





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

GASTON CAPERTON  
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.  
COMMISSIONER

October 21, 1996

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

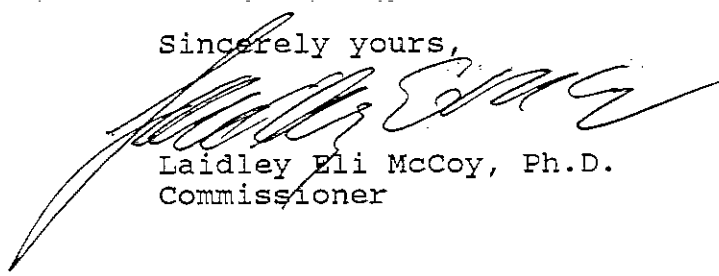
RE: 33CSR32 - "Underground Storage Tank Insurance  
Trust Fund"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-referenced rule as a notice of rule modification.

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

Sincerely yours,



Laidley Eli McCoy, Ph.D.  
Commissioner

LEM:cc

Attachment

FILED

Oct 22 8 48 AM '96

~~TITLE 47~~  
~~TITLE 33~~  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION  
~~WATER RESOURCES - WASTE MANAGEMENT~~  
OFFICE OF WASTE MANAGEMENT

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

~~SERIES 37A~~  
SERIES 32  
UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

~~§47-37A-1.~~ §33-32-1. General.

1.1. Scope and Purpose.

~~These regulations establish~~ This rule establishes 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.~~ §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. ~~These regulations apply~~ 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 ~~§20-5H-10~~ §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.

~~§47-37A-3.~~ §33-32-3. 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 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).

~~3.2.~~ 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~~ and

~~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.~~ §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 board director or the administrator on forms supplied by the board 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.

~~§47-37A-5.~~ §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:

~~5.1.1.~~ 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 ~~capital~~ capital

assessments may be levied if there is an inadequate surplus of funds, as determined by the ~~state board of risk and insurance management administrator~~, the director division of Natural Resources, and the underground storage tank advisory committee pursuant to section seven, article ~~five-H~~ seventeen, chapter ~~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 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.~~ §33-32-6. 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 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.~~ §33-32-7. 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~~ 33 C.S.R.  
30;

~~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.

~~§47-37A-8. §33-32-8. Emergency Claims.~~

#### 8.1. Notification of Claim.

The ~~division insured~~ shall ~~must~~ notify the ~~board~~ director and the  
administrator of a ~~potential claim,~~ 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 ~~owner or operator insured~~ shall ~~must~~ comply with the  
applicable 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 administrator prior to the acceptance of written  
bids in accordance with subsection 8.4 and 8.5 of this rule.

#### 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 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. §33-32-9. Non-Emergency Claims.~~

9.1. Notification of Claim.

The ~~division~~ insured shall must notify the ~~board~~ director and the administrator of a potential claim, 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 ~~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. §280.66 §§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 administrator is responsible for reimbursing the ~~owner or operator~~ insured for all eligible damages expenses as enumerated in the West Virginia petroleum underground storage tank insurance policy 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. §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 title 47 33, series 36 30, section 4 of the Code of State Regulations Rules (~~47 C.S.R. 36 34~~) (33 C.S.R. 30 34) shall not be eligible for insurance coverage pursuant to ~~these regulations this rule~~, until such notification is made and approved by the director.

~~§47-37A-11.~~ §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 ~~these regulations this rule~~ 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 and make recommendations to the director regarding all claims; and

~~11.1.2.~~ 11.1.b. Have the authority to function as an appeals board for resolving the 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 §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.~~ The approval or denial of a request shall be determined at the discretion of the committee based on facts presented with the request. A record shall be retained by the committee stating the reasons for the decision to approve or deny the request. The committee, upon approval of a request, shall direct the board to pay the appropriate costs.

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

~~12.1.~~ 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 and to this end the requirements of these regulations are declared to be severable.



FILED

OCT 18 2 44 PM '96

**West Virginia Legislature**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Room MB47-State Capitol  
Charleston, West Virginia 25305  
(304) 347-4840

Senator Mike Ross, Co-Chair  
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel  
Joe Altizer, Associate Counsel  
Marie Nickerson, Admr. Assistant

October 15, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
TO: Commissioner Laidley E. McCoy  
Bureau of Environment  
10 McJunkin Road  
Nitro, WV 25143-2508  
FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Underground Storage Tank Insurance Fund

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agencyX
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Mark Scott, Dep. Dir.  
Gil Sattler  
B. F. Smith, Chief

ANALYSIS OF PROPOSED LEGISLATIVE RULE

**Agency:** Division of Environmental Protection

**Subject:** Underground Storage Tank Insurance Trust Fund - 33CSR32

---

PERTINENT DATES

Filed for public comment: July 10, 1996  
Public comment period ended: August 28, 1996  
Filed following public comment period: August 28, 1996  
Filed LRMRC: August 28, 1996  
Filed as emergency: n/a

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. Several small changes are made to the rule changing cites as part of the technical cleanup project. The rule also changed all references to "owner or operator" to the "insured."

Section 2 Petroleum is inserted before the words "underground storage tanks" throughout the rule. This in effect limits the type of storage tanks covered under this rule to petroleum storage tanks. The only types of tanks required under the Code of Federal Regulations to provide financial assurance for cleanups are petroleum storage tanks and this change reflects that requirement.

Section 3 Definitions- The definition of "accidental release" is rewritten. A definition of "administrator" is added. Administrator means any person or other entity that the director so designates to administer the Underground Storage Tank Insurance Trust Fund. This delegation of authority is authorized by WVC §22-17-5(c). The definition of "advisory committee" is deleted and the definition in the authorizing statute is incorporated by reference. A few other small definition changes are also made.

Throughout the rule, references to the Storage Tank Advisory Committee are deleted and reference is made to the DEP Director and the administrator. The effect of this change is to shift the responsibility of oversight and administration of the fund away from the board to the DEP Director or an administrator. This is in line with the statutory authority of the authorizing statute. The Board is statutorily created as an advisory board but has by

rule been charged with administering the Storage Tank Trust Fund. This rule change will bring the rule into compliance with the statute.

Section 7 which provides when insurance coverage may be canceled by the DEP was permissive and is now mandatory.

Sections 7.1.d & e are added. These changes provide that if an insured fails to reimburse the UST Storage Trust Fund for any deductible expenses or improper payments, the division shall cancel coverage.

Section 8.1 now requires when making emergency claims, that the insured must notify the director or administrator within 24 hours of discovery of any possible accidental release. The insured must also notify the director or administrator of any occurrence which may result in a claim.

Section 8.3 & 4 provide that for any insurance claim, that a written itemization be submitted to the director or administrator and that a minimum of three written bids be obtained before undertaking any repairs.

Section 9.1 requires that for non-emergency claims, that the insured must notify the director or administrator within 24 hours of discovery of any possible accidental release. The insured must also notify the director or administrator of any type of occurrence which may result in a claim.

Section 9.4 is amended to provide that in non-emergency bids, that the trust fund will not reimburse repair costs above the amount of the minimum bid received.

Section 11 is changed to reflect the Boards new advisory role, removing the authority of the Board to hold hearings and spend trust fund monies.

---

#### AUTHORITY

Statutory authority: W.Va. Code, §22-17-6 provides:

(a) The director has overall responsibility for the promulgation of rules under this article.

(b) The director shall promulgate rules applicable to owners or operators of underground storage tanks or other affected persons, as appropriate....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has several technical changes to suggest.

