

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

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Div. Environmental Protection-Office Waste Management TITLE NUMBER: 33

RULE TYPE: Legislative CITE AUTHORITY: 22-18-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30

TITLE OF RULE BEING AMENDED: "Underground Storage Tanks"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: Tuesday, August 15, 2000 TIME: 6:00 P.M.

LOCATION OF PUBLIC HEARING: Office of Waste Management
1356 Hansford Street
Charleston, WV 25301

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office Waste Management

1356 Hansford Street
Charleston, WV 25301
Attn: Mike Dorsey

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

Carrie J. Chambers

Authorized Signature



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

July 14, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 33CSR30 - "Underground Storage Tanks"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced Legislative Rule with your Office and the Legislative Rule-Making Review Committee as "Notice of a Public Hearing/ Comment Period on a Proposed Legislative Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Gil Sattler
Carrie Chambers

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT**

Rule Title: Title 33, Series 30 "Underground Storage Tanks"

- A. AUTHORITY: WV Code §22-17-6**
- B. SUMMARY OF RULE: This amendment will allow the certification of persons who install, repair, upgrade, or test corrosion protection on underground storage tank systems.**
- C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE: The U. S. Environmental Protection Agency and West Virginia underground storage tank (UST) regulations required all USTs to be have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed. The UST inspectors are finding that many of the systems were not installed correctly. Because the rules did not specifically require certification of persons who install corrosion protection the burden falls solely on the UST owners and/or operators to correct the system. With this amendment the agency is trying to prevent this from continuing in the future.**
- D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:
There is no federal counterpart regulation.**
- E. CONSTITUTIONAL TAKINGS DETERMINATION:
N/A**
- F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:
These proposed rule amendments were discussed with DEP's Advisory Council at their July 6, 2000 meeting. Any comments/recommendations made by the Council concerning this rule will be included in the Minutes of the Council Meeting and attached to the rule when filed for Public Hearing/Comment Period.**

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes.

The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to

review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"
- 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"
- 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"
- 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"
- 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"
- 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR30 - "Requirements for Operating Permits"
- 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

In discussion of 45CSR1, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large

industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPS. The model rule incorporates standards to allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that **45CSR15** adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to **45CSR16**, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under 45CSR13.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being

shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits, which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also

proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those circumstances. However, that should not be that much of a burden since the emissions from a majority (90% +) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

□ 60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to 60CSR4. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

□ 199CSR1 - "Surface Mining Blasting Rule"

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to

ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in §22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- 35CSR4 - "Oil and Gas Wells and Other Wells"
- 35CSR7 - "Certification of Gas Wells"

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward. He said the proposed amendments in 35CSR4 will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the

paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Internal Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- **33CSR3** - "Yard Waste Management Rule"
- **33CSR5** - "Waste Tire Management Rule"
- **33CSR20** - "Hazardous Waste Management Rule"
- **33CSR32** - "Underground Storage Tank Insurance Fund"

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on **33CSR3**. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under **33CSR5**. The

proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed **33CSR20**. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, **33CSR30**, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

- 38CSR2 - "WV Surface Mining Reclamation Rule"
- 38CSR3 - "Rules for Quarrying and Reclamation"

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to 38CSR2, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000

feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 33 Series 30 "Underground Storage Tanks"

Type of Rule: X Legislative Interpretive Procedural

Agency: Bureau of Environment

Address: Division of Environmental Protection
Office of Waste Management
 1356 Hansford Street
 Charleston, WV 25301-1401

1. Effect of Proposed Rule

	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. **Explanation of above estimates:**

A certification program has been in place since 1995 so this additional requirement will be incorporated into the existing program.

