

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

FILED

SEP 14 2 59 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Environmental Protection
Office of Waste Management TITLE NUMBER: 33

CITE AUTHORITY: WV Code 22-17-6

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 32

TITLE OF RULE BEING AMENDED: Underground Storage Tank Insurance Trust Fund


IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary


Signature

\$4.40



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

October 14, 1998

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

RE: 33CSR32 - "Underground Storage Tanks Insurance Trust Fund"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-reference rule as notice of an Emergency Rule with your Office and the Legislative Rule-Making Review Committee. This rule was filed in your Office for Public Hearing/Comment period on September 3, 1998 and as an Agency-Approved Rule October 7, 1998.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Cap Smith, Chief, OWM
Gil Sattler, OWM
Carrie Chambers

EMERGENCY RULE QUESTIONNAIRE

DATE: *October 14, 1998*

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *Division of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301
558-5929*

EMERGENCY RULE TITLE: *Underground Storage Tank Insurance Trust Fund*

1. Date of filing of proposed legislative rule: *October 14, 1998*
2. Statutory authority for promulgating emergency rule: *W. Va. Code 22-17-6*
3. Date of filing of proposed legislative rule: *October 14, 1998*
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? *New language is added to amend the rule.*
5. Has the same or similar emergency rule previously been filed and expired? *No.*
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety, or welfare. *Both federal and state regulations require UST owners to upgrade, replace, or close their USTs by December 22, 1998. The Division of Environmental Protection wishes to provide up to \$500,000 from the UST Insurance Trust Fund to the Small Business Revolving Loan Program which was created last year to make loans to small businesses for UST qualifying loans. Many UST owners are finding it difficult to obtain the funding from other sources.*
7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein. *The deadline of December 22, 1998, is not a deadline for the agency but for UST owners. The rules requiring the UST upgrades, replacement or closure is federal regulation 40 CFR Part 280 Subpart B. The state rule is §33-30-2.*

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest. *Without the ability to obtain this funding some small businesses will have to stop operating. They will not have the means to upgrade their systems or to properly close them. Therefore human health and safety and the environment will be threatened due to unprotected UST systems remaining in the ground. The loss of these small businesses will also affect the public by reducing the number of service stations available to them.*

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: *Title 33, Series 32 "Underground Storage Tank Insurance Trust Fund"*

- A. AUTHORITY: *WV Code 22-17-6*
- B. SUMMARY OF RULE: *This amendment will allow the UST Insurance Trust Fund to provide up to \$500,000 to the Small Business Revolving Loan Program to make loans to small businesses for UST qualifying loans. The federal and state UST regulations require all USTs to be upgraded, replaced, or closed by December 22, 1998.*
- C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE: *The current rule does not allow the UST Insurance Trust Fund to provide these funds to the Small Business Revolving Loan Program. UST owners are required to upgrade, replace, or close their USTs by December 22, 1998. Many are finding it difficult or impossible to obtain funding from other sources.*
- D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY: *There is no counterpart regulation.*
- E. CONSTITUTIONAL TAKING DETERMINATION: *In accordance with §22-1A-1 and 3(c), the Director 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: *This rule is being made available to the advisory council for their recommendation to the Director.*

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 33, Series 32, "Underground Storage Tank Insurance Trust Fund"

Type of Rule: X Legislative Interpretive Procedural

Agency Bureau of Environment

Division of Environmental Protection

Address Office of Waste Management

1356 Hansford Street

Charleston, WV 25301-1401

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ *	\$ *	\$ *	\$ *	\$ *
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates: ***

This rule is being amended to allow the insurance trust fund to provide funds to the Small Business Revolving Loan Program. The anticipated administrative costs of the program will be to the loan administrator.

3. Objectives of these rules:

To provide low interest loans to small businesses for upgrade and replacement of USTs.

Rule Title: Title 33, Series 32, "Underground Storage Tank Insurance Trust Fund"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Administrative costs to the Small Business Revolving Loan Program

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

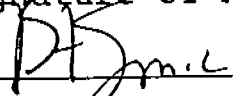
The rule will have a positive effect on small businesses.

C. Economic Impact on Citizens/Public at Large.

The rule will have a positive effect on the public because there will be more service stations available to them.

Date: September 2, 1998

Signature of Agency Head or Authorized Representative



B. F. Smith, P.E., Chief

Oct 14 2 53 PM '98

TITLE 33
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION OFFICE OF THE COMMONWEALTH OF VIRGINIA
OFFICE OF WASTE MANAGEMENT SECRETARY OF STATE

SERIES 32
UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

§33-32-1. General.

1.1. Scope and Purpose. -- This rule establishes an Underground Storage Tank Insurance Trust Fund pursuant to W. Va. Code §22-17-22 and as set forth under the financial responsibility requirements of W. Va. Code §22-17-10.