Senate Bill No. 166

1 (By Senator(s) Ross, Anderson, Macnaughtan,  
2 Boley and Buckalew)

3 [Introduced March 3, 1997; referred to the  
4 Committee on Natural Resources; and then to the  
5 Committee on the Judiciary.]  
6  
7  
8  
9

10 A BILL to amend and reenact section one, article three,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of environmental  
14 protection to promulgate a legislative rule relating  
15 to the underground storage tank insurance trust fund.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article three, chapter sixty-four of  
18 the code of West Virginia, one thousand nine hundred  
19 thirty-one, as amended, be amended and reenacted, to read  
20 as follows:

21 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO  
22 PROMULGATE LEGISLATIVE RULES.

23 §64-3-1. Division of environmental protection.

1           (a) The legislative ~~rules~~ rule filed in the state  
2 register on twenty-eighth day of July, one thousand nine  
3 hundred ninety-five, authorized under the authority of  
4 section four, article five, chapter twenty-two of this  
5 code, relating to the division of environmental protection  
6 (emission standards for hazardous air pollutants pursuant  
7 to 40 CFR Part 63, 45 CSR 34), ~~are~~ is authorized.

8           (b) The legislative ~~rules~~ rule filed in the state  
9 register on the twenty-eighth day of July, one thousand  
10 nine hundred ninety-five, authorized under the authority of  
11 section four, article five, chapter twenty-two of this  
12 code, modified by the division of environmental protection  
13 to meet the objections of the legislative rule-making  
14 review committee and refiled in the state register on the  
15 twenty-seventh day of October, one thousand nine hundred  
16 ninety-five, relating to the division of environmental  
17 protection (to prevent and control air pollution from  
18 hazardous waste treatment, storage or disposal facilities,  
19 45 CSR 25), ~~are~~ is authorized.

20           (c) The legislative ~~rules~~ rule filed in the state  
21 register on the twenty-eighth day of July, one thousand  
22 nine hundred ninety-five, authorized under the authority of  
23 section four, article five, chapter twenty-two of this

1 code, relating to the division of environmental protection  
2 (acid rain provisions and permits, 45 CSR 33), ~~are~~ is  
3 authorized.

4 (d) The legislative ~~rules~~ rule filed in the state  
5 register on the thirty-first day of July, one thousand nine  
6 hundred ninety-five, authorized under the authority of  
7 section six, article seventeen, chapter twenty-two of this  
8 code, modified by the division of environmental protection  
9 to meet the objections of the legislative rule-making  
10 review committee and refiled in the state register on the  
11 eighteenth day of January, one thousand nine hundred  
12 ninety-six, relating to the division of environmental  
13 protection (underground storage tanks, 47 CSR 36), ~~are~~ is  
14 authorized.

15 (e) The legislative ~~rules~~ rule filed in the state  
16 register on the thirty-first day of July, one thousand nine  
17 hundred ninety-five, authorized under the authority of  
18 section six, article eighteen, chapter twenty-two of this  
19 code, modified by the division of environmental protection  
20 to meet the objections of the legislative rule-making  
21 review committee and refiled in the state register on the  
22 eighteenth day of January, one thousand nine hundred  
23 ninety-six, relating to the division of environmental

1 protection (hazardous waste management regulations, 47 CSR  
2 35), ~~are~~ is authorized.

3 (f) The legislative ~~rules~~ rule filed in the state  
4 register on the thirty-first day of July, one thousand nine  
5 hundred ninety-five, authorized under the authority of  
6 section four, article three, chapter twenty-two of this  
7 code, modified by the division of environmental protection  
8 to meet the objections of the legislative rule-making  
9 review committee and refiled in the state register on the  
10 twenty-third day of January, one thousand nine hundred  
11 ninety-six, relating to the division of environmental  
12 protection (surface mining and reclamation regulations, 38  
13 CSR 2), ~~are~~ is authorized with the following amendments:

14 "On page 64, section 3.27, after the word 'Director'  
15 by striking out the word 'may' and inserting in lieu  
16 thereof the word 'shall';

17 On page 64, section 3.27, after the word 'completed'  
18 by striking out the remainder of the first paragraph and  
19 inserting in lieu thereof the following words:

20 'and reclamation activities are ongoing.'

21 On page 156, section 11.6(c)(6)(A) after the word  
22 'operations' by striking out the words 'within five (5)  
23 years of the date of SMA approval,';

1           On page 156, section 11.6(c)(6)(B) after the word  
2 '(95-87)' by striking out the words 'within five (5) years  
3 of the date of SMA approval,';

4           On page 157, section 11.6(c)(6)(C) after the word  
5 'State' by striking out the words 'within five (5) years of  
6 the date of SMA approval,';

7           On page 163, section 11.6(d)(6)(A), after the word  
8 'applicant' by striking out the words 'within five (5)  
9 years of the date of SMA approval,';

10           On page 164, section 11.6(d)(6)(B), after the word  
11 '95-87' by striking out the words 'within five (5) years of  
12 the date of SMA approval,';

13           On page 164, section 11.6(d)(6)(C), after the word  
14 'wetlands' by striking out the words 'within five (5) years  
15 of the date of SMA approval,';

16           On page 169, section 11.6(e)(5)(A), after the word  
17 '95-87' by striking out the words 'within five (5) years of  
18 the date of SMA approval,';

19           On page 169, section 11.6(e)(5)(B), after the word  
20 'wetlands' by striking out the words 'within five (5) years  
21 of the date of SMA approval,';

22           On page 175, section 11.6(f)(5)(A), after the word  
23 '95-87', by striking out the words 'within five (5) years

1 of the date of SMA approval,';

2 On page 175, section 11.6(f)(5)(B), after the word  
3 'enhancement' by striking out the words 'of wetlands within  
4 five (5) years of the date of SMA approval,'.

5 On page 178, section 12.2 subsection (e) by striking  
6 12.2.e in its entirety and inserting in lieu thereof the  
7 following:

8 'Notwithstanding any other provisions of this rule, no  
9 bond release or reduction will be granted if, at the time,  
10 water discharged from or affected by the operation requires  
11 chemical treatment in order to comply with applicable  
12 effluent limitations or water quality standards: *Provided,*  
13 That the Director may approve a request for Phase I but not  
14 Phase II or III, release if the applicant demonstrates to  
15 the satisfaction of the Director that either:

16 (A) The remaining bond is adequate to assure long term  
17 treatment of the drainage; or

18 (B) The operator has irrevocably committed other  
19 financial resources which are adequate to assure long term  
20 treatment of the drainage: *Provided,* That the alternate  
21 financial resources must be in acceptable form, and meet  
22 the standards set forth in Section 11 of the Act and  
23 Section 11 of this rule: *Provided, however,* That the

1 alternate financial arrangements shall provide a mechanism  
2 whereby the Director can assume management of the resources  
3 and treatment work in the event that the operator defaults  
4 for any reason: *And provided further,* That default on a  
5 treatment obligation under this paragraph shall be  
6 considered equivalent to a bond forfeiture, and the  
7 operator will be subject to penalties and sanctions,  
8 including permit blocking, as if a bond forfeiture had  
9 occurred.

10 In order to make such demonstration as referenced  
11 above, the applicant shall address, at a minimum, the  
12 current and projected quantity and quality of drainage to  
13 be treated, the anticipated duration of treatment, the  
14 estimated capital and operating cost of the treatment  
15 facility, and the calculations which demonstrate the  
16 adequacy of the remaining bond or of the alternate  
17 financial resources.'

