

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

DO NOT WRITE IN THIS BOX

FILED

APR 10 9 07 AM '96

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
Water Resources/Waste Management TITLE NUMBER: 47

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: Underground Storage Tanks

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) HB 4224

SECTION 64-3-1(d), PASSED ON March 9, 1996

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

THE FOLLOWING DATE: July 1, 1996

B7 Jm.k
AUTHORIZED SIGNATURE

5-46



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

April 10, 1996

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

RE: 47-CSR-36 - "Underground Storage Tanks"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-captioned rule as final adoption of a legislative rule authorized by the West Virginia Legislature.

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

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Laidley Eli McCoy", written over a horizontal line.

Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc

Attachment

LEGISLATIVE HISTORY ABSTRACT

Underground Storage Tanks

47 CSR 36 - 1 et. seq.

Division of Environmental Protection
Office of Waste Management
Underground Storage Tank Section
Rulemaking Coordinator - Gil Sattler

June 23, 1995	Initial filing with Secretary of State
July 24, 1995	Public Hearing
July 25, 1995	- Comment Period
July 31, 1995	Agency Approved Rule filed with Secretary of State
July 31, 1995	Agency Approved Rule filed with Legislative Rulemaking Review Committee
January 18, 1996	Notice of Rule Modification of a Proposed Rule filed with the Secretary of State after passage by the Legislative Rulemaking Review Committee __X__ With Amendments _____ Without Amendments
March 9, 1996	HB 4224 authorizing Title 47, Series 36 passed by the Legislature
April 1, 1996	HB 4224 signed by the Governor
April 10, 1996	Final Filed with the Secretary of State
July 1, 1996	Effective Date

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

SERIES 36
UNDERGROUND STORAGE TANKS

FILED

APR 10 9 07 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§47-36-1. General.

1.1. Scope and Purpose.

This legislative rule establishes regulations to govern the construction, installation, upgrading, use, maintenance, testing, and closure of underground storage tanks in this State.

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

1.3. Filing Date. -- April 10, 1996

1.4. Effective Date. -- July 1, 1996

§47-36-2. Adoption of Federal Regulations.

2.1. Incorporation by Reference.

The director hereby adopts and incorporates by reference the provisions contained in 40 C.F.R. Part 280 as published in the Code of Federal Regulations on December 6, 1995, with the following modifications:

2.1.a. The definition of "implementing agency" that appears in 40 C.F.R. §280.12 shall be deleted and replaced by "implementing agency means the West Virginia division of environmental protection."

2.1.b. The provisions contained in 40 C.F.R. §280.20(e) shall be deleted and replaced by section 3 of this rule.

2.1.c. The provisions contained in 40 C.F.R. §280.22 shall be deleted and replaced by section 4 of this rule.

2.1.d. The phrase "section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended" that appears in 40 C.F.R. §280.34 shall be deleted and replaced by the phrase "W. Va. Code §22-17-13".

2.1.e. The provisions contained in 40 C.F.R. §280.34(a)(1) shall be deleted and replaced by "(1) notification in accordance with the provisions of section 4 of this rule".

2.1.f. The provisions contained in appendices II and III of 40 C.F.R. Part 280 shall be deleted.

§47-36-3. Certification Requirements for Individuals Who Install, Repair, Retrofit, Upgrade, Perform Change-in-Service, Close, or Tightness Test Underground Storage Tank Systems.

3.1. Application of Requirements.

The requirements of this section apply to individuals engaged in underground storage tank system installation, repair, retrofitting, upgrading, change-in-service, closure, or tightness testing.

3.2. Certified Individual Required.

No individual shall conduct an underground storage tank system installation, repair, retrofit, upgrade, change-in-service, closure, or conduct a tightness test unless an individual present at the underground storage tank system site and exercising responsible supervisory control over the installation, repair, retrofit, upgrade, change-in-service, closure, or tightness test is currently certified by the director in accordance with this section. The underground storage tank system owner and operator must ensure that the individual supervising the installation, repair, retrofitting, upgrade, change-in-service, closure, and/or tightness testing is certified by the director in the applicable class for the activity performed. The certified individual is required to ensure that the underground storage tank system installation, repair, retrofit, upgrade, change-in-service, closure, and/or tightness testing is conducted in accordance with all applicable rules, regulations, and policies established by the director.

3.2.a. An individual who holds a current certificate issued by the director shall be present at all times during:

3.2.a.1. The installation process involving the preparation of the excavation immediately prior to receiving backfill and the tank, the setting of the tank and the piping (including placement of any anchoring devices), backfilling to the level of the tank, strapping, anytime during the installation in which piping components are connected, all testing of the underground storage tank and piping performed during the installation, completion of the backfill and filling of the excavation, and installation of release detection devices within the excavation zone;

3.2.a.2. The repair, retrofitting or upgrading process involving the excavation of existing tanks and/or piping, the actual performance of repairs to the tank and/or piping, anytime during the process when components of the piping are connected, anytime during the repair process when the tank and/or associated piping are tested and at anytime during the process when equipment is connected to the tank and/or piping;

3.2.a.3. The tightness testing of tanks and/or piping; and

3.2.a.4. The change-in-service or closure process involving the process of vapor removal, purging, inerting, cleaning and all subsurface sample collection events.

3.3. Certification Categories.

The underground storage tank system certificates issued by the director will address the following categories:

3.3.a. A class A certificate will allow the individual certified to install, repair, retrofit or upgrade an underground storage tank system;

3.3.b. A class B certificate will allow the individual certified to perform a change-in-service or close an underground storage tank system; and

3.3.c. A class C certificate will allow the individual certified to perform tank and/or piping tightness testing and to perform minor repairs and to disconnect and reconnect piping and equipment to an underground storage tank system as is necessary to perform the tightness test.

