

**WEST VIRGINIA
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ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
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Form #6

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

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

AMENDMENT TO AN EXISTING RULE: YES 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: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) HB2723

SECTION 64-3-1(h), PASSED ON April 8, 2005

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: June 1, 2005


Authorized Signature

FILED

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

2005 MAY 10 A 8:45

SERIES 31
UNDERGROUND STORAGE TANK FEE ASSESSMENTS

OFFICE 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. -- May 10, 2005

1.4. Effective Date. -- June 1, 2005

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 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. "Department" means the 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 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 (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 intra-state 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 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 sixty-five dollars (\$65) per tank per year.

3.2. Response Fees.

3.2.a. The 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 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 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 department.

4.2. Fees assessed pursuant to this rule must be paid by check, money order, or bank draft payable to the West Virginia 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 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 department will

be corrected by the issuance of a corrected invoice.

4.4.b. Overcharges that appear on the assessment invoices issued by the 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 department. Said request, along with documentation supporting the claim of erroneous assessment, must accompany the payment of the assessed fee. The 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 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:

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 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 department of an assessment for the correct number of tanks. Each tank owner is obligated to notify the 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 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.