18 On page sixteen, section 38-2-2.106, after the words  
19 'sum of the loading' by inserting the words 'or driving';  
20 and by striking out the words 'in a constructed valley  
21 fill, backfill, dam, or refuse pile' and inserting in lieu  
22 thereof the words 'as determined by acceptable engineering  
23 practices';

1        On page twenty-eight, section 38-2-3.2(e), after the  
2 words 'limited number of minor changes' by inserting the  
3 words 'that do not significantly affect the health, safety  
4 or welfare of the public and';

5        On page thirty-six, section 38-2-3.6(h)(5), after the  
6 words 'as defined in' by striking out the words 'Article 5D  
7 of Chapter 20' and inserting in lieu thereof the words  
8 'Article 14 of Chapter 22';

9        On page thirty-nine, section 38-2-3.8(c), at the end  
10 after the words 'reasonable time for compliance.', by  
11 inserting a new sentence to read as follows: 'Provided,  
12 That those structures and facilities, where it can be  
13 demonstrated that reconstruction or revision would result  
14 in greater environmental harm and the performance standards  
15 set forth in the Act and these regulations can otherwise be  
16 met, may be exempt from revision or reconstruction.';

17        On page one hundred seventy-eight, section 38-2-  
18 12.2(d), after the words 'until all coal extraction  
19 operations' by inserting the words 'for the permit or  
20 increment thereof', and after the words 'the entire  
21 disturbed area' by inserting the words 'for the permit or  
22 increment thereof';

23        On page one hundred ninety-seven, section 38-2-

1 14.3(c)(2), after the words 'medium is the best' by  
2 inserting the word 'reasonably';

3 And,

4 On page two hundred fifteen, section 38-2-14.14(e)(4),  
5 by striking the sentence 'Runoff from areas above and  
6 adjacent to the fill shall not be allowed to flow onto the  
7 fill surface, and shall be diverted into stabilized  
8 diversion channels, designed and constructed to safely pass  
9 the peak runoff from a 100 year, 24 hour precipitation  
10 event.' and inserting in lieu thereof the sentences  
11 'Surface water runoff from areas above and adjacent to the  
12 fill shall be diverted into properly designed and  
13 constructed stabilized diversion channels which have been  
14 designed using best current technology to safely pass the  
15 peak runoff from a 100 year, 24 hour precipitation event.  
16 The channel shall be designed and constructed to ensure  
17 stability of the fill, control erosion, and minimize water  
18 infiltration into the fill.'"

19 (g) The legislative ~~rules~~ rule filed in the state  
20 register on the twenty-sixth day of July, one thousand nine  
21 hundred ninety-five, authorized under the authority of  
22 section four, article twenty-one, chapter twenty-two of  
23 this code, modified by the division of environmental

1 protection to meet the objections of the legislative  
2 rule-making review committee and refiled in the state  
3 register on the fourteenth day of December, one thousand  
4 nine hundred ninety-five, relating to the division of  
5 environmental protection (coalbed methane wells, 38 CSR  
6 23), ~~are~~ is authorized.

7 (h) The legislative ~~rules~~ rule filed in the state  
8 register on the twenty-third day of November, one thousand  
9 nine hundred ninety-four, authorized under the authority of  
10 section eight, article eleven, chapter twenty of this code,  
11 modified by the division of environmental protection to  
12 meet the objections of the legislative rule-making review  
13 committee and refiled in the state register on the  
14 twentieth day of December, one thousand nine hundred  
15 ninety-five, relating to the division of environmental  
16 protection (waste tire management, 47 CSR 38G), ~~are~~ is  
17 authorized.

18 (i) The legislative ~~rules~~ rule filed in the state  
19 register on the twenty-second day of June, one thousand  
20 nine hundred ninety-five, authorized under the authority of  
21 section twenty, article fifteen, chapter twenty-two of this  
22 code, modified by the division of environmental protection  
23 to meet the objections of the legislative rule-making

1 review committee and refiled in the state register on the  
2 twenty-second day of December, one thousand nine hundred  
3 ninety-five, relating to the division of environmental  
4 protection (sewage sludge management, 47 CSR 38D), ~~are~~ is  
5 authorized with the amendments set forth below:

6 On page seven, section 3.2.2, by striking out the  
7 words "Table 3 of" this rule will automatically be repealed  
8 and replaced with Table 3A of this rule on December 31,  
9 1997, unless this provision is modified prior to that  
10 date.";

11 And,

12 On page seven, section 3.2.2, after the word "rule,"  
13 by inserting the following: The director is authorized  
14 until Dec. 31, 1999, to issue variances to this section to  
15 allow land application to soils which exceed the maximum  
16 soil concentrations of metals listed in Table 3 where soil  
17 analyses demonstrate that other soil factors, including,  
18 but not limited to, soil pH, cation exchange capacity,  
19 organic matter content, or clay content, will limit  
20 mobility and availability of the metals. No later than  
21 June 30, 1999, the director shall propose revisions to  
22 Table 3 to adequately protect soil quality, human health  
23 and the environment',

1 And,

2 On page 20, by striking the following from Table 3:  
3 "NOTE: Table 3 of this rule will automatically be repealed  
4 and replaced with Table 3A of this rule on December 31,  
5 1997, unless the provision of paragraph 3.2.2 of this rule  
6 is modified prior to that date.",

7 And,

8 On page 21, by striking out all of Table 3A.

9 (j) The legislative ~~rules rule~~ filed in the state  
10 register on the thirty-first day of July, one thousand nine  
11 hundred ninety-five, authorized under the authority of  
12 section four, article five, chapter twenty-two of this  
13 code, relating to the division of environmental protection  
14 (to prevent and control of air pollution from the emission  
15 of volatile organic compounds, ~~45~~ CSR 21), ~~are is~~  
16 authorized with the following amendment:

17 "On pages 170 and 171, by striking out section 40 in  
18 its entirety and inserting in lieu thereof a new section  
19 40, to read as follows:

20 §45-21-40. Other Facilities that Emit Volatile Organic  
21 Compound (VOC).

22 40.1. Applicability.

23 a. This section 40. applies to any facility that has

1 aggregate maximum theoretical emissions of 90.7 megagrams  
2 (mg) (100 tons) or more of volatile organic compounds  
3 (VOCs) per calendar year in the absence of control devices;  
4 provided that this section 40. applies to any source or  
5 sources within such facility other than those sources  
6 subject to regulation under sections 11. through 39. VOC  
7 emissions from sources regulated under sections 11. through  
8 39., but which fall below the applicability thresholds of  
9 these sections, and thus are not subject to the emissions  
10 control standards of these sections, shall be included in  
11 the determination of maximum theoretical emissions for a  
12 facility but shall not be subject to the requirements of  
13 this section 40. Emissions from sources listed in section  
14 40.1.d. shall not be included in the determination of  
15 maximum theoretical emissions for a facility.

16       b. The owner or operator of a coating line or  
17 operation, whose emissions are below this applicability  
18 threshold, shall comply with the certification,  
19 recordkeeping, and reporting requirements of section  
20 40.6.a.

21       c. The owner or operator of a non-coating source,  
22 whose emissions are below this applicability threshold,  
23 shall comply with the certification, recordkeeping, and

1 reporting requirements of section 40.6.b.

2 d. The requirements of this section 40. shall not  
3 apply to coke ovens (including by-product recovery plants),  
4 fuel combustion sources, barge loading facilities, jet  
5 engine test cells, vegetable oil processing facilities,  
6 wastewater treatment facilities, iron and steel production,  
7 surface impoundments, pits, and boilers, industrial  
8 furnaces, and incinerators having a destruction efficiency  
9 of 95 percent or greater.

10 e. The requirements of this section 40. shall not  
11 apply to any facility bound by an order or permit,  
12 enforceable by the Director, which limits the facility's  
13 emissions to less than 100 tons of VOC per calendar year  
14 without the application of control devices.

15 40.2. Definitions. -- As used in this section 40., all  
16 terms not defined herein shall have the meaning given them  
17 in section 2.

18 a. 'Reasonably available control measures' (also  
19 denoted as RACM) means an emission limit or limits that  
20 reflect the application of control technology and/or  
21 abatement techniques or measures that are reasonably  
22 available, considering technological and economic  
23 feasibility. Such emission limits may be considered on a

1 plant-wide basis to achieve emission reduction requirements  
2 in the most cost effective manner.

