

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #1

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JUL 10 1 14 PM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection
Water Resources/Waste Management TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY WV Code 22-17-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 37A

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: August 13, 1996 TIME: 6:30 p.m.

LOCATION OF PUBLIC HEARING: Division of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301

COMMENTS LIMITED TO: ORAL _____, WRITTEN _____, BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Div. of Env. Protection

1356 Hansford Street
Charleston, WV 25301-1401
Attn: Gil Sattler

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

B. J. Smith
Authorized Signature

4.60



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

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

July 8, 1996

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

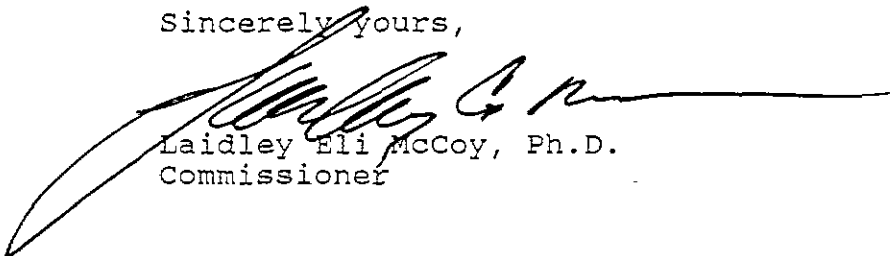
RE: 47CSR37A - "Underground Storage Tank
Insurance Trust Fund"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-referenced rule as Notice of Public Hearing and Comment Period on a proposed rule.

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

Sincerely yours,



Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc

Attachment

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: Title 47, Series 37A, "Underground Storage Tank Insurance Trust Fund"

- A. AUTHORITY:** WV Code 22-17-6
- B. SUMMARY OF RULE:** *This amendment will update this rule to reflect changes that have been made in the administration of the Underground Storage Tank Insurance Trust Fund.*
- C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:** *The administration of the Underground Storage Tank Insurance Trust Fund has been transferred to the Division of Environmental Protection and a third party administrator.*
- D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:**
- *There is no counterpart regulation.*
- E. CONSTITUTIONAL TAKING DETERMINATION:** *In accordance with WV Code 22-1A, 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 amendment to the rule will be reviewed by the Council at its meeting on July 17, 1996. Recommendations of the Council and the Director's response to Council's recommendations will be included in the August 30, 1996, filing with the Secretary of State's Office and Legislative Rulemaking Review Committee.*

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 47, Series 37A, "Underground Storage Tank Insurance Trust Fund"

Type of Rule: X **Legislative** **Interpretive** **Procedural**

Agency: Bureau of Environment

Address: Division of Environmental Protection/
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>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates: This rule is being amended to reflect a change in the administration of the program. No new administrative expenditures are anticipated.

3. Objectives of these rules: To reflect a change in the administration of the program.

Rule Title: Title 47, Series 37A, "Underground Storage Tank Insurance Trust Fund"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No impact.

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

The rule will not economically affect those already regulated.

C. Economic Impact on Citizens/Public at Large.

No impact.

Date: July 9, 1996

Signature of Agency Head or Authorized Representative

B. F. Smith

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

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
WATER RESOURCES - WASTE MANAGEMENT

SERIES 37A
UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

FILED
JUL 10 1 14 PM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§47-37A-1. General.

1.1. Scope and Purpose.

These regulations establish an Underground Storage Tank Insurance Trust Fund pursuant to W. Va. Code ~~§20-5H-22~~ §22-17-22 and as set forth under the financial responsibility requirements of W. Va. Code ~~§20-5H-10~~ §22-17-10.

1.2. Authority. -- W. Va. Code ~~§20-5H-6~~ §22-17-6.

1.3. Filing Date. --

1.4. Effective Date. ---

§47-37A-2. Applicability.

2.1. Financial Assurance.

Owners or operators of underground storage tanks are required by statute 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. These regulations apply to UST owners and operators who do not show evidence of meeting the financial assurance requirements set forth in W. Va. Code ~~§20-5H-10~~ §22-17-10 and to any UST owner or operator with an established means of financial assurance who desires to participate in the state program.