3.4. Certification Requirements.

An individual applying for a class A, class B and/or class C certificate must file a written application on a form supplied by the director showing the director that he or she meets the following requirements:

3.4.a. The applicant must be an individual. Businesses or corporations may not be certified;

3.4.b. The applicant need not be a resident of West Virginia;

3.4.c. The applicant shall demonstrate ethical practice. The demonstration shall consist of providing to the director written statements from two (2) personal references and two (2) business references attesting to the applicant's ethical practices. In addition, the director may conduct a police check and checks with other certification or licensing boards with which the applicant is registered to determine the nature of violations of federal, state or local laws and regulations relating to the applicant's performance in an ethical and competent manner. The director may deny the applicant's certification based upon the documentary evidence obtained pursuant to this subdivision;

3.4.d. The applicant must demonstrate active participation in a minimum of ten (10) regulated underground storage tank system installations, repairs, retrofits, upgrades, performances of a change-in-service, closures, and/or tightness testing conducted after December 22, 1988, as is applicable to the class A, B and/or C

certificate. Closely related work experience may be substituted upon approval by the director. An applicant who is a registered professional civil or mechanical engineer duly licensed by the State Board of Registration for Professional Engineers of West Virginia may substitute this license for the required experience for class A or class B;

3.4.d.1. Applicants shall provide the director a listing of the work performed, site locations, and the names of the companies or employers for whom the work was performed;

3.4.d.2. Applicants for class C certification must submit proof of a current certification by the manufacturer of each tank and/or piping tightness test method that they will be using and must assure by a signed written statement filed with the director that they will follow the current test protocol established by the manufacturer and policies established by the director;

3.4.e. No applicant shall be issued a certificate unless he or she has successfully passed a written examination administered by the director;

3.4.e.1. Examinations administered to applicants for certification shall be written, multiple choice examinations. The director shall derive the questions used in the examination from standards, instructions, industry recommended practices and state and federal laws and regulations pertaining to underground storage tank system installation, repair, retrofitting, upgrading, change-in-service, closure, and tightness testing. The director can make available to applicants alternative testing procedures;

3.4.e.2. Beginning after July 1, 1994, the director or persons designated by the director shall conduct written examinations at such times and locations within the state as the director may consider necessary;

3.4.e.3. Applicants for certification must correctly answer not less than 80 percent of the questions in a category of certification to qualify for that category of certification; and

3.4.e.4. No applicant may take an examination more than three (3) times within a twelve (12) month period. Applications are considered current for a period of one (1) year from the date they are received by the director. After one (1) year, a new application must be filed and the examination fee paid; and

3.4.f. At the time of the examination the applicant shall remit a nonrefundable \$75 fee by check or money order. This fee shall be deposited in the Underground Storage Tank Administrative Fund. A fee of \$35 shall be assessed for each retesting within the same year.

3.5. Certificate Expiration and Renewal.

All certificates and certificate renewals expire December 31 of every second year. Applications for certificate renewal and payment of a nonrefundable renewal fee of \$50 must be submitted to the director by November 1 of the year in which the certificate expires. An individual whose certificate has expired prior to his or her submission of an application for renewal is considered a new applicant for certification.

3.5.a. An individual may renew his or her certificate for another two (2) year period by:

3.5.a.1. Paying the renewal fee; and

3.5.a.2. Submitting on a form supplied by the director a certificate renewal application demonstrating that he or she has completed sixteen (16) hours of director approved continuing education training courses and has participated in at least one (1) job applicable to the class of certification within the prior certification period:

3.5.a.2.A. The continuing education training course must be relevant to the subject area of installation, repair, retrofitting, upgrading, change-in-service, closure, tightness testing or the regulation of underground storage tank systems as it relates to the category of certification and offer instruction on the most current generally acceptable technology or methods for these subjects; and

3.5.a.2.B. Applications for approval of specific training programs shall be submitted by the training provider to the director in writing. The submissions shall contain a complete course outline, training material, sample certificates, the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods that will be presented in the training program will satisfy state and federal laws governing underground storage tank system installation, repair, retrofitting, upgrading, change-in-service, closure, or tightness testing; or

3.5.a.3. Submitting on a form supplied by the director a certificate renewal application, demonstrating that he or she has participated in at least one (1) job applicable to the class of certification within the prior certification period and successfully passing the written examination described in sub-division 3.4.e. of this rule. At the time of the examination, the applicant applying for renewal must remit a nonrefundable \$50 fee by check or money order.

3.6. Identification Card.

Upon issuance of the certification the director shall issue an identification card to the successful applicant that shows the individual's name, social security number, certificate issuance date, certificate expiration date, certification number and the class of

certification.

3.6.a. An individual who holds a current certificate shall present his or her identification card upon request by a representative of the director or the owner or operator of the underground storage tank system for which an installation, repair, retrofit, upgrade, change-in-service, closure or tightness test is to be conducted.

3.7. Denial or Revocation of Certification.

Should an applicant be denied issuance or renewal of certification or should the individual's certificate be revoked, the reason or reasons for the denial or revocation shall be set forth in writing to the individual by the director.

3.7.a. Possible reasons for denial of issuance of certification, renewal of certification or revocation of certification may include, but are not limited to, failure to achieve a passing score on the written examination described in sub-division 3.4.e. of this rule, failure to submit required documentation, failure to follow the tank and/or piping tightness testing manufacturer's protocol and/or policies established by the director, previous revocation of certification held by the applicant, evidence of fraud or deceit with respect to the certification application, failure to present the identification card upon request of a director's representative, violations of the laws or rules of West Virginia, for ethical considerations enumerated in sub-division 3.4.c. of this rule, and/or any other cause that, in the opinion of the director, constitutes adequate grounds for denial or revocation of a certificate.

3.7.b. An individual who has been denied issuance or renewal of certification or who has had a certificate revoked may appeal the action to the Environmental Quality Board pursuant to the provisions of WV Code §22-17-18.