3 b. "Fugitive emissions" means those emissions which  
4 could not reasonably pass through a stack, chimney, vent,  
5 or other functionally equivalent opening.

6 40.3. Standards. -- The owner or operator of a  
7 facility subject to this section 40. shall:

8 a. Except as provided in section 40.3.b.,

9 1. With respect to any existing non-fugitive  
10 emission source which has maximum theoretical emissions of  
11 6 pounds per hour or more, comply with an emission control  
12 plan established on a case-by-case basis approved by the  
13 Director that meets the definition of reasonably available  
14 control measures (RACM) and achieves at least a 90 percent  
15 reduction in emissions below the total (aggregate) maximum  
16 theoretical emissions from all such non-fugitive emission  
17 sources subject to RACM requirements; and

18 2. With respect to each process unit producing a  
19 product or products, intermediate or final, in excess of  
20 1000 megagrams (Mg) (1,100 tons) per year, regardless of  
21 whether such product or products are listed in 40 CFR  
22 60.489, comply with an emission control plan for fugitive  
23 sources using the methods and criteria of section 37., or

1 alternative methods and criteria approved by the Director.  
2 The Director may exempt a process unit from fugitive  
3 emission control requirements upon satisfactory  
4 demonstration that emissions are of minor significance.

5       b. With respect to such sources as described in  
6 sections 40.3.a.1. and 40.3.a.2., comply with emission  
7 limits and measures based upon an alternative emissions  
8 reduction plan approved by the Director considering  
9 technical, economic and air quality benefit considerations  
10 that, at a minimum, maintains emission control measures  
11 incorporated as part of any federally approved maintenance  
12 plan for the county or area in which the source is located.

13       c. With respect to any source at a facility subject to  
14 this section 40., which source has maximum theoretical  
15 emissions of 6 pounds per hour or more and is constructed,  
16 modified or begins operating after the effective date of  
17 this rule, comply with a control plan developed on a case-  
18 by-case basis approved by the Director that meets the  
19 definition of reasonably available control technology  
20 (RACT) in section 2.60. for both fugitive and non-  
21 fugitive emission sources.

#### 22       40.4. Submissions and Approval of Control Plans

23       a. Within 90 days after the effective date of this

1 rule, the owner or operator of a facility subject to this  
2 section 40. shall submit any required amendments to the  
3 case-by-case RACT control plans previously submitted to the  
4 Director, that revise such control plans to meet the  
5 definition of reasonably available control measures (RACM).

6           b. Notwithstanding the provisions of section 9.2.,  
7 the owner or operator of a facility subject to this rule  
8 solely due to this section 40., that requires a major  
9 process change and/or major capital investment to comply  
10 with RACM requirements, may petition the Director for an  
11 additional extension beyond December 31, 1996, for  
12 compliance certification, and the Director may grant such  
13 extension when warranted.        Provided however, such  
14 compliance certification date shall be no later July 31,  
15 1997.

16           c. The Director shall not approve a RACM plan or an  
17 alternative emissions reduction plan under this section 40.  
18 unless such plan includes:

19           1. A commitment to develop and submit a  
20 complete RACT plan to the Director within 180 days of a  
21 finding by the Director that a violation of the National  
22 Ambient Air Quality Standard for ozone has occurred within  
23 the county or maintenance area in which the source is

1 located; and

2                   2. A commitment to achieving full  
3 implementation of RACT within 2 years of approval of the  
4 RACT plan by the Director.

5                   d. A finding by the Director that a violation of  
6 the National Ambient Air Quality Standard for ozone has  
7 occurred shall be made based upon verification of a  
8 monitored ozone standard violation in the county or  
9 maintenance area in which the source is located. The three  
10 maintenance areas (the Huntington area, comprising Cabell  
11 and Wayne counties; the Charleston area, comprising Kanawha  
12 and Putnam counties; and the Parkersburg area, comprising  
13 Wood county) shall be treated separately and independently  
14 for any such finding(s).

15                   e. All RACM control plans, RACT control plans, and  
16 alternative emissions reduction plans approved by the  
17 Director pursuant to this section 40. shall be embodied in  
18 a consent order or permit in accordance with 45CSR13 or  
19 45CSR30, as required. A facility owner or operator may at  
20 any time petition the Director to approve revisions to  
21 these plans. The decision concerning said petition shall  
22 be issued by the Director in accordance with 45CSR13 or  
23 45CSR30, as required, or a consent order. Any such

1 revisions shall be subject to the public participation  
2 requirements of 45CSR13 or 45CSR30.

3 f. The owner or operator of a facility subject to  
4 this section 40. may submit for approval by the Director an  
5 emission control plan that meets the definition of  
6 reasonably available control technology (RACT) in section  
7 2.60.

8 40.5. Test methods and procedures. -- The owner or  
9 operator of any source subject to this section 40. shall  
10 demonstrate compliance with section 40.3. by using the  
11 applicable test methods specified in sections 41. through  
12 46 or by other means approved by the Director.  
13 Notwithstanding the requirements of section 41.1., EPA  
14 approval for alternate test methods to demonstrate  
15 compliance shall not be required for sources which are  
16 subject solely to emission control requirements specified  
17 in section 40.3.

18 40.6. Reporting and Recordkeeping Requirements for  
19 Exempt Non-Control Technique Guideline (CTG) Sources.

20 a. An owner or operator of a coating line or  
21 operation that is exempt from the emission limitations in  
22 section 40.3. shall comply with the certification,  
23 recordkeeping, and reporting requirements in section 4.2.

1           b. An owner or operator of a non-coating source  
2 that is exempt from the emission limitations in section  
3 40.3. shall submit, upon request by the Director, records  
4 that document that the source is exempt from these  
5 requirements.

6           1. These records shall be submitted to the  
7 Director within 30 days from the date of request.

8           2. If such records are not made available, the  
9 source will be considered subject to the limits in section  
10 40.3.

11       40.7. Reporting and Recordkeeping Requirements for  
12 Subject Non-CTG Coating Sources. --An owner or operator of  
13 a coating line or operation subject to this section 40. and  
14 complying with section 40.3. shall comply with the  
15 certification, recordkeeping, and reporting requirements in  
16 section 4.

17       40.8. Reporting and Recordkeeping Requirements for  
18 Subject Non-CTG, Non-Coating Sources.

19           a. The owner or operator of the subject VOC sources  
20 shall perform all testing and maintain the results of all  
21 tests and calculations required under sections 40.3. and  
22 40.5. to demonstrate that the subject source is in  
23 compliance.

1           b. The owner or operator of the subject VOC source  
2 shall maintain these records in a readily accessible  
3 location for a minimum of 3 years, and shall make these  
4 records available to the Director upon verbal or written  
5 request.

6           c. The owner or operator of any facility containing  
7 sources subject to this section 40. shall comply with the  
8 requirements in section 5. except that such requirements,  
9 as they apply to sources solely subject to this section  
10 40., may be modified by the Director upon petition by the  
11 owner or operator. Any such modified requirements shall be  
12 embodied in the facility's control plan (RACM, RACT or  
13 alternative plan) and reflected in the associated consent  
14 order or permit issued pursuant to 45CSR13 or 45CSR30."

15           (k) The legislative ~~rules~~ rule filed in the state  
16 register on the twenty-seventh day of July, one thousand  
17 nine hundred ninety-five, authorized under the authority of  
18 section five, article twelve, chapter twenty-two of this  
19 code, modified by the division of environmental protection  
20 to meet the objections of the legislative rule-making  
21 review committee and refiled in the state register on the  
22 seventeenth day of January, one thousand nine hundred  
23 ninety-six, relating to the division of environmental

1 protection (monitoring well design standards, 47 CSR 60),  
2 ~~are~~ is authorized.

