

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

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Form #1

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

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

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §22-17-6

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 31

TITLE OF RULE BEING AMENDED: "Underground Storage Tank Fee Assessments"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: June 7, 2004 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Dept. of Environmental Protection / Office of Waste Management
DWM2 Conference Room
1356 Hansford Street
Charleston, WV 25301-1401

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:


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

Dept. of Environmental Protection
Office of Waste Management
attn: Gil W. Sattler

1356 Hansford Street
Charleston, WV 25301-1401


Authorized Signature

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: Title 33, Series 31- "Underground Storage Tank Fee Assessments"

A. AUTHORITY: W.Va. Code §22-17-6

B. SUMMARY OF RULE:

This amendment to the rule will allow the increase in the annual registration fees as required by House Bill 4521.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

This emergency rule will allow the Department of Environmental Protection to assess the annual registration fees in compliance with HB4521. HB4521 requires that the emergency rule be filed and the fee be assessed for state fiscal year 2004.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

No federal counterpart to this proposed rule exists.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

The Environmental Protection Advisory Council discussed the proposed rule at its April 29, 2004 meeting (minutes attached).

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Thursday, April 29, 2004
1356 Hansford Street, Charleston, WV
2nd Floor Conference Room

ATTENDEES:

Advisory Council Members:

Larry Harris
Jackie Hallinan (unexcused absence)
Rick Roberts
Lisa Dooley
Bill Raney

DEP:

Joe Dawley, General Counsel
Karen Watson, Assistant General Counsel
Ken Ellison, Director - DLR
Pam Nixon, Environmental Advocate
Jessica Greathouse, Communications Officer
Gil Sattler, Program Manager, DEP/UST

Joseph M. Dawley, WVDEP – General Counsel, called the meeting to order at 10:00 a.m.

HB 4521 – Underground Storage Tank Administrative Fee Increase

- Presented by Joe Dawley and Gil Sattler.
- Additional dialogue ensued regarding public hearing/comment periods for the emergency rule.

SCR 99 - UST Insurance Fund

- Joe Dawley presented update on solvency of fund and reasons for deficit.
- Legislature to study revenue issues and explore creative solutions.
- Lisa Dooley inquired whether BRIM, as DEP's insurer, should fund the liability for the insurance fund.
- Lisa Dooley suggested to evaluate the possibility of adding a surcharge on the UST insurance to make up for the shortfall.

HB 4027 - Environmental Excellence Bill

- Joe Dawley provided an overview of the bill which is aimed to encourage superior environmental performance in exchange for incentives and enhanced stakeholder involvement.
- Joe Dawley explained that DEP will begin to develop rules for the implementation of the

program. The DEP will develop a draft rule for discussion with interested parties.

SB 163 - Water Resources Preservation Act

- Joe Dawley gave an overview on how the DEP intends to proceed in the implementation of the water use survey.
- Joe Dawley indicated that the DEP will work with the legislature in the implementation of the survey.
- Rick Roberts suggested that the DEP start with the PSD's because they currently submit information on withdrawals to the Bureau of Health.
- Bill Raney suggested that Allyn Turner attend the next advisory council meeting to discuss the implementation of the water use survey.

HCR 52 - Water Quality Standards

- Bill was discussed by Joe Dawley that involved the study of the development of water quality standards. The DEP will participate in the study.

§ 22-1-9. Environmental Protection Advisory Council

- Copy of code distributed to members.
- Discussion held about the duties of the Advisory Council and the guiding principles.
- Council was encouraged to actively and effectively utilize the powers with which the Advisory Council is charged.
- Joe Dawley agreed to put a webpage on the Council on DEP's webpage.

Involvement of Advisory Council

- Bill Raney suggested DEP Directors provide occasional updates on their respective issues so Advisory Council will be informed and can possibly provide some input and/or solutions.
- Ken Ellison stated the Division of Land Restoration will set a model and develop plan as an example for other divisions to provide Advisory Council with written proposals of issues, so level of participation from DEP divisions can be determined and debates can occur before rules are promulgated.
- Ken Ellison discussed possibility of presenting tough science issues to Advisory Council for assistance in answering what "science" says about a particular issue, as well as assistance in continuing to build a relationship with the medical community.

Future Advisory Council Meetings

- Will attempt to normalize dates of future meetings. Tentative discussion was held about holding quarterly meetings on the 4th Thursday of every third month, with the exception of December meeting, which will be held on 2nd Thursday. If council members are unable to attend, representative can attend.
- Joe Dawley asked if there were any particular issues the Advisory Council would like to take on this year or if Council would prefer to react to what the Department of Environmental Protection provides.
- Lisa Dooley stated she thinks Advisory Council meetings need a structured agenda and that meetings should be recorded. Dooley also suggested that Advisory Council utilize "Roberts

Rules” as means to providing input to specific issues. Joe Dawley will explore different options.

- Karen Price will be extended invitation to future meetings until Governor formally appoints her as Advisory Council replacement.
- Agenda items for future meetings can be sent via e-mail to Joe Dawley who will determine if issue needs to be part of Advisory Council meeting agenda, or if it issue may require individual discussion with particular DEP personnel.