3.8. Enforcement Action.

Any individual who violates the provision of section 3 of this rule is subject to enforcement action under WV Code §22-17-1 et seq.

§47-36-4. Notification Requirements.

4.1. Notification.

Except as provided in sub-division 4.1.a., 4.1.b., or 4.1.c. of this rule, the owner or operator of an underground storage tank system that was in the ground prior to May 1, 1990, must submit a notice of the existence of such tank system to the director by completing the form prescribed in appendix I of this rule.

4.1.a. The owner or operator of an underground storage tank

system that was in the ground prior to May 1, 1990, is exempt from the notification requirements of sub-section 4.1 of this rule if notice was previously given to the director in accordance with the provisions of the federal Hazardous and Solid Waste Amendments of 1984 on the form published in the federal register on November 8, 1985 (50 F.R. 46602), unless such notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

4.1.b. The owner or operator of an underground storage tank system that was removed from the ground on or before May 8, 1986, is exempt from the notification requirements of sub-section 4.1 of this rule.

4.1.c. The owner or operator of an underground storage tank that was installed before December 22, 1988, need only complete sections I through X of the form prescribed in appendix I of these regulations. Tank systems installed on or after December 22, 1988, must comply with the provisions of sub-section 4.2 of this rule.

4.2. Notification of Compliance.

All owners and operators of underground storage tank systems installed on or after December 22, 1988, must provide the director, in addition to the provisions of sub-division 4.1.c. of this rule, notification of compliance with the following requirements:

4.2.a. For underground storage tank systems installed on or after December 22, 1988, and before January 1, 1995, installation of tanks and piping as certified under section XI of the form prescribed in appendix I of these regulations, excluding item B (installer certified or licensed by the implementing agency) under section 1 (installation) of part XI (certification of compliance).

4.2.b. For underground storage tank systems installed on or after January 1, 1995, installation of tanks and piping by an individual certified by the director in accordance with section 3 of these regulations.

4.2.c. Cathodic protection of steel tanks and piping in accordance with the provisions of 40 C.F.R. §§280.20(a) and 280.20(b).

4.2.d. Spill and overflow prevention equipment in accordance with the provisions of 40 C.F.R. §280.20(c).

4.2.e. Financial responsibility in accordance with the provisions of 40 C.F.R. Part 280 Subpart H.

4.2.f. Release detection in accordance with the provisions of 40 C.F.R. §§280.41 and 280.42.

4.3. Notification of Installation.

All owners and operators of underground storage tank systems to be installed must notify the director in writing at least thirty (30) days prior to beginning the installation. The thirty (30) day time period may be waived when such action is in response to a release from an existing UST system on the site.

4.4. Certification of Installation.

All owners and operators of UST systems must ensure that:

4.4.a. When the system was installed on or after December 22, 1988, and before January 1, 1995, the installer certifies, in the notification form, that the methods used to install the tanks and piping comply with the requirements of 40 C.F.R. §280.20(d); and

4.4.b. When the system was installed on or after January 1, 1995, the installation of tanks and piping was performed by an individual certified by the director in accordance with section 3 of these regulations. The installer must certify in the notification form that the methods used to install the tanks and piping comply with the requirements of 40 C.F.R. 280.20(a) through (d).

4.5. Notification Requirements.

An owner or operator who is required to submit notices under section 4 of these regulations may provide notice for several tanks by using one notification form, but an owner of tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

4.6. Notification to Purchaser.

After June 10, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's notification obligations under section 4 of these regulations. The following notice may be used to comply with the requirement:

"NOTICE: Owners of certain underground storage tanks in West Virginia are required by law to notify the director of the division of environmental protection of the existence of their tanks. Notifications for tanks brought into use after May 8, 1986, must be made within thirty (30) days. Consult the division's Underground Storage Tank Rule (46 C.S.R. 30) to determine if you must provide this notification."

4.6.a. After June 14, 1993, any person who sells an existing tank intended to be used as an underground storage tank must notify the director in writing at least thirty (30) days prior to the transfer of ownership.

4.7. Notification of Change in Status.

Except as provided in sub-division 4.6.a. of these regulations, the owner or operator must report changes in the status of any underground storage tank system by completing the form prescribed in appendix I of these regulations and then submitting that form to the director by December 31 of the year in which the change of status occurred.

4.7.a. A new owner of an underground storage tank must provide notification of the transfer of ownership of that tank by completing the form prescribed in appendix I of these regulations along with proof of financial responsibility in accordance with the provisions of 40 C.F.R. Part 280 Subpart H and must submit this information to the director within thirty (30) days of the transfer.

§47-36-5. Carriers.

5.1. Proof of Compliance.

Carriers (private, common, or for-hire) of regulated substances shall not deliver regulated substances into an underground storage tank unless the division has certified that the underground storage tank owner or operator is in compliance with the requirements of: the Underground Storage Tank Fee Assessments (47 C.S.R. 37), notification requirements (47 C.S.R. 36 Section 4); and capitalization fee requirements (47 C.S.R. 37A Section 5) and the owner or operator presents proof of this certification along with proof of financial responsibility in compliance with 40 C.F.R. Part 280 Subpart H to the carrier.

5.2. Enforcement.

Any carrier who violates the provision of sub-section 5.1 of these regulations is subject to enforcement action under WV Code §22-17-1 et seq.

Notification for Underground Storage Tanks

STATE USE ONLY

State Agency Name and Address WV Div. of Environmental Protection, Office of Waste Mgmt., UST Section
1356 Hanford Street, Charleston, WV 25301

ID NUMBER _____

TYPE OF NOTIFICATION

F.E.I.N.: No. _____

A. NEW FACILITY **B. AMENDED** **C. CLOSURE**
 _____ No. of tanks at facility _____ No. of continuation sheets attached

A. Date Entered Into Computer _____
 B. Data Entry Clerk Initials _____
 C. Owner Was Contacted to Clarify Responses, Comments _____

INSTRUCTIONS

Please type or print in ink all items except "signature" in section VIII. This form must be completed for each location containing underground storage tanks. If more than five (5) tanks are owned at this location, photocopy the following sheets, and staple continuation sheets to the form.