3 (1) The legislative ~~rules~~ rule filed in the state  
4 register on the thirty-first day of July, one thousand nine  
5 hundred ninety-five, authorized under the authority of  
6 section five, article fifteen, chapter twenty-two of this  
7 code, modified by the division of environmental protection  
8 to meet the objections of the legislative rule-making  
9 review committee and refiled in the state register on the  
10 twenty-fourth day of January, one thousand nine hundred  
11 ninety-six, relating to the division of environmental  
12 protection (solid waste management, 47 CSR 38), ~~are~~ is  
13 authorized with the following amendments:

14 "On page 37, subdivision 3.8.4, after the words 'from  
15 the uppermost' by striking the word 'significant.'

16 On page 142, by striking the existing subdivision  
17 4.11.2.c.A and inserting in lieu thereof the following:

18 '4.11.2.c.A

19 The monitoring frequency for all constituents listed in  
20 Appendix I of this rule, must be at least twice a year  
21 during the active life of the facility, including closure  
22 and the post-closure periods. The director may require  
23 more frequent monitoring on a site-specific basis by

1 considering aquifer flow rate and existing quality of the  
2 groundwater.'

3 . On page 148, by striking the existing subdivision  
4 4.11.3.i.A. and inserting in lieu thereof the following:  
5 '4.11.3.i.A. -

6 The director may consider an alternative groundwater  
7 protection standard in consultation with the environmental  
8 quality board pursuant to 47CSR57 for constituents for  
9 which water quality standards have not been established.'

10 On page 151, subdivision 4.11.5., by following the  
11 words 'any applicable groundwater quality protection  
12 standards' by inserting the words 'and/or background  
13 groundwater quality, pursuant to the requirements of the  
14 Groundwater Protection Act, WVC §22-12-1 et seq.'

15 On page 152, subdivision 4.11.6.b.A., by following the  
16 words 'Be protective of human health and the environment'  
17 inserting the words 'and maintain existing groundwater  
18 quality, pursuant to the requirements of the Groundwater  
19 Protection Act, WVC §22-12-1 et seq.'

20 On page 154, subdivision 4.11.6.d.B.(f), by striking  
21 the words 'Resource value of the aquifer' and inserting in  
22 lieu thereof the words 'The hydrogeologic characteristics  
23 of the facility and the surrounding land,'

1           On page 154, subdivision 4.11.6.d.B(f).(e) by striking  
2 out the words "The hydrogeologic characteristics of the  
3 facility and surrounding land;

4           And, by renumbering and relettering the remaining  
5 subdivisions of the rule.

6           On page 156, subdivision 4.11.7.a.A., by following the  
7 words 'Demonstrate compliance with' inserting the words  
8 'the Groundwater Protection Act, WVC §22-12-1 et seq.,  
9 and/or the'

10          And,

11          On page 173, subdivision 5.4.3, by adding the  
12 following sentence to the end of the subdivision: 'A class  
13 D facility other than a class D-1 solid waste facility  
14 shall not exceed two (2) acres in size.'

15          (m) The legislative rule filed in the state register  
16 on the twenty-eighth day of August, one thousand nine  
17 hundred ninety-six, authorized under the authority of  
18 section six, article seventeen, chapter twenty-two, of this  
19 code, modified by the division of environmental protection  
20 to meet the objections of the legislative rule-making  
21 review committee and refiled in the state register on the  
22 twenty-second day of October, one thousand nine hundred  
23 ninety-six, relating to the division of environmental

1 protection (underground storage tank insurance trust fund,  
2 33 CSR 32), is authorized.

3

4 NOTE: The purpose of this bill is to authorize the  
5 Division of Environmental Protection to promulgate a  
6 legislative rule relating to the Underground Storage Tank  
7 Insurance Trust Fund.

8  
9 Strike-throughs indicate language that would be  
10 stricken from the present law, and underscoring indicates  
11 new language that would be added.

0337

H. B. 2330

1 Bill-DEP, Undergrd Tank

2  
3 (By Delegate(s) Douglas, Hunt, Compton,  
4 Faircloth, Linch and Riggs)

5 [Introduced March 3, 1997; referred to the  
6 Committee on the Judiciary.]  
7  
8  
9

10 A BILL to amend and reenact section one, article three,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of environmental  
14 protection to promulgate a legislative rule relating  
15 to the underground storage tank insurance trust fund.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article three, chapter sixty-four of  
18 the code of West Virginia, one thousand nine hundred  
19 thirty-one, as amended, be amended and reenacted, to read  
20 as follows:

21 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO  
22 PROMULGATE LEGISLATIVE RULES.

23 §64-3-1. Division of environmental protection.

1           (a) The legislative ~~rules~~ rule filed in the state  
2 register on twenty-eighth day of July, one thousand nine  
3 hundred ninety-five, authorized under the authority of  
4 section four, article five, chapter twenty-two of this  
5 code, relating to the division of environmental protection  
6 (emission standards for hazardous air pollutants pursuant  
7 to 40 CFR Part 63, 45 CSR 34), ~~are~~ is authorized.

8           (b) The legislative ~~rules~~ rule filed in the state  
9 register on the twenty-eighth day of July, one thousand  
10 nine hundred ninety-five, authorized under the authority of  
11 section four, article five, chapter twenty-two of this  
12 code, modified by the division of environmental protection  
13 to meet the objections of the legislative rule-making  
14 review committee and refiled in the state register on the  
15 twenty-seventh day of October, one thousand nine hundred  
16 ninety-five, relating to the division of environmental  
17 protection (to prevent and control air pollution from  
18 hazardous waste treatment, storage or disposal facilities,  
19 45 CSR 25), ~~are~~ is authorized.

20           (c) The legislative ~~rules~~ rule filed in the state  
21 register on the twenty-eighth day of July, one thousand  
22 nine hundred ninety-five, authorized under the authority of  
23 section four, article five, chapter twenty-two of this

1 code, relating to the division of environmental protection  
2 (acid rain provisions and permits, 45 CSR 33), ~~are~~ is  
3 authorized.

4 (d) The legislative ~~rules~~ rule filed in the state  
5 register on the thirty-first day of July, one thousand nine  
6 hundred ninety-five, authorized under the authority of  
7 section six, article seventeen, chapter twenty-two of this  
8 code, modified by the division of environmental protection  
9 to meet the objections of the legislative rule-making  
10 review committee and refiled in the state register on the  
11 eighteenth day of January, one thousand nine hundred  
12 ninety-six, relating to the division of environmental  
13 protection (underground storage tanks, 47 CSR 36), ~~are~~ is  
14 authorized.

15 (e) The legislative ~~rules~~ rule filed in the state  
16 register on the thirty-first day of July, one thousand nine  
17 hundred ninety-five, authorized under the authority of  
18 section six, article eighteen, chapter twenty-two of this  
19 code, modified by the division of environmental protection  
20 to meet the objections of the legislative rule-making  
21 review committee and refiled in the state register on the  
22 eighteenth day of January, one thousand nine hundred  
23 ninety-six, relating to the division of environmental

1 protection (hazardous waste management regulations, 47 CSR  
2 35), ~~are~~ is authorized.

3 (f) The legislative ~~rules~~ rule filed in the state  
4 register on the thirty-first day of July, one thousand nine  
5 hundred ninety-five, authorized under the authority of  
6 section four, article three, chapter twenty-two of this  
7 code, modified by the division of environmental protection  
8 to meet the objections of the legislative rule-making  
9 review committee and refiled in the state register on the  
10 twenty-third day of January, one thousand nine hundred  
11 ninety-six, ~~relating to the division of~~ environmental  
12 protection (surface mining and reclamation regulations, 38  
13 CSR 2), ~~are~~ is authorized with the following amendments:

14 "On page 64, section 3.27, after the word 'Director'  
15 by striking out the word 'may' and inserting in lieu  
16 thereof the word 'shall';

17 On page 64, section 3.27, after the word 'completed'  
18 by striking out the remainder of the first paragraph and  
19 inserting in lieu thereof the following words:

20 'and reclamation activities are ongoing.'

