

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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MAY 19 8 58 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 32

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

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

TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) H.B. 2333

SECTION 64-3-1(d), PASSED ON April 12, 1997

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: May 19, 1997

BT Sm.c



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
COMMISSIONER

May 12, 1997

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

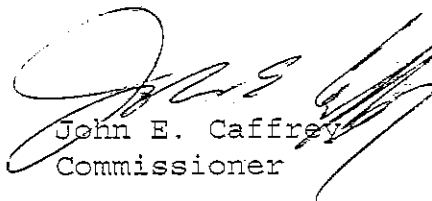
RE: 33CSR32 - "Underground Storage Tank Insurance
Fund"

Dear Ms. Cooper:

This is to advise you that I am giving approval for final filing and adoption of the above-referenced rule with your office.

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

Sincerely yours,


John E. Caffrey
Commissioner

LEM:cc

Attachment

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

SERIES 32
UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§33-32-1. General.

1.1. Scope and Purpose.

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

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

1.3. Filing Date. -- May 19, 1997

1.4. Effective Date. -- May 19, 1997

§33-32-2. Applicability.

2.1. Financial Assurance.

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

§33-32-3. Definitions.

3.1. "Accidental Release".

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

3.2. "Administrator".

"Administrator" means private or state individuals, organizations, other state agencies, companies, corporations, or other persons designated by the director through agreements,

including reimbursement for services rendered, contracts, and cooperative arrangements under such terms and conditions as he or she deems appropriate to administer the Underground Storage Tank Insurance Trust Fund in accordance with W. Va. Code §22-17-5(c).

3.3. "Advisory Committee".

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

3.4. "Damages".

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

3.5. "Director".

"Director" means the director of the division of environmental protection of the bureau of environment or other such person to whom the director has delegated authority and duties pursuant to 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 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.a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; and

3.10.b. Petroleum, including crude oil or any fraction thereof

which is liquid at a temperature of sixty (60) degrees fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute (14.7 psia). The term "regulated substance" includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

3.11. "Underground Storage Tank" or "UST".

"Underground Storage Tank" or "UST" means one tank or a combination of tanks, and the underground pipes connected thereto, that is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. The term "underground storage tank" does not include:

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

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

3.11.c. Septic tanks;

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

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

3.11.f. Storm water or wastewater collection systems;

3.11.g. Flow-through process tanks;

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

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

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

§33-32-4. Applying for Coverage.

4.1. Application for Coverage.

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

4.2. Sworn Statement.

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

§33-32-5. Capitalization Fees.

5.1. Capitalization Fee.

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

5.1.a. One hundred dollars per tank per year (\$100/tank/year) for a period of not less than one (1) year and not more than three (3) years. Second and third year capital assessments may be levied if there is an inadequate surplus of funds, as determined by the administrator, the director, and the underground storage tank advisory committee pursuant to section seven, article seventeen, chapter twenty-two of the West Virginia Code [W. Va. Code §22-17-7].

5.2. Capitalization Fee Payment.

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

5.3. Interest Accrued.

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

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

6.1. Premium Rate.

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

6.2. Premium Rate Payment.

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

6.3. Premium Payment and Deposit.

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

6.4. UST Insurance Program Shall Be Assessable.

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

§33-32-7. Cancellation of Coverage.

7.1. Cancellation of Coverage.

Coverage will be cancelled for an insured who:

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

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

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

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

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

§33-32-8. Emergency Claims.

8.1. Notification of Claim.

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

8.2. Initial Response Requirements.

The insured must comply with applicable initial response requirements set forth in 40 C.F.R. §280.61.

8.3. Written Itemization.

The insured must submit written itemization of projected contract costs to the director or the administrator prior to the acceptance

of written bids in accordance with subsection 8.4 and 8.5 of this rule.

8.4. Bids Secured.

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

8.5. Acceptance of Bid.

The insured is required to accept the lowest bid.

8.6. Reimbursement.

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

§33-32-9. Non-Emergency Claims.

9.1. Notification of Claim.

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

9.2. Bids Secured.

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

9.3. Acceptance of Bid.

The insured is required to accept the lowest bid.

9.4. Reimbursement.

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

§33-32-10. Notification Requirements.

10.1. Notification Requirements.

Owners and operators of underground storage tanks who have not fulfilled the notification requirements pursuant to title 33,

series 30, section 4 of the Code of State Rules (33 C.S.R. 30 §4) shall not be eligible for insurance coverage pursuant to this rule, until such notification is made and approved by the director.

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

11.1. Advisory Committee Powers, Duties, and Responsibilities.

In addition to all other powers, duties, and responsibilities aforementioned in this rule and W. Va. Code §22-17-7, the advisory committee shall:

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

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

RULE PROMULGATION HISTORY ABSTRACT

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

SERIES 32
UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

July 10, 1996	Filed with Secretary of State Notice of Public Hearing
August 13, 1996	Public Hearing held
August 28, 1996	Agency Approved Proposed Rule filed with Secretary of State and Legislative Rule Making Review Committee
October 14, 1996	Legislative Rule Making Review Committee meeting
October 22, 1996	Modification of Proposed Rule filed with Secretary of State and Legislative Rule Making review Committee
April 12, 1997	H.B. 2333 passed by the Legislature
May 2, 1997	H.B. 2333 approved by the Governor
May 19, 1997	Final Filing with Secretary of State
May 19, 1997	Effective date

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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SECRETARY OF STATE

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

TO: CARRIE CHAMBERS

AGENCY: DEP- WASTE MANAGEMENT

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 16, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 32 TITLE: 33 DEP- WASTE MANAGEMENT

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: ERPMF

DATE: 6/23/97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUN 23 8 36 AM '97

FILED

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.