GENERAL INFORMATION

Notification is required by Federal law for all underground tanks that have been used to store regulated substances, that are in the ground as of May 8, 1986, or that are brought into use after May 8, 1986. The information requested is required by Section 9002 of the Resource Conservation and Recovery Act, (RCRA), as amended.

The primary purpose of this notification program is to locate and evaluate underground tanks that store or have stored petroleum or hazardous substances. It is expected that the information you provide will be based on reasonably available records, or in the absence of such records, your knowledge, belief, or recollection.

Who Must Notify? Section 9002 of RCRA, as amended, requires that, unless exempted, owners of underground tanks that store regulated substances must notify designated State or local agencies of the existence of their tanks. Owner means—

a) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and

b) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

c) if the State agency so requires, any facility that has undergone any changes to facility information or tank system status (only amended tank information needs to be included).

What Tanks Are Included? Underground storage tank is defined as any one or combination of tanks that (1) is used to contain an accumulation of regulated substances, and (2) whose volume (including connected underground piping) is 10% or more beneath the ground. Some examples are underground tanks storing: 1. Gasoline, used oil, or diesel fuel; and 2. industrial solvents, pesticides, herbicides or fumigants.

What Tanks Are Excluded? Tanks removed from the ground are not subject to notification. Other tanks excluded from notification are:

1. farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. tanks used for storing heating oil for consumptive use on the premises where stored;

3. septic tanks;
4. pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1979, or which is an interstate pipeline facility regulated under State laws;
5. surface impoundments, pits, ponds, or lagoons;
6. storm water or waste water collection systems;
7. flow-through process tanks;
8. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;
9. storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

What Substances Are Covered? The notification requirements apply to underground storage tanks that contain regulated substances. This includes any substance defined as hazardous in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), with the exception of those substances regulated as hazardous waste under Subcode C of RCRA. It also includes petroleum, e.g., crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

Where To Notify? Send completed forms to:

WV Division of Environmental Protection
 Office of Waste Management
 UST Section
 1356 Hanford Street
 Charleston, WV 25301

When To Notify? 1. Owners of underground storage tanks in use or that have been taken out of operation, but still in the ground, must notify by May 8, 1986. 2. Owners who bring underground storage tanks into use after May 8, 1986, must notify within 30 days of bringing the tanks into use. 3. If the State requires notification of any amendments to facility send information to State agency immediately.

Penalties: Any owner who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or for which false information is submitted.

I. OWNERSHIP OF TANK(S)

II. LOCATION OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity) _____
 Street Address _____

 City _____ State _____ ZIP Code _____
 County _____
 Phone Number (Include Area Code) _____

If required by State, give the geographic location of tanks by degrees, minutes, and seconds. Examples List 42, 36, 12 N Long. 85, 24, 17W

Latitude _____ Longitude _____

 (If same as Section I, mark box here)
 Facility Name or Company Site Identifier, as applicable _____
 Street Address (P.O. Box not acceptable) _____

 City _____ State _____ Zip code _____
 County _____ Municipality _____

III. TYPE OF OWNER	IV. INDIAN LANDS	
<input type="checkbox"/> Federal Government <input type="checkbox"/> Commercial <input type="checkbox"/> State Government <input type="checkbox"/> Private <input type="checkbox"/> Local Government	Tanks are located on land within an Indian Reservation or on other trust lands. <input type="checkbox"/> Tanks are owned by native American nation, tribe, or individual. <input type="checkbox"/>	Tribe or Nation: _____ _____

V. TYPE OF FACILITY

Select the Appropriate Facility Description

<input type="checkbox"/> Gas Station	<input type="checkbox"/> Railroad	<input type="checkbox"/> Trucking/Transport
<input type="checkbox"/> Petroleum Distributor	<input type="checkbox"/> Federal - Non-Military	<input type="checkbox"/> Utilities
<input type="checkbox"/> Air Taxi (Airline)	<input type="checkbox"/> Federal - Military	<input type="checkbox"/> Residential
<input type="checkbox"/> Aircraft Owner	<input type="checkbox"/> Industrial	<input type="checkbox"/> Farm
<input type="checkbox"/> Auto Dealership	<input type="checkbox"/> Contractor	<input type="checkbox"/> Other (Explain) _____

VI. CONTACT PERSON IN CHARGE OF TANKS

Name	Job Title	Address	Phone Number (Include Area Code)

VII. FINANCIAL RESPONSIBILITY

I have met the financial responsibility requirements in accordance with 40 CFR Subpart H

Check All that Apply

<input type="checkbox"/> Self Insurance	<input type="checkbox"/> Guarantee	<input type="checkbox"/> State Funds
<input type="checkbox"/> Commercial Insurance	<input type="checkbox"/> Surety Bond	<input type="checkbox"/> Trust Fund
<input type="checkbox"/> Risk Retention Group	<input type="checkbox"/> Letter of Credit	<input type="checkbox"/> Other Method Allowed Specify _____

VIII. CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner or owner's authorized representative (Print)	Signature	Date Signed

EPA estimates public reporting burden for this form to average 30 minutes per response including time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding this burden estimate to Chief, Information Policy Branch PM-223, U.S. Environmental Protection Agency, 401 M Street, Washington D.C. 20460, marked "Attention Desk Officer for EPA." This form amends the previous notification form as printed in 40 CFR Part 280, Appendix I. Previous editions of this notification form may be used while supplies last.