21 On page 156, section 11.6(c)(6)(A) after the word  
22 'operations' by striking out the words 'within five (5)  
23 years of the date of SMA approval,';

1       On page 156, section 11.6(c)(6)(B) after the word  
2 '95-87)' by striking out the words 'within five (5) years  
3 of the date of SMA approval,';

4       On page 157, section 11.6(c)(6)(C) after the word  
5 'State' by striking out the words 'within five (5) years of  
6 the date of SMA approval,';

7       On page 163, section 11.6(d)(6)(A), after the word  
8 'applicant' by striking out the words 'within five (5)  
9 years of the date of SMA approval,';

10       On page 164, section 11.6(d)(6)(B), after the word  
11 '95-87' by striking out the words 'within five (5) years of  
12 the date of SMA approval,';

13       On page 164, section 11.6(d)(6)(C), after the word  
14 'wetlands' by striking out the words 'within five (5) years  
15 of the date of SMA approval,';

16       On page 169, section 11.6(e)(5)(A), after the word  
17 '95-87' by striking out the words 'within five (5) years of  
18 the date of SMA approval,';

19       On page 169, section 11.6(e)(5)(B), after the word  
20 'wetlands' by striking out the words 'within five (5) years  
21 of the date of SMA approval,';

22       On page 175, section 11.6(f)(5)(A), after the word  
23 '95-87', by striking out the words 'within five (5) years

1 of the date of SMA approval,';

2 - On page 175, section 11.6(f)(5)(B), after the word  
3 'enhancement' by striking out the words 'of wetlands within  
4 five (5) years of the date of SMA approval,'.

5 On page 178, section 12.2 subsection (e) by striking  
6 12.2.e in its entirety and inserting in lieu thereof the  
7 following:

8 'Notwithstanding any other provisions of this rule, no  
9 bond release or reduction will be granted if, at the time,  
10 water discharged from or affected by the operation requires  
11 chemical treatment in order to comply with applicable  
12 effluent limitations or water quality standards: *Provided,*  
13 That the Director may approve a request for Phase I but not  
14 Phase II or III, release if the applicant demonstrates to  
15 the satisfaction of the Director that either:

16 (A) The remaining bond is adequate to assure long term  
17 treatment of the drainage; or

18 (B) The operator has irrevocably committed other  
19 financial resources which are adequate to assure long term  
20 treatment of the drainage: *Provided,* That the alternate  
21 financial resources must be in acceptable form, and meet  
22 the standards set forth in Section 11 of the Act and  
23 Section 11 of this rule: *Provided,* however, That the

1 alternate financial arrangements shall provide a mechanism  
2 whereby the Director can assume management of the resources  
3 and treatment work in the event that the operator defaults  
4 for any reason: And provided further, That default on a  
5 treatment obligation under this paragraph shall be  
6 considered equivalent to a bond forfeiture, and the  
7 operator will be subject to penalties and sanctions,  
8 including permit blocking, as if a bond forfeiture had  
9 occurred.

10 In order to make such demonstration as referenced  
11 above, the applicant shall address, at a minimum, the  
12 current and projected quantity and quality of drainage to  
13 be treated, the anticipated duration of treatment, the  
14 estimated capital and operating cost of the treatment  
15 facility, and the calculations which demonstrate the  
16 adequacy of the remaining bond or of the alternate  
17 financial resources.

18 On page sixteen, section 38-2-2.106, after the words  
19 'sum of the loading' by inserting the words 'or driving';  
20 and by striking out the words 'in a constructed valley  
21 fill, backfill, dam, or refuse pile' and inserting in lieu  
22 thereof the words 'as determined by acceptable engineering  
23 practices';

1        On page twenty-eight, section 38-2-3.2(e), after the  
2 words 'limited number of minor changes' by inserting the  
3 words 'that do not significantly affect the health, safety  
4 or welfare of the public and';

5        On page thirty-six, section 38-2-3.6(h)(5), after the  
6 words 'as defined in' by striking out the words 'Article 5D  
7 of Chapter 20' and inserting in lieu thereof the words  
8 'Article 14 of Chapter 22';

9        On page thirty-nine, section 38-2-3.8(c), at the end  
10 after the words 'reasonable time for compliance.', by  
11 inserting a new sentence to read as follows: 'Provided,  
12 That those structures and facilities, where it can be  
13 demonstrated that reconstruction or revision would result  
14 in greater environmental harm and the performance standards  
15 set forth in the Act and these regulations can otherwise be  
16 met, may be exempt from revision or reconstruction.';

17        On page one hundred seventy-eight, section 38-2-  
18 12.2(d), after the words 'until all coal extraction  
19 operations' by inserting the words 'for the permit or  
20 increment thereof', and after the words 'the entire  
21 disturbed area' by inserting the words 'for the permit or  
22 increment thereof';

23        On page one hundred ninety-seven, section 38-2-

1 14.3(c)(2), after the words 'medium is the best' by  
2 inserting the word 'reasonably';

3 And,

4 On page two hundred fifteen, section 38-2-14.14(e)(4),  
5 by striking the sentence 'Runoff from areas above and  
6 adjacent to the fill shall not be allowed to flow onto the  
7 fill surface, and shall be diverted into stabilized  
8 diversion channels, designed and constructed to safely pass  
9 the peak runoff from a 100 year, 24 hour precipitation  
10 event.' and inserting in lieu thereof the sentences  
11 'Surface water runoff from areas above and adjacent to the  
12 fill shall be diverted into properly designed and  
13 constructed stabilized diversion channels which have been  
14 designed using best current technology to safely pass the  
15 peak runoff from a 100 year, 24 hour precipitation event.  
16 The channel shall be designed and constructed to ensure  
17 stability of the fill, control erosion, and minimize water  
18 infiltration into the fill.'

19 (g) The legislative rules rule filed in the state  
20 register on the twenty-sixth day of July, one thousand nine  
21 hundred ninety-five, authorized under the authority of  
22 section four, article twenty-one, chapter twenty-two of  
23 this code, modified by the division of environmental

1 protection to meet the objections of the legislative  
2 rule-making review committee and refiled in the state  
3 register on the fourteenth day of December, one thousand  
4 nine hundred ninety-five, relating to the division of  
5 environmental protection (coalbed methane wells, 38 CSR  
6 23), ~~are~~ is authorized.

7 (h) The legislative ~~rules~~ rule filed in the state  
8 register on the twenty-third day of November, one thousand  
9 nine hundred ninety-four, authorized under the authority of  
10 section eight, article eleven, chapter twenty of this code,  
11 modified by the division of environmental protection to  
12 meet the objections of the legislative rule-making review  
13 committee and refiled in the state register on the  
14 twentieth day of December, one thousand nine hundred  
15 ninety-five, relating to the division of environmental  
16 protection (waste tire management, 47 CSR 38G), ~~are~~ is  
17 authorized.