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

1.3. Filing Date. -- ~~May 19, 1997.~~

1.4. Effective Date. -- ~~May 19, 1997.~~

§33-32-2. Applicability.

2.1. Financial Assurance. Owners or operators of petroleum underground storage tanks are required by statute and rule to establish a means of financial assurance necessary for taking reasonable corrective action and for compensating third parties for bodily injury and property damage caused by sudden or nonsudden accidental releasing arising from the operation of USTs. This rule applies to petroleum UST owners and operators who do not show evidence of meeting the financial assurance requirements set forth in W. Va. Code §22-17-10 and to any petroleum UST owner or operator with an established means of financial assurance who desires to participate in the state program.

§33-32-3. Definitions.

3.1. "Accidental Release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

3.2. "Administrator" means private or state

individuals, organizations, other state agencies, companies, corporations, or other persons designated by the director through agreements, including reimbursement for services rendered, contracts, and cooperative arrangements under such terms and conditions as he or she deems appropriate to administer the Underground Storage Tank Insurance Trust Fund in accordance with W. Va. Code §22-17-5(c).

3.3. "Advisory Committee" means the underground storage tank advisory committee as prescribed in W. Va. Code §22-17-7.

3.4. "Damages" means bodily injury or property damage caused by a release or accidental release as defined in this rule.

3.5. "Director" means the director of the division of environmental protection of the bureau of environment or other such person to whom the director has delegated authority and duties pursuant to W. Va. Code §§22-1-6 or 8.

3.6. "Deductible" means an amount of money paid by the insured that relieves the insurer of responsibility for an initial specified loss.

3.7. "Division" means the division of environmental protection of the bureau of environment.

3.8. "Premium" means the payment made for a contract of insurance.

3.9. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

3.10. "Regulated Substance" means:

3.10.a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 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; and

3.10.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). The term "regulated substance" includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

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

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

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

3.11.c. Septic tanks;

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

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

3.11.f. Storm water or wastewater collection systems;

3.11.g. Flow-through process tanks;

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

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

3.11.j. Any pipes connected to any tank which is described in subdivisions 3.11.a. through 3.11.i. of this rule.

§33-32-4. Applying for Coverage.

4.1. Application for Coverage. -- The owner or operator of an underground storage tank shall submit an application for coverage to the director or the administrator on forms supplied by the director or the administrator.

4.2. Sworn Statement. -- The application shall include a sworn statement that all information and records are accurate and in compliance with all applicable federal, state, and local requirements.

§33-32-5. Capitalization Fees.

5.1. Capitalization Fee. A capitalization fee shall be assessed against all owners or operators of underground storage tanks to be used to establish the Underground Storage Tank Insurance Trust Fund. The fee shall be:

5.1.a. One hundred dollars per tank per year (\$100/tank/year) for a period of not less than one (1) year and not more than three (3) years. Second and third year capital assessments may be levied if there is an inadequate surplus of funds, as determined by the administrator, the director, and

the underground storage tank advisory committee pursuant to W. Va. Code §22-17-7.

5.2. Capitalization Fee Payment. -- The capitalization fee shall be paid to the director or the administrator and shall be deposited into the state treasury into a special fund designated the "Underground Storage Tank Insurance Trust Fund Capitalization Fees".

5.3. Interest Accrued. -- Interest accrued on monies in the Underground Storage Tank Insurance Trust Fund Capitalization Fees or the Underground Storage Tank Trust Fund Premium Fund shall be credited to that fund.

§33-32-6. Powers and Duties of the Director.

6.1. Premium Rate. -- The director shall have the power, duty, and responsibility to establish and maintain the premium rate for the UST insurance program.

6.2. Premium Rate Payment. -- The annual premium rate, as determined by the director, shall be paid by the owners or operators requesting coverage and may include reasonable administrative expenses.

6.3. Premium Payment and Deposit. -- The premium shall be paid to the director or the administrator and deposited into the Underground Storage Tank Insurance Trust Fund Premium Fund.

6.4. UST Insurance Program Shall Be Assessable. -- The UST insurance program shall be assessable. The director may implement assessments once the insurance premium fund reaches a level of not more than two million dollars (\$2,000,000). The assessment shall be subject to approval of the director and the advisory committee. For purposes of assessment calculations, the insurance premium pool shall not include funds collected from the capitalization fee assessment.

§33-32-7. Cancellation of Coverage.