IX. DESCRIPTION OF UNDERGROUND STORAGE TANKS (Complete for each tank at this location.)

Tank Identification Number	Tank No. _____	Tank No. _____	Tank No. _____	Tank No. _____	Tank No. _____
1. Status of Tank (mark only one)	Currently In Use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Temporarily Out of Use <small>(Remember to fill out section X.)</small>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Permanently Out of Use <small>(Remember to fill out section X.)</small>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Amendment of Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Date of Installation (mo./year)					
3. Estimated Total Capacity (gallons)					
4. Material of Construction (Mark all that apply)	Asphalt Coated or Bare Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Cathodically Protected Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Epoxy Coated Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Composite (Steel with Fiberglass)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Fiberglass Reinforced Plastic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Lined Interior	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Double Walled	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Polyethylene Tank Jacket	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Concrete	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Excavation Liner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Unknown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Other, Please specify	_____	_____	_____	_____
	_____	_____	_____	_____	_____
Has tank been repaired?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Piping (Material) (Mark all that apply)	Bare Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Galvanized Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Fiberglass Reinforced Plastic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Copper	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Cathodically Protected	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Double Walled	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Secondary Containment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Unknown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Other, Please specify	_____	_____	_____	_____
_____	_____	_____	_____	_____	
6. Piping (Type) (Mark all that apply)	Suction: no valve at tank	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Suction: valve at tank	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Pressure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Gravity Feed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Has piping been repaired?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	_____	_____	_____	_____	_____

Tank Identification Number	Tank No. _____	Tank No. _____	Tank No. _____	Tank No. _____	Tank No. _____
7. Substance Currently or Last Stored In Greatest Quantity by Volume Gasoline Diesel Gasohol Kerosene Heating Oil Used Oil Other, Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Hazardous Substance CERCLA name and/or, CAS number	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Mixture of Substances Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
X. TANKS OUT OF USE, OR CHANGE IN SERVICE					
1. Closing of Tank A. Estimated date last used (mo./day/year)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
B. Estimate date tank closed (mo./day/year)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
C. Tank was removed from ground D. Tank was closed in ground E. Tank filled with inert material Describe	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
F. Change in service	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
2. Site Assessment Completed	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Evidence of a leak detected	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

X). CERTIFICATION OF COMPLIANCE (COMPLETE FOR ALL NEW AND UPGRADED TANKS AT THIS LOCATION)

Tank Identification Number	Tank No. _____	Tank No. _____	Tank No. _____	Tank No. _____	Tank No. _____					
1. Installation										
A. Installer certified by tank and piping manufacturers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
B. Installer certified or licensed by the implementing agency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
C. Installation inspected by a registered engineer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
D. Installation inspected and approved by implementing agency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
E. Manufacturer's installation checklists have been completed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
F. Another method allowed by State agency. Please specify.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
2. Release Detection (Mark all that apply)	TANK	PIPING	TANK	PIPING	TANK	PIPING	TANK	PIPING	TANK	PIPING
A. Manual tank gauging	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
B. Tank tightness testing	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
C. Inventory controls	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
D. Automatic tank gauging	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
E. Vapor monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Interstitial monitoring double walled tank/piping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Interstitial monitoring/secondary containment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Automatic line leak detectors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Line tightness testing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Other method allowed by Implementing Agency. Please specify.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Spill and Overfill Protection										
A. Overfill device installed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Spill device installed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OATH: I certify the information concerning installation that is provided in section XI is true to the best of my belief and knowledge.

Installer: _____
Name
Signature
Date
Position
Company

WV Certification Number _____

1976

H. B. 4251

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)

(Introduced January 29, 1996; referred to the
Committee on the Judiciary)

47-34

A BILL to amend and reenact section one, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tanks.

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) The legislative rules filed in the state register

4251

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (requirements for determining conformity of
10 general federal actions to applicable air quality
11 implementation plans (general conformity), 45 CSR 35), are
12 authorized.

13 (b) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (emission standards for hazardous air pollutants
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five, article twenty, chapter sixteen, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (standards of performance for new stationary
10 sources, 45 CSR 16), are authorized with the amendment set
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by
20 inserting a new subdivision to read as follows:

21 'l. Part 60.335(f)(1).'

22 (d) The legislative rules filed in the state register
23 on the fifteenth day of August, one thousand nine hundred
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 modified by the division of environmental protection to
3 meet the objections of the legislative rule-making review
4 committee and refiled in the state register on the
5 nineteenth day of December, one thousand nine hundred
6 ninety-four, relating to the division of environmental
7 protection (permits for construction and major modification
8 of major stationary sources of air pollution for the
9 prevention of significant deterioration, 45 CSR 14), are
10 authorized.

11 (e) The legislative rules filed in the state register
12 on the twelfth day of August, one thousand nine hundred
13 ninety-four, authorized under the authority of section
14 four, article five, chapter twenty-two, of this code,
15 modified by the division of environmental protection to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-third day of November, one thousand nine hundred
19 ninety-four, relating to the division of environmental
20 protection (requirements for determining conformity of
21 transportation plans, programs and projects developed,
22 funded or approved under title 23 U.S.C. or the federal
23 transit act, to applicable air quality implementation
24 plans, 45 CSR 36), are authorized.

1 (f) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 ninth day of December, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (to prevent and control air pollution from the
11 operation of coal preparation plants and coal handling
12 operations, 45 CSR 5), are authorized.

13 (g) The legislative rules filed in the state register
14 on the thirteenth day of September, one thousand nine
15 hundred ninety-four, authorized under the authority of
16 section four, article five, chapter twenty-two, of this
17 code, modified by the division of environmental protection
18 to meet the objections of the legislative rule-making
19 review committee and refiled in the state register on the
20 twelfth day of January, one thousand nine hundred
21 ninety-five, relating to the division of environmental
22 protection (to prevent and control air pollution from
23 hazardous waste treatment, storage or disposal facilities,
24 45 CSR 25), are authorized.

1 (h) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the
8 twenty-third day of November, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (acid rain provisions and permits, 45 CSR 33),
11 are authorized.