3. **Objectives of these rules:**

This amendment will allow the certification of persons who install, repair, upgrade, or test corrosion protection on underground storage tank systems.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There will be no overall impact because there is already a certification program in place.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

There will be an initial \$75.00 application fee and a \$50.00 renewal fee every two years to those that are certified. The cost of hiring the worker may increase slightly, however this certification will greatly improve the quality of work being performed. One of the principle reasons for filing this amendment is to provide some protection to underground storage tank owners who have been paying thousands of dollars only to find that the system was installed incorrectly. Also, some of the corrosion systems that have been installed are interfering with other corrosion systems maintained by utility companies, such as gas lines and water pipes, which is costing these companies additional money to repair their systems.

C. Economic Impact on Citizens/Public at Large.

Only in that it will help to protect their property values by preventing releases from underground storage tank systems.

Date: _____

7/17/00

Signature of Agency Head or Authorized Representative

Garni J. Chambers

FILED

JUL 14 4 08 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 33
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT

SERIES 30
UNDERGROUND STORAGE TANKS

§33-30-1. General.

1.1. Scope. -- This legislative rule establishes regulations to govern the construction, installation, upgrading, use, maintenance, testing, and closure of underground storage tanks in this State.

1.2. Authority. -- W. Va. Code §22-17-6.

1.3. Filing Date. -- ~~April 10, 1996.~~

1.4. Effective Date. -- ~~July 1, 1996.~~

§33-30-2. Adoption of Federal Regulations.

2.1. Incorporation by Reference. -- The director hereby adopts and incorporates by reference the provisions contained in 40 C.F.R. Part 280 as published in the Code of Federal Regulations on ~~December 6, 1995~~ May 1, 2000, with the following modifications:

2.1.a. The definition of "implementing agency" that appears in 40 C.F.R. §280.12 shall be deleted and replaced by "implementing agency means the West Virginia division of environmental protection."

2.1.b. The provisions contained in 40 C.F.R. §280.20(e) shall be deleted and replaced by section 3 of this rule.

2.1.c. The provisions contained in 40 C.F.R. §280.22 shall be deleted and replaced by section 4 of this rule.

2.1.d. The phrase "section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended" that appears in 40 C.F.R.

§280.34 shall be deleted and replaced by the phrase "W. Va. Code §22-17-13".

2.1.e. The provisions contained in 40 C.F.R. §280.34(a)(1) shall be deleted and replaced by "(1) notification in accordance with the provisions of section 4 of this rule".

2.1.f. The provisions contained in appendices II and III of 40 C.F.R. Part 280 shall be deleted.

§33-30.3. Certification Requirements for Individuals Who Install, Repair, Retrofit, Upgrade, Perform Change-in-Service, Close, or Tightness Test Underground Storage Tank Systems: or Install, Repair, Upgrade, or Test Corrosion Protection on Underground Storage Tank Systems.

3.1. Application of Requirements. -- The requirements of this section apply to individuals engaged in underground storage tank system installation, repair, retrofitting, upgrading, change-in-service, closure, or tightness testing, or corrosion protection installation, repair, upgrade or testing.

3.2. Certified Individual Required. -- No individual shall conduct an underground storage tank system installation, repair, retrofit, upgrade, change-in-service, closure, or conduct a tightness test, or a corrosion protection installation, repair, upgrade or test unless an individual present at the underground storage tank system site and exercising responsible supervisory control over the installation, repair, retrofit, upgrade, change-in-service, closure, or tightness test, or corrosion protection

installation, repair, upgrade or test is currently certified by the director in accordance with this section. The underground storage tank system owner and operator must ensure that the individual supervising the installation, repair, retrofitting, upgrade, change-in-service, closure, and/or tightness testing and/or corrosion protection installation, repair, upgrade or testing is certified by the director in the applicable class for the activity performed. The certified individual is required to ensure that the underground storage tank system installation, repair, retrofit, upgrade, change-in-service, closure, and/or tightness testing and/or corrosion protection installation, repair, upgrade or testing is conducted in accordance with all applicable rules, regulations, and policies established by the director.