7.1. Cancellation of Coverage. -- Coverage will be canceled for an insured who:

7.1.a. Is not in compliance with the provisions of 40 C.F.R. Part 280 or 33 C.S.R. 30;

7.1.b. Fails to install overfill/spill prevention if two (2) incidents are reported within a twelve (12) month period in excess of the insured's deductible;

7.1.c. Fails to pay the premium when due;

7.1.d. Fails to reimburse the UST Insurance Trust Fund for deductible expenses promptly; or

7.1.e. Fails to reimburse the UST Insurance Trust Fund for any payment made by the fund on account of any claim involving a breach of the terms of the policy or violation of federal or state rules.

§33-32-8. Emergency Claims.

8.1. Notification of Claim. -- The insured must notify the director and the administrator of an accidental release, real or alleged, within twenty-four (24) hours of discovery of the release. The insured must notify, or verify that notice has been provided to, the director and the administrator of any occurrence which may result in a claim.

8.2. Initial Response Requirements. -- The insured must comply with applicable initial response requirements set forth in 40 C.F.R. §280.61.

8.3. Written Itemization. -- The insured must submit written itemization of projected contract costs to the director or the administrator prior to the acceptance of written bids in accordance with subsections 8.4 and 8.5 of this rule.

8.4. Bids Secured. -- The insured must secure a minimum of three (3) written bids to perform site activities necessary to comply with the requirements set forth in 40 C.F.R. §§280.62, 280.63, 280.64, 280.65, and 280.66 when these activities are required by the division.

8.5. Acceptance of Bid. -- The insured is required to accept the lowest bid.

8.6. Reimbursement. -- The director or the administrator is responsible for reimbursing the insured for all eligible expenses at an amount no greater than the lowest bid less the insured's deductible.

§33-32-9. Non-Emergency Claims.

9.1. Notification of Claim. -- The insured must notify the director and the administrator of an accidental release, real or alleged, within twenty-four (24) hours of the discovery of the release. The insured must notify, or verify that notice has been provided to, the director and the administrator of any occurrence which may result in a claim.

9.2. Bids Secured. -- The insured must secure a minimum of three (3) written bids to perform site activities necessary to comply with the requirements set forth in 40 C.F.R. §§280.62, 280.63, 280.64, 280.65, and 280.66 when these activities are required by the division.

9.3. Acceptance of Bid. -- The insured is required to accept the lowest bid.

9.4. Reimbursement. -- The director or the administrator is responsible for reimbursing the insured for all eligible expenses as enumerated in the West Virginia petroleum underground storage tank insurance policy at an amount no greater than the lowest bid less the insured's deductible.

§33-32-10. Notification Requirements.

10.1. Notification Requirements. -- Owners and operators of underground storage tanks who have not fulfilled the notification requirements pursuant to W. Va. Code §33-30-4 shall not be eligible for insurance coverage pursuant to this rule, until such notification is made and approved by the director.

§33-32-11. Powers and Duties of the Advisory Committee.

11.1. Advisory Committee Powers, Duties, and Responsibilities. -- In addition to all other powers, duties, and responsibilities aforementioned in this

rule and W. Va. Code §22-17-7, the advisory committee shall:

11.1.a. Have the authority to review and make recommendations to the director regarding all claims; and

11.1.b. Have the authority to hear and make recommendations to the director regarding disputes that may arise from the operation of the underground storage tank insurance program established under W. Va. Code §22-17-22 and this rule and

11.1.c. Have the authority to hear and make recommendations to the director regarding entering into an intergovernmental agreement with the revolving low-interest small business environmental loan program and commit up to \$500,000 of the Underground Storage Tank Insurance Trust Fund Premium Fund to make loans to small businesses for underground storage tank qualifying loans as defined by the revolving low-interest small business environmental loan program established by W. Va. Code §22-24, as amended.



DIVISION OF ENVIRONMENTAL PROTECTION
1356 Hansford Street
Charleston, WV 25301-1401

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
DIRECTOR

Public Hearing
Proposed Rule: Title 33, Series 32
Underground Storage Tank Insurance Trust Fund
October 5, 1998

Good afternoon. It's 1:15 p.m., October 5 and I would like to open this public hearing regarding a proposed rule, sponsored by the Bureau of Environment's Division of Environmental Protections, entitled Title 33, Series 32, Underground Storage Tank Insurance Trust Fund.

The authority for this rule can be found in the West Virginia Code, Chapter 22, Article 17, Section 6.

The proposed amendment will allow the Underground Storage Tank Insurance Trust Fund to provide up to \$500,000 to the Small Business Revolving Loan Program to make loans to small businesses for UST qualifying loans.

The current rule does not allow the UST Insurance Trust Fund to provide these funds.

There is no counterpart federal regulations

It must be noted that the only attendees for today's hearing is myself, Jim Waycaster, Public Information Office and Gil Sattler of the Underground Storage Tank Section.

At this time, I would like to close today's public hearing.