12 (i) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section two,
15 article one, chapter twenty-two, of this code, modified by
16 the division of environmental protection to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-third day
19 of November, one thousand nine hundred ninety-four,
20 relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23 (j) The legislative rules filed in the state register
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article five, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of November, one thousand nine hundred
7 ninety-four, relating to the division of environmental
8 protection (provisions for determination of compliance with
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 five, article twenty, chapter sixteen, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-third day of November, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (to prevent and control air pollution from
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the fourth
4 day of January, one thousand nine hundred ninety-five,
5 relating to the division of environmental protection (dam
6 safety, 47 CSR 34), are authorized with the amendments set
7 forth below:

8 On page 9, section §47-34-3, by striking out
9 3.5.2.c.A, and substituting therefor the following:

10 "3.5.2.c.A. An impoundment exceeding forty (40) feet
11 in height or four hundred (400) acre-feet storage volume
12 shall not be classified as a Class 3 dam."

13 On pages 17 and 18, section §47-34-7, at the end of
14 section 7.1.1.b.C. by adding the following:

15 "The design precipitation for a Class 3 dam may be
16 reduced based on Risk Assessment pursuant to paragraph
17 3.5.4 of this rule, but in no case to less than a P100
18 rainfall of six (6) hours in duration."

19 On page 40, section §47-34-13, by striking out section
20 13.2 and substituting therefor the following:

21 "Performance Requirements - All dams completed before
22 July 1, 1973, shall meet the applicable design requirements
23 of Section 7 of this rule. Those dams which do not meet
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned
2 pursuant to the provisions of this rule. In developing the
3 required plans, specifications, and documentation necessary
4 to bring the structure into conformity with section 7 of
5 this rule, the design engineer may consider in his
6 submitted analyses, peculiarities and local conditions for
7 each impounding structure with recognition of the many
8 factors involved, some of which may not be precisely known.
9 Existing construction documentation and the historical
10 performance of the structure including documented storms
11 and spillway flows may be considered by the engineer as
12 part of the evaluation of the structure. Upon approval by
13 the Director of the plans, specifications, and
14 documentation submitted by the engineer, the Director may
15 issue a certificate of approval."

16 (m) The legislative rules filed in the state register
17 on the fifteenth day of August, one thousand nine hundred
18 ninety-four, authorized under the authority of section
19 fifteen, article one, chapter twenty-two, of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the eleventh
23 day of January, one thousand nine hundred ninety-five,
24 relating to the division of environmental protection

1 (regulations governing environmental laboratories
2 certification and standards of performance, 47 CSR 32), are
3 authorized.

4 (n) The legislative rules filed in the state register
5 on the twenty-eighth day of February, one thousand nine
6 hundred ninety-four, authorized under the authority of
7 section three, article two, chapter twenty-two-c, 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 twenty-eighth day of July, one thousand nine hundred
12 ninety-four, relating to the division of environmental
13 protection (state water pollution control revolving fund
14 program, 47 CSR 31), are authorized.

15 (o) The legislative rules filed in the state register
16 on the ~~fifteenth~~ thirty-first day of ~~August~~ July, one
17 thousand nine hundred ~~ninety-four~~ ninety-five, authorized
18 under the authority of section six, article seventeen,
19 chapter twenty-two, of this code, modified by the division
20 of environmental protection to meet the objections of the
21 legislative rule-making review committee and refiled in the
22 state register on the eighteenth day of January, one
23 thousand nine hundred ninety-six, relating to the division
24 of environmental protection (underground storage tanks, 47

1 CSR 36), are authorized.

2 (p) The legislative rules filed in the state register
3 on the fifteenth day of August, one thousand nine hundred
4 ninety-four, authorized under the authority of section six,
5 article eighteen, chapter twenty-two, of this code,
6 modified by the division of environmental protection to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the
9 thirteenth day of January, one thousand nine hundred
10 ninety-five, relating to the division of environmental
11 protection (hazardous waste management regulations, 47 CSR
12 35), are authorized.

13 (q) The legislative rules filed in the state register
14 on the twenty-second day of July, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article three, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-ninth day of August, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (standards for certification of blasters-surface
23 coal mines, 38 CSR 2C), are authorized with the amendments
24 set forth below:

1 On page 4, section 38.2C.4, after the words "Form
2 MR-30-TR." by inserting a second paragraph to read as
3 follows:

4 "In lieu of completing the training program, the
5 applicant for certification or re-certification may
6 complete a self-study course using the study guide and
7 other materials available from the Division of
8 Environmental Protection."

9 On page 8, subsection 8.2, after the words "refresher
10 training course" by inserting the phrase "or complete the
11 self-study course."

12 On page 8 at subsection 10.1 by striking out the
13 phrase "a cessation order and/or take other action as
14 provided in West Virginia Code 22-3-16 and 17" and the
15 phrase "the provisions of West Virginia Code 22-3-1 et
16 seq., rules promulgated under that article, or".

17 On page 9, subsection 11.1, by striking out the
18 subsection and inserting in lieu thereof a new subsection
19 to read as follows: "11.1. **Suspension** - Upon service of a
20 written notice of violation by the Director to a certified
21 blaster, the Director may suspend his or her certification.
22 Prior to the issuance of such an order, the certified
23 blaster shall be granted a hearing before the Director to
24 show cause why his or her certification should not be

1 suspended."

2 On page 9, subsection 11.2, by striking out the phrase
3 "or cessation order" in the first sentence.

4 On page 9, Section 12, by striking out the phrase
5 "cessation order".

6 (r) The legislative rules filed in the state register
7 on the fifteenth day of August, one thousand nine hundred
8 ninety-four, authorized under the authority of section
9 nine, article three, chapter twenty-two, of this code,
10 modified by the division of environmental protection to
11 meet the objections of the legislative rule-making review
12 committee and refiled in the state register on the sixth
13 day of January, one thousand nine hundred ninety-five,
14 relating to the division of environmental protection (rules
15 and regulations relating to abandoned mine lands and
16 reclamation, 38 CSR 2D), are authorized.