3.2.a. An individual who holds a current certificate issued by the director shall be present at all times during:

3.2.a.1. The installation process involving the preparation of the excavation immediately prior to receiving backfill and the tank, the setting of the tank and the piping (including placement of any anchoring devices), backfilling to the level of the tank, strapping, anytime during the installation in which piping components are connected, installation of corrosion protection either galvanic or impressed current when anodes are installed, electrical connections are made to the tank and anodes, and when the system is energized, all testing of the underground storage tank and piping performed during the installation, completion of the backfill and filling of the excavation, and installation of release detection devices within the excavation zone;

3.2.a.2. The repair, retrofitting or upgrading process involving the excavation of existing tanks and/or piping, the actual performance of repairs to the tank and/or piping, anytime during the process when components of the piping are connected, anytime during repair or upgrade of corrosion protection either galvanic or impressed current when anodes are installed, electrical connections are made to the tank and anodes, and when the system is energized, anytime during the

repair process when the tank and/or associated piping are tested and at anytime during the process when equipment is connected to the tank and/or piping;

3.2.a.3. The tightness testing of tanks and/or piping; and

3.2.a.4. The change-in-service or closure process involving the process of vapor removal, purging, inerting, cleaning and all subsurface sample collection events; and

3.2.a.5. The testing of a corrosion protection system either galvanic or impressed current.

3.3. Certification Categories. -- The underground storage tank system certificates issued by the director will address the following categories:

3.3.a. A class A certificate will allow the individual certified to install, repair, retrofit or upgrade an underground storage tank system;

3.3.b. A class B certificate will allow the individual certified to perform a change-in-service or close an underground storage tank system; and

3.3.c. A class C certificate will allow the individual certified to perform tank and/or piping tightness testing and to perform minor repairs and to disconnect and reconnect piping and equipment to an underground storage tank system as is necessary to perform the tightness test.

3.3.d. A class D certificate will allow the individual certified to install, repair, test or upgrade corrosion protection systems either galvanic or impressed current on an underground storage tank system; and

3.3.e. A class E certificate will allow the individual certified to conduct routine tests, system maintenance, and routine inspections on corrosion protection systems either galvanic or impressed current on an underground storage tank system.

3.4. Certification Requirements. -- An individual applying for a class A, class B, ~~and/or~~ class C, class D and/or class E certificate must file a written application on a form supplied by the director showing the director that he or she meets the following requirements:

3.4.a. The applicant must be an individual. Businesses or corporations may not be certified;

3.4.b. The applicant need not be a resident of West Virginia;

3.4.c. The applicant shall demonstrate ethical practice. The demonstration shall consist of providing to the director written statements from two (2) personal references and two (2) business references attesting to the applicant's ethical practices. In addition, the director may conduct a police check and checks with other certification or licensing boards with which the applicant is registered to determine the nature of violations of federal, state or local laws and regulations relating to the applicant's performance in an ethical and competent manner. The director may deny the applicant's certification based upon the documentary evidence obtained pursuant to this subdivision;

3.4.d. The applicant for class A, B, or C must demonstrate active participation in a minimum of ten (10) regulated underground storage tank system installations, repairs, retrofits, upgrades, performances of a change-in-service, closures, and/or tightness testing conducted after December 22, 1988, as is applicable to the class A, B and/or C certificate. ~~Closely related work experience may be substituted upon approval by the director.~~ An applicant who is a registered professional civil or mechanical engineer duly licensed by the State Board of Registration for Professional Engineers of West Virginia may substitute this license for the required experience for class A or class B;

3.4.d.1. Applicants shall provide the director a listing of the work performed, site locations, and the names of the companies or employers for whom the work was performed;

3.4.d.2. Applicants for class C certification must submit proof of a current certification by the manufacturer of each tank and/or piping tightness test method that they will be using and must assure by a signed written statement filed with the director that they will follow the current test protocol established by the manufacturer and policies established by the director;