§47-37A-3. Definitions.

3.1. "Accidental Release".

"Accidental Release" means a release arising from extrinsic causes or occurring unexpectedly, by chance, without intent, or through carelessness 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".

"Administrator" means 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.

~~3.2. 3.3. "Advisory Committee".~~

~~"Advisory Committee" means a committee composed of seven (7) members, which shall include: the underground storage tank advisory committee as prescribed in W. Va. Code §22-17-7.~~

~~3.2.1. One member of the West Virginia Petroleum Council;~~

~~3.2.2. One member of the West Virginia Service Station Dealers Association;~~

~~3.2.3. One member of the West Virginia Petroleum Marketers Association;~~

~~3.2.4. The director of the division of Natural Resources of the West Virginia Department of Commerce, Labor and Environmental Resources;~~

~~3.2.5. One member of the West Virginia Manufacturers Association;~~

~~3.2.6. The West Virginia Insurance Commissioner; and~~

~~3.2.7. A representative from the citizenry-at-large who shall be appointed by the Governor.~~

~~3.3. "Board".~~

~~"Board" means the West Virginia board of risk and insurance management.~~

~~3.4. "Damages".~~

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

~~3.5. "Director".~~

~~"Director" means the director of the division of Natural Resources of the West Virginia Department of Commerce, Labor and Environmental Resources environmental protection of the bureau of environment or other such person to whom the director has delegated authority and duties pursuant to sections six or eight [§22-1-6 or §22-1-8] article one of chapter twenty-two.~~

~~3.6. "Deductible".~~

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

3.7. "Division".

"Division" means the division of ~~Natural Resources of the West Virginia Department of Commerce, Labor and Environmental Resources~~ environmental protection of the bureau of environment.

3.8. "Premium".

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

3.9. "Release".

"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".

"Regulated Substance" means:

~~3.10.1.~~ 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; or

~~3.10.2.~~ 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 "petroleum" "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".

"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:

~~3.11.1.~~ 3.11.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;

~~3.11.2.~~ 3.11.b. Tanks used for storing heating oil for consumptive use on the premises where stored;

~~3.11.3.~~ 3.11.c. Septic tanks;

~~3.11.4.~~ 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;

~~3.11.5.~~ 3.11.e. Surface impoundments, pits, ponds, or lagoons;

~~3.11.6.~~ 3.11.f. Storm water or wastewater collection systems;

~~3.11.7.~~ 3.11.g. Flow-through process tanks;

~~3.11.8.~~ 3.11.h. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

~~3.11.9.~~ 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

~~3.11.10.~~ 3.11.j. Any pipes connected to any tank which is described in ~~Sections 3.11.1~~ sub-divisions 3.11.a. through 3.11.9 3.11.i. of ~~these regulations~~ this rule.

§47-37A-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 ~~board~~ director or the director's administrator on forms supplied by the ~~board~~ director or the director's 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.

§47-37A-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:

~~5.1.1.~~ 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 ~~capatl~~ capital assessments may be levied if there is an inadequate surplus of funds, as determined by the ~~state board of risk and insurance management~~ director's administrator, the ~~director~~ division of Natural Resources, and the underground storage tank advisory committee pursuant to section seven, article ~~five-H~~ seventeen,

chapter ~~twenty~~ twenty-two of the West Virginia Code [W. Va. Code ~~§20-5H-7~~ §22-17-7].

5.2. Capitalization Fee Payment.

The capitalization fee shall be paid to the ~~board~~ director or the director's 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.

§47-37A-6. Powers and Duties of the Board Director.

6.1. Premium Rate.

The ~~board~~ 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 ~~board~~ 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 ~~board~~ director or the director's 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 ~~board~~ director may implement assessments once the insurance premium ~~pool~~ fund reaches a level of not more than two million dollars (\$2,000,000) ~~or less~~. 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.

§47-37A-7. Cancellation of Coverage.