17 (s) The Legislature hereby authorizes and directs the
18 division of environmental protection to promulgate the
19 legislative rules filed in the state register on February,
20 seventh, one thousand nine hundred ninety-five, authorized
21 under the authority of section five, article twenty,
22 chapter sixteen, of this code, relating to the division of
23 environmental protection (prevention and control of
24 particulate air pollution from combustion of fuel in

1 indirect heat exchangers, 45 CSR 2), effective the first
2 day of May, one thousand nine hundred ninety-five, with the
3 amendments set forth below:

4 On page eight, section 3.4(e) after the word "operated" by
5 adding the words "at normal operating loads";

6 And,

7 On page thirteen, section 9.4 by striking the words
8 "monthly or", and, following the words "quarterly basis" by
9 striking the word "as"; and by inserting the words "unless
10 otherwise" following the words "quarterly basis".

11 And,

12 On page thirteen, by creating a new section, designated
13 section "45.2.10. Variances.

14 10.1. In the event of an unavoidable shortage of fuel
15 having characteristics or specifications necessary for a
16 fuel burning unit to comply with the opacity standards set
17 forth in section 3 or any emergency situation or condition
18 creating a threat to public safety or welfare, the Director
19 may grant an exception to the otherwise applicable visible
20 emission standards for a period not to exceed fifteen (15)
21 days, provided that visible emissions during the exception
22 period do not exceed a maximum six (6) minute average of
23 thirty (30) percent and that a reasonable demonstration is
24 made by the owner or operator that the emission standards

1 under section 4 of this rule will not be exceeded during
2 the exemption period."

3 10.2. In the event a fuel burning unit employing a
4 flue gas desulphurization system must by-pass such system
5 because of necessary planned or unplanned maintenance,
6 visible emissions may not exceed twenty percent (20%)
7 opacity during such period of maintenance. The Director
8 may require advance notice of necessary planned
9 maintenance, including a description of the necessity of
10 the maintenance activity and its expected duration and may
11 limit the duration of the variance or the amount of the
12 excess opacity exception herein allowed. The Director
13 shall be notified of unplanned maintenance and may limit
14 the duration of the variance or the amount of excess
15 opacity exception allowed during unplanned maintenance.

16 And, by renumbering subsequent sections.

17 (t) The legislative rules filed in the state register
18 on the nineteenth day of August, one thousand nine hundred
19 ninety-four, authorized under the authority of section
20 four, article three, chapter twenty-two, of this code,
21 relating to the division of environmental protection
22 (surface mining and reclamation regulations, 38 CSR 2), are
23 authorized "with the amendments set forth below"

24 On pages 2 and 3, by striking out subsections 1.6, 1.7

1 and 1.8 in their entirety;

2 On page 6, by inserting a new subsection 2.20, to read
3 as follows, and renumbering subsequent subsections;

4 "Chemical Treatment means - the treatment of water
5 from a surface coal mining operation using chemical
6 reagents such as but not limited to sodium hydroxide,
7 calcium carbonate, or anhydrous ammonia for purposes of
8 meeting applicable state and federal effluent limitations.
9 Chemical treatment does not include passive treatment
10 systems such as but not limited to limestone drains,
11 wetlands, alkaline addition, application of flyash,
12 agricultural lime, or injection of flyash, limestone, or
13 other minerals into underground coal operations."

14 On page 16, section 2, by striking out subsection 2.92
15 and renumbering the subsequent subsections.

16 On page 25, by striking the second paragraph of
17 subsection 3.1 (o) and inserting in lieu thereof a new
18 second paragraph 3.1 of subsection 3.1 (o), to read as
19 follows: "Any permit application which references an
20 approved centralized ownership and control file may be
21 determined to be complete and accurate for the purposes of
22 this subsection. Each centralized ownership and control
23 file shall at a minimum:"

24 On page 63, by striking out subsection 3.25 (e).

1 On page 63, by striking out the first sentence in
2 subsection 3.26, and inserting in lieu thereof the
3 following:

4 "(a) All changes including name changes, replacements,
5 and additions to the ownership or control data relative to
6 a permittee or assignee who will function as an operator
7 pursuant to the provisions of paragraph (c) of subsection
8 3.25 of this rule shall be reported to the Director."

9 On page 64, after subsection 3.26 (a) (5) by inserting
10 a new subsection 3.26 (a) (6) to read as follows:

11 "(6) In the event that a permittee or operator has
12 incurred no changes in its ownership and control
13 information and therefore has not been obligated to file
14 a report within any consecutive twelve-month period, that
15 permittee or operator is required to notify the Director in
16 writing that no changes to the information required by
17 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
18 rule have occurred."

19 On page 64, by striking out subsection 3.27 (a) and
20 inserting in lieu thereof the following:

21 "(a) All active surface mining operations shall be
22 subject to the renewal requirements and provisions for
23 issuance of a renewal discussed in Section 19 of the Act:
24 *Provided*, That the Director may waive the requirement for

1 renewal if the permittee certifies in writing that all coal
2 extraction is completed, that all backfilling and regrading
3 will be completed within sixty (60) days prior to the
4 expiration date of the permit, and that an application for
5 Phase I bond release will be filed prior to the expiration
6 date of the permit. Failure of the permittee complete
7 backfilling and regrading within sixty (60) days prior to
8 the expiration date of the permit will nullify the waiver.

9 Those operations which have been granted inactive
10 status in accordance with subsection 14.11 of this rule
11 shall also be subject to the renewal requirements of
12 Section 19 of the Act.

