

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

Department of Environmental Protection/  
AGENCY: Office of Waste Management TITLE NUMBER: 33

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: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2663

SECTION 64-3-1 (h), PASSED ON April 14, 2001

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: July 1, 2001



Authorized Signature

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

SERIES 30  
UNDERGROUND STORAGE TANKS

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2001 MAY 15 P 3:30  
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**§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, retrofit, 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.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.e.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.e.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.e.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.e.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 overfill 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.