7.1. Cancellation of Coverage.

~~The division may request a cancellation of coverage for~~
Coverage will be cancelled for an insured who:

~~7.1.1. 7.1.a. An owner or operator who is~~ Is not in compliance with the provisions of 40 C.F.R. Part 280 or 47 C.S.R. 36;

~~7.1.2. 7.1.b. An owner or operator who fails~~ 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; ~~or~~

~~7.1.3. 7.1.c. An owner or operator who fails~~ 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 or regulations.

§47-37A-8. Emergency Claims.

8.1. Notification of Claim.

The ~~division insured shall~~ must notify the ~~board~~ director and the director's administrator of a ~~potential claim, an accidental release, real or alleged,~~ within twenty-four (24) hours. The insured must see to it that the director and the director's administrator are notified of an occurrence or an offense which may result in a claim.

8.2. Initial Response Requirements.

The ~~owner or operator insured shall~~ must comply with the initial response requirements set forth in 40 C.F.R. §280.61.

8.3. Written Itemization.

The ~~owner or operator insured shall~~ must immediately submit written itemization of projected contract costs to the ~~board~~ director or the director's administrator.

8.4. Bids Secured.

~~Upon compliance with the provisions of 40 C.F.R. §280.61, the owner or operator~~ The insured shall 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. ~~§280.66~~ §§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 ~~owner or operator insured~~ is required to accept the lowest bid.

8.6. Reimbursement.

The ~~board~~ director or the director's administrator is responsible

for reimbursing the ~~owner or operator~~ insured for all eligible expenses at an amount no greater than the lowest bid less the owners or operators insured's deductible.

~~8.7. Initial Site Assessment.~~

~~The board will not pay the cost of the initial site assessment.~~

§47-37A-9. Non-Emergency Claims.

9.1. Notification of Claim.

The division insured shall must notify the board director and the director's administrator of a potential claim. an accidental release, real or alleged, within twenty-four (24) hours. The insured must see to it that the director and the director's administrator are notified of an occurrence or an offense which may result in a claim.

9.2. Bids Secured.

The owner or operator insured shall 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 owner or operator insured is required to accept the lowest bid.

9.4. Reimbursement.

The board director or the director's administrator is responsible for reimbursing the owner or operator insured for all eligible damages expenses at an amount no greater than the lowest bid less the owner or operator insured's deductible.

~~9.5. Initial Site Assessment.~~

~~The Board will not pay the cost of the initial site assessment.~~

§47-37A-10. Notification Requirements.

10.1. Notification Requirements.

Owners and operators of underground storage tanks who have not fulfilled the notification requirements pursuant to title 47, series 36, section 4 of the Code of State Regulations (47 C.S.R. 36 §4) shall not be eligible for insurance coverage pursuant to these regulations, until such notification is made and approved by the director.

§47-37A-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 these regulations and W. Va. Code ~~§20-5H-7~~ §22-17-7, the advisory committee shall:

~~11.1.1.~~ 11.1.a. Have the authority to review all claims; and

~~11.1.2.~~ 11.1.b. Have the authority to function as an appeals board for resolving the disputes that may arise from the operation of the underground storage tank insurance program established under W. Va. Code ~~§20-5H-22~~ §22-17-22 and ~~these regulations~~ this rule; and.

~~11.1.3.~~ Have the authority, to authorize the board to use funds from the premium pool to pay for corrective action when:

~~11.1.3.a.~~ An owner or operator submits a written request to the committee claiming he has no available financial means to pay the costs incurred not covered by the Insurance Trust Fund under sections 8 and 9 of these regulations; or

~~11.1.3.b.~~ Upon request of the division.

11.2. Approval or Denial of Requests.

The approval or denial of a request shall be determined at the discretion of the advisory committee based on facts presented with the request. A record shall be retained by the advisory committee stating the reasons for the decision to approve or deny the request. The advisory committee, upon approval of a request, shall direct the board director or the director's administrator to pay the appropriate costs.

§47-37A-12. Severability of Requirements.

12.1. Severability of Requirements.

If any requirement of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other requirements or applications of ~~these regulations~~ this rule and to this end the requirements of ~~these regulations~~ this rule are declared to be severable.