18 (i) The legislative ~~rules~~ rule filed in the state  
19 register on the twenty-second day of June, one thousand  
20 nine hundred ninety-five, authorized under the authority of  
21 section twenty, article fifteen, chapter twenty-two of this  
22 code, modified by the division of environmental protection  
23 to meet the objections of the legislative rule-making

1 review committee and refiled in the state register on the  
2 twenty-second day of December, one thousand nine hundred  
3 ninety-five, relating to the division of environmental  
4 protection (sewage sludge management, 47 CSR 38D), ~~are is~~  
5 authorized with the amendments set forth below:

6 On page seven, section 3.2.2, by striking out the  
7 words "Table 3 of this rule will automatically be repealed  
8 and replaced with Table 3A of this rule on December 31,  
9 1997, unless this provision is modified prior to that  
10 date.";

11 And,

12 On page seven, section 3.2.2, after the word "rule."  
13 by inserting the following: The director is authorized  
14 until Dec. 31, 1999, to issue variances to this section to  
15 allow land application to soils which exceed the maximum  
16 soil concentrations of metals listed in Table 3 where soil  
17 analyses demonstrate that other soil factors, including,  
18 but not limited to, soil pH, cation exchange capacity,  
19 organic matter content, or clay content, will limit  
20 mobility and availability of the metals. No later than  
21 June 30, 1999, the director shall propose revisions to  
22 Table 3 to adequately protect soil quality, human health  
23 and the environment',

1. And,

2 On page 20, by striking the following from Table 3:  
3 "NOTE: Table 3 of this rule will automatically be repealed  
4 and replaced with Table 3A of this rule on December 31,  
5 1997, unless the provision of paragraph 3.2.2 of this rule  
6 is modified prior to that date.",

7 And,

8 On page 21, by striking out all of Table 3A.

9 (j) The legislative rules rule filed in the state  
10 register on the thirty-first day of July, one thousand nine  
11 hundred ninety-five, authorized under the authority of  
12 section four, article five, chapter twenty-two of this  
13 code, relating to the division of environmental protection  
14 (to prevent and control of air pollution from the emission  
15 of volatile organic compounds, 45 CSR 21), are is  
16 authorized with the following amendment:

17 "On pages 170 and 171, by striking out section 40 in  
18 its entirety and inserting in lieu thereof a new section  
19 40, to read as follows:

20 §45-21-40. Other Facilities that Emit Volatile Organic  
21 Compound (VOC).

22 40.1. Applicability.

23 a. This section 40. applies to any facility that has

1 aggregate maximum theoretical emissions of 90.7 megagrams  
2 (mg) (100 tons) or more of volatile organic compounds  
3 (VOCs) per calendar year in the absence of control devices;  
4 provided that this section 40. applies to any source or  
5 sources within such facility other than those sources  
6 subject to regulation under sections 11. through 39. VOC  
7 emissions from sources regulated under sections 11. through  
8 39., but which fall below the applicability thresholds of  
9 these sections, and thus are not subject to the emissions  
10 control standards of these sections, shall be included in  
11 the determination of maximum theoretical emissions for a  
12 facility but shall not be subject to the requirements of  
13 this section 40. Emissions from sources listed in section  
14 40.1.d. shall not be included in the determination of  
15 maximum theoretical emissions for a facility.

16     b. The owner or operator of a coating line or  
17 operation, whose emissions are below this applicability  
18 threshold, shall comply with the certification,  
19 recordkeeping, and reporting requirements of section  
20 40.6.a.

21     c. The owner or operator of a non-coating source,  
22 whose emissions are below this applicability threshold,  
23 shall comply with the certification, recordkeeping, and

1 reporting requirements of section 40.6.k.

2 d. The requirements of this section 40. shall not  
3 apply to coke ovens (including by-product recovery plants),  
4 fuel combustion sources, barge loading facilities, jet  
5 engine test cells, vegetable oil processing facilities,  
6 wastewater treatment facilities, iron and steel production,  
7 surface impoundments, pits; and boilers, industrial  
8 furnaces, and incinerators having a destruction efficiency  
9 of 95 percent or greater.

10 e. The requirements of this section 40. shall not  
11 apply to any facility bound by an order or permit,  
12 enforceable by the Director, which limits the facility's  
13 emissions to less than 100 tons of VOC per calendar year  
14 without the application of control devices.

15 40.2. Definitions. -- As used in this section 40., all  
16 terms not defined herein shall have the meaning given them  
17 in section 2.

18 a. 'Reasonably available control measures' (also  
19 denoted as RACM) means an emission limit or limits that  
20 reflect the application of control technology and/or  
21 abatement techniques or measures that are reasonably  
22 available, considering technological and economic  
23 feasibility. Such emission limits may be considered on a

1 plant-wide basis to achieve emission reduction requirements  
2 in the most cost effective manner.

3 b. "Fugitive emissions" means those emissions which  
4 could not reasonably pass through a stack, chimney, vent,  
5 or other functionally equivalent opening.

6 40.3. Standards. -- The owner or operator of a  
7 facility subject to this section 40. shall:

8 a. Except as provided in section 40.3.b.,

9 1. With respect to any existing non-fugitive  
10 emission source which has maximum theoretical emissions of  
11 6 pounds per hour or more, comply with an emission control  
12 plan established on a case-by-case basis approved by the  
13 Director that meets the definition of reasonably available  
14 control measures (RACM) and achieves at least a 90 percent  
15 reduction in emissions below the total (aggregate) maximum  
16 theoretical emissions from all such non-fugitive emission  
17 sources subject to RACM requirements; and

18 2. With respect to each process unit producing a  
19 product or products, intermediate or final, in excess of  
20 1000 megagrams (Mg) (1,100 tons) per year, regardless of  
21 whether such product or products are listed in 40 CFR  
22 60.489, comply with an emission control plan for fugitive  
23 sources using the methods and criteria of section 37., or

1 alternative methods and criteria approved by the Director.  
2 The Director may exempt a process unit from fugitive  
3 emission control requirements upon satisfactory  
4 demonstration that emissions are of minor significance.

5 b. With respect to such sources as described in  
6 sections 40.3.a.1. and 40.3.a.2., comply with emission  
7 limits and measures based upon an alternative emissions  
8 reduction plan, approved by the Director considering  
9 technical, economic and air quality benefit considerations  
10 that, at a minimum, maintains emission control measures  
11 incorporated as part of any federally approved maintenance  
12 plan for the county or area in which the source is located.

13 c. With respect to any source at a facility subject to  
14 this section 40., which source has maximum theoretical  
15 emissions of 6 pounds per hour or more and is constructed,  
16 modified or begins operating after the effective date of  
17 this rule, comply with a control plan developed on a case-  
18 by-case basis approved by the Director that meets the  
19 definition of reasonably available control technology  
20 (RACT) in section 2.60. for both fugitive and non-  
21 fugitive emission sources.

#### 22 40.4. Submissions and Approval of Control Plans

23 a. Within 90 days after the effective date of this

1 rule, the owner or operator of a facility subject to this  
2 section 40., shall submit any required amendments to the  
3 case-by-case RACT control plans previously submitted to the  
4 Director, that revise such control plans to meet the  
5 definition of reasonably available control measures (RACM).

6 b. Notwithstanding the provisions of section 9.2.,  
7 the owner or operator of a facility subject to this rule  
8 solely due to this section 40., that requires a major  
9 process change and/or major capital investment to comply  
10 with RACM requirements, may petition the Director for an  
11 additional extension beyond December 31, 1996, for  
12 compliance certification, and the Director may grant such  
13 extension when warranted. Provided however, such  
14 compliance certification date shall be no later July 31,  
15 1997.

16 c. The Director shall not approve a RACM plan or an  
17 alternative emissions reduction plan under this section 40.  
18 unless such plan includes:

19 1. A commitment to develop and submit a  
20 complete RACT plan to the Director within 180 days of a  
21 finding by the Director that a violation of the National  
22 Ambient Air Quality Standard for ozone has occurred within  
23 the county or maintenance area in which the source is

1 located; and  
2                   2. A commitment to achieving full  
3 implementation of RACT within 2 years of approval of the  
4 RACT plan by the Director.

5                   d. A finding by the Director that a violation of  
6 the National Ambient Air Quality Standard for ozone has  
7 occurred shall be made based upon verification of a  
8 monitored ozone standard violation in the county or  
9 maintenance area in which the source is located. The three  
10 maintenance areas (the Huntington area, comprising Cabell  
11 and Wayne counties; the Charleston area, comprising Kanawha  
12 and Putnam counties; and the Parkersburg area, comprising  
13 Wood county) shall be treated separately and independently  
14 for any such finding(s).

