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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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February 11, 2001

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers
DEP-Waste Management, Office of
10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Underground Storage Tanks, 33CSR30**

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
- 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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

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ANALYSIS OF PROPOSED LEGISLATIVE RULE

Dec 28 3 29 PM '00

Agency: Office of Waste Management

Subject: Underground Storage Tanks

CSR Cite: 33CSR30

Counsel: JAA

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

PERTINENT DATES

Filed for public comment: July 14, 2000
Public comment period ended: August 15, 2000
Filed following public comment period: August 23, 2000
Filed LRMRC: August 23, 2000
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

This rule is being amended to insert certification requirements for persons who install, repair, upgrade or test corrosion protection or underground storage tank systems. Federal references are also updated. According to the Office of Waste Management, installation of corrosive protection devices on underground storage tanks has been required since 1998, and several installations have been done improperly causing tank owners considerable costs in correcting these problems. Certification requirements are created to assure that corrosion protection installers are properly trained.

Section Summary

Section 2.1 updates the cite to the federal regulation to May 1, 2000.

Section 3 contains certification requirements for persons who service underground storage tanks. This section is amended to require persons who install, repair, upgrade or test corrosion protection or underground storage tank systems.

New Section 3.3.d creates a new class D certificate to allow certified individuals to install repair, test or upgrade corrosion protection systems on underground storage tank systems.

New Section 3.3.e. creates class E certificate for persons to conduct routine tests, system maintenance and routine inspections on corrosion protection systems.

New Section 3.4.e. requires that applicants for a class D license must submit proof of certification as a corrosion technician by the National Association of Corrosion Engineers or proof of an equivalent certification and a signed statement that he or she will comply with the Public Service Commission pipeline safety requirements.

New Section 3.4.f. requires for applicants for a class E license must submit proof of certification as a corrosion tester by the National Association of Corrosion Engineers or proof of an equivalent certification and a signed statement that he or she will comply with PSC pipeline safety requirements.

New Section 3.4.i. provides that applicants for class D or E licenses pay a nonrefundable application fee of \$75.00, which shall be deposited in the Underground Storage Tank Administrative Fund.

New Section 3.5.b. requires class C, D, and E permittees to submit copies of their certifications to the Director.

Section 3.7.a. adds to the grounds for denial or revocation of certification, failure to follow PSC pipeline safety requirements.

AUTHORITY

Statutory authority: W.Va. Code, §22-18-6 provides:

(a) The director has overall responsibility for the promulgation of rules under this article. The director shall promulgate the following rules, in consultation with the department of health and human resources, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the division of highways, the department of agriculture, and the environmental quality board. In promulgating and revising such rules, the director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

(1) Rules establishing a plan for the safe and effective management of hazardous wastes within the state....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.