DEP New Building Update

- Construction of building is on schedule and DEP is expected to move in October and November.
- If Advisory Council members are interested, a tour can possibly be arranged in conjunction with June meeting.

The next schedule meeting of the WV DEP Advisory Council is Thursday, June 24, 2004.

Joe Dawley adjourned the meeting.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 33 Series 31 "Underground Storage Tank Fee Assessments"

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Department of Environmental Protection

Address: Division of Water and Waste Management

1356 Hansford Street

Charleston, WV 25301-1401

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$0	\$0	\$0	\$0	\$0
PERSONAL SERVICES	\$0	\$0	\$0	\$0	\$0
CURRENT EXPENSE	\$0	\$0	\$0	\$0	\$0
REPAIRS & ALTERATIONS	\$0	\$0	\$0	\$0	\$0
EQUIPMENT	\$0	\$0	\$0	\$0	\$0
OTHER	\$0	\$0	\$0	\$0	\$0

2. Explanation of Above Estimates:
To implement this rule change only a field in a database will be changed.

3. Objectives of These Rules:
To increase revenue to the Underground Storage Tank Program which has been underfunded for several years.

Rule Title: Title 33 Series 31 "Underground Storage Tank Fee Assessments"

4. Explanation of Overall Economic Impact of Proposed Rule:

- A. Economic Impact on State Government:
The increase in the fee will increase revenue to the Underground Storage Tank Program and allow it to be self supporting.

- B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:
The increase will effect underground storage tank owners who are major oil companies, petroleum marketers, individual service station owners, other state agencies, some cities and counties, the federal government, and others.

- C. Economic Impact on Citizens/Public at Large.
None will be directly affected by the fee increase. The revenue increase will however allow the regulatory program to continue to operate and regulate the underground storage tanks which will in turn protect human health, safety, and the environment.

Date: _____

Signature of Agency Head or Authorized Representative:

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

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SERIES 31
UNDERGROUND STORAGE TANK FEE ASSESSMENTS

WEST VIRGINIA
SECRETARY OF STATE

§33-31-1. General.

1.1. Scope. -- This legislative rule establishes procedures for the assessment and collection of fees for the Underground Storage Tank Administrative Fund and the Leaking Underground Storage Tank Response Fund pursuant to W. Va. Code §§22-17-20 and 22-17-21.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Incorporation by Reference. -- Whenever federal statutes or regulations are incorporated by reference into this rule, the reference is to the statute or rule in effect on the date on which this rule was proposed ~~July 1, 1992~~ April 8, 2004.

1.6. Tanks Excluded From Fee Assessments. -- The following categories of underground storage tanks are excluded from the fee assessment provisions of section 3 of this rule.

1.6.a. Any underground storage tank holding hazardous wastes listed or identified under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, or a mixture of such hazardous waste and other regulated substances;

1.6.b. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the federal Clean Water Act;

1.6.c. Equipment or machinery that contains regulated substances for operational purposes

such as hydraulic lift tanks and electrical equipment tanks;

1.6.d. Any underground storage tank system whose capacity is one hundred and ten (110) gallons or less;

1.6.e. Any underground storage tank system that contains a de minimis concentration of regulated substances; and

1.6.f. Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

§33-31-2. Definitions.

2.1. "Act" means the West Virginia Underground Storage Tank Act (W. Va. Code §22-17-1 et seq.).

2.2. "Change-In-Service" means when an underground storage tank system has undergone a "change-in-service" pursuant to 40 C.F.R. §§280.71 and 280.72.

2.3. "~~Division~~" "Department" means the ~~division~~ department of environmental protection.

2.4. "Owner" means:

2.4.a. In the case of an underground storage tank system in use on November 8, 1984, or brought into use after that date, a person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance.

2.4.b. In the case of an underground storage tank system, in use before November 8, 1984, but no longer in use on that date, a person

who owned such a tank immediately before the discontinuation of its use.

2.5. "Person" means any individual, trust, firm, joint stock company, federal agency, corporation (including government corporations), partnership, association, state, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, or the United States government.

2.6. "Permanent Closure" means the closure of an underground storage tank in the manner specified under 40 C.F.R. §§ 280.71 and 280.72.

2.7. "Regulated Substance" means:

2.7.a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; or

2.7.b. Petroleum, including crude oil or an 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).

2.8. "Underground Storage Tank" or "UST" means any one or 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 underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. The term underground storage tank does not include:

2.8.a. Farm or residential tanks with a capacity of eleven hundred ~~gallons~~ (1,100) gallons or less and used for storing motor fuel for noncommercial purposes;

2.8.b. Tanks used for storing heating oil for consumptive use on the premises where stored;

2.8.c. Septic tanks;

2.8.d. A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated under state laws comparable to the provisions of either of those acts;

2.8.e. Surface impoundments, pits, ponds, or lagoons;

2.8.f. Storm water or wastewater collection systems;

2.8.g. Flow-through process tanks;

2.8.h. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

2.8.i. Storage tanks situated in an underground area such as basement, cellar, mine working, drift, shaft, or tunnel if such storage tank is situated upon or above the surface of the floor; and

2.8.j. Any pipes connected to any tank which is described in sub-division 2.8.a. through 2.8.i. of this rule.