3.4.e. Applicants for class D must submit proof of a current certification level as at a minimum a corrosion technician by the National Association of Corrosion Engineers or an equivalent certification from another organization and must assure by a signed written statement that they will follow the West Virginia public service commission rule as adopted by reference Title 49, Parts 191-193 and Part 195 of the Pipeline Safety regulations regarding corrosion protection;

3.4.e.1. The applicant must prove that certification by an organization other than the National Association of Corrosion Engineers is equivalent to the National Association of Corrosion Engineers by submitting copies of the course of study for review;

3.4.f. Applicants for class E must submit proof of a current certification level as at a minimum a corrosion tester by the National Association of Corrosion Engineers or an equivalent certification from another organization and must assure by a signed written statement that they will follow the West Virginia public service commission rule as adopted by reference Title 49, Parts 191-193 and Part 195 of the Pipeline Safety regulations regarding corrosion protection;

3.4.f.1. The applicant must prove that certification by an organization other than the National Association of Corrosion Engineers is equivalent to the National Association of Corrosion Engineers by submitting copies of the course of study for review;

~~3.4.e.~~ 3.4.g. No applicant for class A, B, or C shall be issued a certificate unless he or she has successfully passed a written examination administered by the director;

~~3.4.c.1.~~ 3.4.g.1. Examinations administered to applicants for certification shall be written, multiple choice examinations. The director shall derive the questions used in the examination from standards, instructions, industry recommended practices and state and federal laws and regulations pertaining to underground storage tank system installation, repair, retrofitting, upgrading, change-in-service, closure, and tightness testing. The director can make available to applicants alternative testing procedures;

~~3.4.c.2.~~ 3.4.g.2. ~~Beginning after July 1, 1994, the~~ The director or persons designated by the director shall conduct written examinations at such times and locations within the state as the director may consider necessary;

~~3.4.c.3.~~ 3.4.g.3. Applicants for certification must correctly answer not less than 80 percent of the questions in a category of certification to qualify for that category of certification; and

~~3.4.c.4.~~ 3.4.g.4. No applicant may take an examination more than three (3) times within a twelve (12) month period. Applications are considered current for a period of one (1) year from the date they are received by the director. After one (1) year, a new application must be filed and the examination fee paid; and

~~3.4.f.~~ 3.4.h. At the time of the examination the applicant for class A, B, or C shall remit a nonrefundable \$75 fee by check or money order. This fee shall be deposited in the Underground Storage Tank Administrative Fund. A fee of \$35 shall be assessed for each retesting within the same year; and

3.4.i. Applicants for class D or E shall submit a nonrefundable application fee of \$75 by check or money order. This fee shall be deposited in the Underground Storage Tank Administrative Fund.

3.5. Certificate Expiration and Renewal. -- All certificates and certificate renewals expire December 31 of every second year. Applications for

certificate renewal and payment of a nonrefundable renewal fee of \$50 must be submitted to the director by November 1 of the year in which the certificate expires. An individual whose certificate has expired prior to his or her submission of an application for renewal is considered a new applicant for certification.

3.5.a. An individual may renew his or her certificate for another two (2) year period by:

3.5.a.1. Paying the renewal fee; and

3.5.a.2. Submitting on a form supplied by the director a certificate renewal application demonstrating that he or she has completed sixteen (16) hours of director approved continuing education training courses for each class and has participated in at least one (1) job applicable to the class of certification within the prior certification period:

3.5.a.2.A. The continuing education training course must be relevant to the subject area of installation, repair, retrofitting, upgrading, corrosion protection, change-in-service, closure, tightness testing or the regulation of underground storage tank systems as it relates to the category of certification and offer instruction on the most current generally acceptable technology or methods for these subjects; and

3.5.a.2.B. Applications for approval of specific training programs shall be submitted by the training provider to the director in writing. The submissions shall contain a complete course outline, training material, sample certificates, the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods that will be presented in the training program will satisfy state and federal laws governing underground storage tank system installation, repair, retrofitting, upgrading, corrosion protection, change-in-service, closure, or tightness testing; or