15                   e. All RACM control plans, RACT control plans, and  
16 alternative emissions reduction plans approved by the  
17 Director pursuant to this section 40. shall be embodied in  
18 a consent order or permit in accordance with 45CSR13 or  
19 45CSR30, as required. A facility owner or operator may at  
20 any time petition the Director to approve revisions to  
21 these plans. The decision concerning said petition shall  
22 be issued by the Director in accordance with 45CSR13 or  
23 45CSR30, as required, or a consent order. Any such

1 revisions shall be subject to the public participation  
2 requirements of 45CSR13 or 45CSR30.

3 f. The owner or operator of a facility subject to  
4 this section 40. may submit for approval by the Director an  
5 emission control plan that meets the definition of  
6 reasonably available control technology (RACT) in section  
7 2.60.

8 40.5. Test methods and procedures. -- The owner or  
9 operator of any source subject to this section 40. shall  
10 demonstrate compliance with section 40.3. by using the  
11 applicable test methods specified in sections 41. through  
12 46. or by other means approved by the Director.  
13 Notwithstanding the requirements of section 41.1., EPA  
14 approval for alternate test methods to demonstrate  
15 compliance shall not be required for sources which are  
16 subject solely to emission control requirements specified  
17 in section 40.3.

18 40.6. Reporting and Recordkeeping Requirements for  
19 Exempt Non-Control Technique Guideline (CTG) Sources.

20 a. An owner or operator of a coating line or  
21 operation that is exempt from the emission limitations in  
22 section 40.3. shall comply with the certification,  
23 recordkeeping, and reporting requirements in section 4.2.

1        b. An owner or operator of a non-coating source  
2 that is exempt from the emission limitations in section  
3 40.3. shall submit, upon request by the Director, records  
4 that document that the source is exempt from these  
5 requirements.

6            1. These records shall be submitted to the  
7 Director within 30 days from the date of request.

8            2. If such records are not made available, the  
9 source will be considered subject to the limits in section  
10 40.3.

11        40.7. Reporting and Recordkeeping Requirements for  
12 Subject Non-CTG Coating Sources. -- An owner or operator of  
13 a coating line or operation subject to this section 40. and  
14 complying with section 40.3. shall comply with the  
15 certification, recordkeeping, and reporting requirements in  
16 section 4.

17        40.8. Reporting and Recordkeeping Requirements for  
18 Subject Non-CTG, Non-Coating Sources.

19            a. The owner or operator of the subject VOC sources  
20 shall perform all testing and maintain the results of all  
21 tests and calculations required under sections 40.3. and  
22 40.5. to demonstrate that the subject source is in  
23 compliance.

1           b. The owner or operator of the subject VOC source  
2 shall maintain these records in a readily accessible  
3 location for a minimum of 3 years, and shall make these  
4 records available to the Director upon verbal or written  
5 request.

6           c. The owner or operator of any facility containing  
7 sources subject to this section 40. shall comply with the  
8 requirements in section 5, except that such requirements,  
9 as they apply to sources solely subject to this section  
10 40., may be modified by the Director upon petition by the  
11 owner or operator. Any such modified requirements shall be  
12 embodied in the facility's control plan (RACM, RACT or  
13 alternative plan) and reflected in the associated consent  
14 order or permit issued pursuant to 45CSR13 or 45CSR30."

15           (k) The legislative ~~rules~~ rule filed in the state  
16 register on the twenty-seventh day of July, one thousand  
17 nine hundred ninety-five, authorized under the authority of  
18 section five, article twelve, chapter twenty-two of this  
19 code, modified by the division of environmental protection  
20 to meet the objections of the legislative rule-making  
21 review committee and refiled in the state register on the  
22 seventeenth day of January, one thousand nine hundred  
23 ninety-six, relating to the division of environmental

1 protection (monitoring well design standards, 47 CSR 60),  
2 ~~are~~ is authorized.

3 (1) The legislative ~~rules~~ rule filed in the state  
4 register on the thirty-first day of July, one thousand nine  
5 hundred ninety-five, authorized under the authority of  
6 section five, article fifteen, chapter twenty-two of this  
7 code, modified by the division of environmental protection  
8 to meet the objections of the legislative rule-making  
9 review committee and refiled in the state register on the  
10 twenty-fourth day of January, one thousand nine hundred  
11 ninety-six, relating to the division of environmental  
12 protection (solid waste management, 47 CSR 38), ~~are~~ is  
13 authorized with the following amendments:

14 "On page 37, subdivision 3.8.4, after the words 'from  
15 the uppermost' by striking the word 'significant.'

16 On page 142, by striking the existing subdivision  
17 4.11.2.c.A and inserting in lieu thereof the following:

18 '4.11.2.c.A

19 The monitoring frequency for all constituents listed in  
20 Appendix I of this rule, must be at least twice a year  
21 during the active life of the facility, including closure  
22 and the post-closure periods. The director may require  
23 more frequent monitoring on a site-specific basis by

1 considering aquifer flow rate and existing quality of the  
2 groundwater.'

3 On page 148, by striking the existing subdivision  
4 4.11.3.i.A. and inserting in lieu thereof the following:  
5 '4.11.3.i.A.

6 The director may consider an alternative groundwater  
7 protection standard in consultation with the environmental  
8 quality board pursuant to 47CSR57 for constituents for  
9 which water quality standards have not been established.'

10 On page 151, subdivision 4.11.5., by following the  
11 words 'any applicable groundwater quality protection  
12 standards' by inserting the words 'and/or background  
13 groundwater quality, pursuant to the requirements of the  
14 Groundwater Protection Act, WVC §22-12-1 et seq.'

15 On page 152, subdivision 4.11.6.b.A., by following the  
16 words 'Be protective of human health and the environment'  
17 inserting the words 'and maintain existing groundwater  
18 quality, pursuant to the requirements of the Groundwater  
19 Protection Act, WVC §22-12-1 et seq.'

20 On page 154, subdivision 4.11.6.d.B.(f), by striking  
21 the words 'Resource value of the aquifer' and inserting in  
22 lieu thereof the words 'The hydrogeologic characteristics  
23 of the facility and the surrounding land,'

1 On page 154, subdivision 4.11.6.d.B(f).(e) by striking  
2 out the words "The hydrogeologic characteristics of the  
3 facility and surrounding land;

4 And, by renumbering and relettering the remaining  
5 subdivisions of the rule.

6 On page 156, subdivision 4.11.7.a.A., by following the  
7 words 'Demonstrate compliance with' inserting the words  
8 'the Groundwater Protection Act, WVC §22-12-1 et seq.,  
9 and/or the'

10 And,

11 On page 173, subdivision 5.4.3., by adding the  
12 following sentence to the end of the subdivision: 'A class  
13 D facility other than a class D-1 solid waste facility  
14 shall not exceed two (2) acres in size.'

15 (m) The legislative rule filed in the state register  
16 on the twenty-eighth day of August, one thousand nine  
17 hundred ninety-six, authorized under the authority of  
18 section six, article seventeen, chapter twenty-two, of this  
19 code, modified by the division of environmental protection  
20 to meet the objections of the legislative rule-making  
21 review committee and refiled in the state register on the  
22 twenty-second day of October, one thousand nine hundred  
23 ninety-six, relating to the division of environmental

1 protection (underground storage tank insurance trust fund,  
2 33 CSR 32), is authorized.

3

4 NOTE: The purpose of this bill is to authorize the  
5 Division of Environmental Protection to promulgate a  
6 legislative rule relating to the Underground Storage Tank  
7 Insurance Trust Fund.

8

9 Strike-throughs indicate language that would be  
10 stricken from the present law, and underscoring indicates  
11 new language that would be added.