§33-31-3. Fee Assessment.

3.1. Registration Fees.

3.1.a. The ~~division~~ department will collect an annual registration fee from each owner of an underground storage tank which has not undergone permanent closure or change-in-service in this state. The registration fee will not exceed ~~twenty-five dollars (\$25)~~ sixty-five dollars (\$65) per tank per year.

3.2. Response Fees.

3.2.a. The ~~division~~ department will collect an annual response fee from each owner of an underground petroleum storage tank which has not undergone permanent closure or change-in-service in this state. The response fee will not exceed twenty-five dollars (\$25) per tank per year.

3.3. Fee Calculation.

3.3.a. The division department will calculate the fees assessed pursuant to this rule based upon the maximum assessment allowable under the Act.

3.3.b. Owners of USTs, the use of which commenced on or after January 1 of the current calendar year must pay the full annual fees assessed under sub-sections 3.1. and 3.2. of this rule (i.e., fees assessed will not be prorated).

3.3.c. Owners of USTs that have completed permanent closure or a change-in-service during the calendar year must pay the full annual fees assessed under sub-sections 3.1. and 3.2. of this rule.

3.4. Fee Consolidation.

3.4.a. The fees assessed pursuant to this rule will be consolidated.

§33-31-4. Fee Collection.

4.1. An invoice for the fees assessed pursuant to this rule will be provided by the division department to each tank owner upon whom a fee is assessed. Such invoice will include an itemized list of fees assessed and the date upon which such fees are due and payable. The invoice will be provided in the form and manner prescribed by the division department.

4.2. Fees assessed pursuant to this rule must be paid by check, money order, or bank draft payable to the West Virginia division department of environmental protection. Payment of the entire amount of the fees assessed, as calculated on the assessment invoice, must be made in a single payment.

4.3. Fee payments must be sent to the address on the assessment invoice provided by the division department by the date specified on the invoice. If such fee payment is mailed, then the payment must be postmarked by the date specified on the invoice.

4.4. Correcting Fee Assessment Errors.

4.4.a. Under charges that appear on the assessment invoices issued by the division

department will be corrected by the issuance of a corrected invoice.

4.4.b. Overcharges that appear on the assessment invoices issued by the division department will be corrected on the assessment invoices issued for the next calendar year unless the tank owner submits a written request for a refund to the division department. Said request, along with documentation supporting the claim of erroneous assessment, must accompany the payment of the assessed fee. The division department shall investigate the tank owner's claim and issue a refund for the amount in excess of the proper assessment if the tank owner's claim proves to be valid.

4.4.c. Any errors made in the calculation of assessment fees, whether by the division department or as a result of inaccurate information submitted by the owner or operator pursuant to the notification requirements under section 4 of the Underground Storage Tank Rule ((33 C.S.R. 30 §4) and section 8 of The Underground Storage Tank Act (W. Va. Code §22-17-8), must be corrected within one (1) year of the due date posted on the invoice, ~~except for the following:~~

~~4.4.c.1. Within one (1) year after the effective date of June 14, 1993, the division or the owner or operator may correct assessment fee errors for all invoices with due dates specified within the previous two (2) years of the effective date under Section 1.4 of these regulations.~~

4.4.d. All fee assessments shall be as originally assessed if no errors are identified within the one (1) year period.

4.5. A tank owner who does not make a full, timely payment of the fees pursuant to this rule, or who otherwise fails to comply with the provisions of this rule, is subject to the penalties provided under W. Va. Code §§22-17-15 and 22-17-16.

4.6. Penalties shall be assessed on fee payments not received by the specified due date on the invoice. Late fees shall be a cumulative sum based on the following penalty assessment:

4.6.a. Fifty percent (50%) of the balance assessed for delinquent fees in excess of thirty (30) days after the due date specified on the invoice.

§33-31-5. Fee Deposit.

5.1. Fees collected by the division department pursuant to this rule will be deposited into the state treasury in accordance with W. Va. Code §§22-17-20 and 22-17-21.

5.1.a. The deposit of a fee payment into the state treasury is not an admission by the division department of an assessment for the correct number of tanks. Each tank owner is obligated to notify the division department if the number of tanks assessed is incorrect. Corrections will be made in accordance with sub-section 4.4 of this rule.

5.1.b. Deposits into the Underground Storage Tank Administrative Fund will include:

5.1.b.1. All registration fees collected pursuant to sub-section 3.1 of this rule;

5.1.b.2. The net proceeds of all fines, penalties, and forfeitures collected under the Act; and

5.1.b.3. All interest accruing on investments and deposits of this fund.

5.1.c. Deposits into the Leaking Underground Storage Tank Response Fund will include;

5.1.c.1. All response fees collected pursuant to sub-section 3.2 of this rule;

5.1.c.2. Any registration fee monies received by the division department that exceed the maximum annual balance for the Underground Storage Tank Administrative Fund as prescribed under W. Va. Code §22-17-20(a).

5.1.c.3. All interest accruing on investments and deposits of this fund.