3.5.a.3. Submitting on a form supplied by the director a certificate renewal applica-

tion, demonstrating that he or she has participated in at least one (1) job applicable to the class of certification within the prior certification period and successfully passing the written examination described in sub-division ~~3.4.c.~~ 3.4.g. of this rule. At the time of the examination, the applicant applying for renewal must remit a nonrefundable \$50 fee by check or money order: and

3.5.b. Individuals certified in class C must submit a copy of their current certification by the manufacturer of each test method that they are and will be using. Individuals certified in class D or class E must submit a copy of their current certification by the National Association of Corrosion Engineers or another previously approved equivalent organization.

3.6. Identification Card. -- Upon issuance of the certification the director shall issue an identification card to the successful applicant that shows the individual's name, social security number, certificate issuance date, certificate expiration date, certification number and the class of certification.

3.6.a. An individual who holds a current certificate shall present his or her identification card upon request by a representative of the director or the owner or operator of the underground storage tank system for which an installation, repair, retrofit, upgrade, change-in-service, closure or tightness test or corrosion protection installation, repair, upgrade, or test is to be conducted.

3.7. Denial or Revocation of Certification. -- Should an applicant be denied issuance or renewal of certification or should the individual's certificate be revoked, the reason or reasons for the denial or revocation shall be set forth in writing to the individual by the director.

3.7.a. Possible reasons for denial of issuance of certification, renewal of certification or revocation of certification may include, but are not limited to, failure to achieve a passing score on the written examination described in sub-division ~~3.4.c.~~ 3.4.g. of this rule, failure to submit required documentation, failure to follow the tank and/or piping tightness testing manufacturer's protocol and/or

policies established by the director, failure to follow West Virginia public service commission rules as adopted by reference Title 49, Parts 191 - 193 and Part 195 of the Pipeline Safety regulations regarding corrosion protection and/or policies established by the director, previous revocation of certification held by the applicant, evidence of fraud or deceit with respect to the certification application, failure to present the identification card upon request of a director's representative, violations of the laws or rules of West Virginia, for ethical considerations enumerated in sub-division 3.4.c. of this rule, and/or any other cause that, in the opinion of the director, constitutes adequate grounds for denial or revocation of a certificate.

3.7.b. An individual who has been denied issuance or renewal of certification or who has had a certificate revoked may appeal the action to the Environmental Quality Board pursuant to the provisions of WV Code §22-17-18.

3.8. Enforcement Action. -- Any individual who violates the provision of section 3 of this rule is subject to enforcement action under WV Code §22-17-1 et seq.

§33-30-4. Notification Requirements.

4.1. Notification. -- Except as provided in sub-division 4.1.a., 4.1.b., or 4.1.c. of this rule, the owner or operator of an underground storage tank system that was in the ground prior to May 1, 1990, must submit a notice of the existence of such tank system to the director by completing the form prescribed ~~in appendix I of this rule.~~ by the director.

4.1.a. The owner or operator of an underground storage tank system that was in the ground prior to May 1, 1990, is exempt from the notification requirements of sub-section 4.1 of this rule if notice was previously given to the director in accordance with the provisions of the federal Hazardous and Solid Waste Amendments of 1984 on the form published in the federal register on November 8, 1985 (50 F.R. 46602), unless such notice was given pursuant to section 103© of the

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

4.1.b. The owner or operator of an underground storage tank system that was removed from the ground on or before May 8, 1986, is exempt from the notification requirements of sub-section 4.1 of this rule.

4.1.c. The owner or operator of an underground storage tank that was installed before December 22, 1988, need only complete sections I through X of the form prescribed in appendix I of this rule. Tank systems installed on or after December 22, 1988, must comply with the provisions of sub-section 4.2 of this rule.

4.2. Notification of Compliance. -- All owners and operators of underground storage tank systems installed on or after December 22, 1988, must provide the director, in addition to the provisions of sub-division 4.1.c. of this rule, notification of compliance with the following requirements:

4.2.a. For underground storage tank systems installed on or after December 22, 1988, and before January 1, 1995, installation of tanks and piping as certified under section XI of the form prescribed in appendix I of this rule by the director, excluding item B (installer certified or licensed by the implementing agency) under section I (installation) of part XI (certification of compliance).

4.2.b. For underground storage tank systems installed on or after January 1, 1995, installation of tanks and piping by an individual certified by the director in accordance with section 3 of this rule.

4.2.c. Cathodic protection of steel tanks and piping in accordance with the provisions of 40 C.F.R. §§280.20(a) and 280.20(b).

4.2.d. Spill and overflow prevention equipment in accordance with the provisions of 40 C.F.R. §280.20(c).

4.2.e. Financial responsibility in accordance with the provisions of 40 C.F.R. Part 280 Subpart H.

4.2.f. Release detection in accordance with the provisions of 40 C.F.R. §§280.41 and 280.42.

4.3. Notification of Installation. -- All owners and operators of underground storage tank systems to be installed must notify the director in writing at least thirty (30) days prior to beginning the installation. The thirty (30) day time period may be waived when such action is in response to a release from an existing UST system on the site.

4.4. Certification of Installation. -- All owners and operators of UST systems must ensure that:

4.4.a. When the system was installed on or after December 22, 1988, and before January 1, 1995, the installer certifies, in the notification form, that the methods used to install the tanks and piping comply with the requirements of 40 C.F.R. §280.20(d); and

4.4.b. When the system was installed on or after January 1, 1995, the installation of tanks and piping was performed by an individual certified by the director in accordance with section 3 of this rule. The installer must certify in the notification form that the methods used to install the tanks and piping comply with the requirements of 40 C.F.R. 280.20(a) through (d).

4.5. Notification Requirements. -- An owner or operator who is required to submit notices under section 4 of this rule may provide notice for several tanks by using one notification form, but an owner of tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

4.6. Notification to Purchaser. -- After June 10, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's notification obligations under section 4 of this rule. The follow-

ing notice may be used to comply with the requirement:

"NOTICE: Owners of certain underground storage tanks in West Virginia are required by law to notify the director of the division of environmental protection of the existence of their tanks. Notifications for tanks brought into use after May 8, 1986, must be made within thirty (30) days. Consult the division's Underground Storage Tank Rule (33 C.S.R. 30) to determine if you must provide this notification."

4.6.a. After June 14, 1993, any person who sells an existing tank intended to be used as an underground storage tank must notify the director in writing at least thirty (30) days prior to the transfer of ownership.

4.7. Notification of Change in Status. -- Except as provided in sub-division 4.6.a. of this rule, the owner or operator must report changes in the status of any underground storage tank system by completing the form prescribed ~~in appendix I of this rule~~ by the director and then submitting that form to the director by December 31 of the year in which the change of status occurred.

4.7.a. A new owner of an underground storage tank must provide notification of the transfer of ownership of that tank by completing the form prescribed ~~in appendix I of this rule~~ by the director along with proof of financial responsibility in accordance with the provisions of 40 C.F.R. Part 280 Subpart H and must submit this information to the director within thirty (30) days of the transfer.

§33-30-5. Carriers.

5.1. Proof of Compliance. -- Carriers (private, common, or for-hire) of regulated substances shall not deliver regulated substances into an underground storage tank unless the division has certified that the underground storage tank owner or operator is in compliance with the requirements of: the Underground Storage Tank Fee Assessments (33 C.S.R. 31), notification requirements (33 C.S.R. 30 §4); and capitalization fee requirements (33 C.S.R. 32 §5) and the owner or operator

presents proof of this certification along with proof of financial responsibility in compliance with 40 C.F.R. Part 280 Subpart H to the carrier.

5.2. Enforcement. -- Any carrier who violates the provision of sub-section 5.1 of this rule is subject to enforcement action under WV Code §22-17-1 et seq.