13 Applications for renewal shall be filed on forms
14 provided by the Director and shall contain at a minimum the
15 following information:"

16 On page 79, by striking out subsection 3.32 (i) and
17 renumbering the remaining subsections.

18 On page 80, subsection 3.34 (b) after the word
19 "criteria" by inserting the words "paragraph (b) of
20 subsection 3.32 of this section";

21 On page 80, by striking out subsection 3.34 (b) (3)
22 and substituting therefor a new subsection 3.34 (b) (3), to
23 read as follows: "(3) The permittee was linked to a
24 violation, penalty or fee through ownership or control,

1 under the violation review criteria, paragraph (b) of
2 subsection 3.32 of this section at the time the permit was
3 issued and an ownership or control link between the
4 permittee and the person responsible for the violation,
5 penalty or fee still exists, or when the link was severed
6 the permittee continues to be responsible for the
7 violation, penalty or fee."

8 On page 82, by striking out subsection 3.34 (g) and
9 substituting therefor a new subparagraph (g) to read as
10 follows:

11 "(g) For purposes of this subsection, a permit is
12 issued when it is originally approved, as well as when a
13 transfer, assignment, or sale of permit rights is approved
14 pursuant to paragraphs (a) or (c), subsection 3.25 of this
15 rule, or where a permit is revised pursuant to subsection
16 3.26 of this rule."

17 On page 86, at the end of subsection 4.4, by adding
18 the following sentence: "Prospecting roads are to be
19 designed, constructed, maintained, and reclaimed in
20 accordance with the provisions of subsection 13.6 of this
21 rule."

22 On page 88, by inserting a new subsection 4.7 (a) (1)
23 to read as follows: (1) Minimize downstream sedimentation
24 and flooding and renumbering the remaining subsections.

1 On page 92, subsection 4.12, by inserting a new
2 sentence between the second and third sentence which reads
3 as follows: "Where the certification statement indicates a
4 change from the design standards or construction
5 requirements approved in the permit, such changes will be
6 documented in as-built plans and submitted for approval to
7 the Director as a permit revision."

8 On Page 148, section 11.6 (a) in the underscored
9 language, after the word, "completed" by inserting the
10 words "or nearly completed".

11 On Page 223, by striking out subsection 14.14 (g) (8)
12 and inserting in lieu thereof a new subsection 14.14 (g)
13 (8), to read as follows: "(8) Surface water runoff from
14 areas above and adjacent to the fill shall be diverted into
15 properly designed and constructed stabilized diversion
16 channels which have been designed using best current
17 technology to safely pass the peak runoff from a 100 year,
18 24-hour precipitation event. The channel shall be designed
19 and constructed to ensure stability of the fill, control
20 erosion, and minimize water infiltration into the fill."

21 On Page 232, by inserting a new subsection, designated
22 subsection 14.19 (d) to read as follows: "(d) Timber from
23 clearing and grubbing operations may be wind-rowed below
24 the projected toe of the outslope in a manner that will

1 provide shelter and habitat for game and non-game wildlife
2 and provide for enhanced sediment control. These materials
3 may not be placed in natural water courses or where they
4 will be covered by spoil material at the toe of the
5 outslope. The wind-rows must be of relatively uniform
6 height and width and must be more or less evenly
7 distributed along the lower reaches and within the permit
8 area."

9 On Page 240, subsection 17.1, in the first sentence,
10 after the words "mining and reclamation," by striking out
11 the remainder of the paragraph and substituting therefor
12 the following: "required by the Act and these Rules,
13 including the engineering analyses and designs; the
14 development of cross-section maps and plans; the geologic
15 drilling and statement of results of test borings and core
16 samplings; preblast surveys; the collection of
17 site-specific resource information and production of
18 protection and enhancement plans for fish and wildlife
19 habitats and other environmental values; and the collection
20 of archaeological and historical information; and any other
21 archaeological and historical information required by the
22 federal department of the interior and the preparation of
23 plans that may be necessitated thereby; and the director
24 shall provide or assume the cost of training coal operators

1 that meet the qualifications concerning the preparation of
2 permit applications and compliance with the regulatory
3 program, and shall ensure that qualified coal operators are
4 aware of the assistance available under this section.

5 On Page 240, subsection 17.1, after the first
6 paragraph by inserting a new paragraph, to read as follows:
7 "The Director will develop a procedure for the interstate
8 coordination and exchange of information collected under
9 the Small Operators Assistance Program."

10 On Page 241, by striking out subsection 17.4 in its
11 entirety and substituting therefor the following: "17.4
12 Request for Assistance. Each applicant requesting
13 assistance shall provide information on forms provided by
14 the director in an application that shall be clear and
15 concise and shall be provided in a format prescribed by the
16 Director and/or a format required by the Federal Office of
17 Surface Mining Reclamation and Enforcement."

18 On Page 249, subsection 17.7 (a) (4), after the words
19 "twelve (12) month period" by striking the remainder of the
20 sentence and inserting in lieu thereof the words
21 "immediately following permit issuance."

22 On page 273, subsection 20.6 (a), after the word
23 "first" by striking out the words "thirty (30)" and
24 inserting in lieu thereof the word "fifteen".

1 On page 273, subsection 20.6 (c), after the words
2 "date of the" by striking out the words "Assessment Officer
3 receiving the
4 finding specified in paragraph (a) of this subsection." and
5 inserting in lieu thereof the words "issuance of a notice
6 or order";

7 On page 274, subsection 20.6 (d), by striking out the
8 first sentence, and inserting in lieu thereof the
9 following: "The time and place of an informal assessment
10 conference shall be posted at the Department of
11 Environmental Protection Office nearest to the operation.

12

13 NOTE: The purpose of this bill is to authorize the
14 Division of Environmental Protection to promulgate
15 legislative rules relating to underground storage tanks.

16

17 Strike-throughs indicate language that would be
18 stricken from the present law, and underscoring indicates
19 new language that would be added.

SENATE BILL NO. 181

(By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred
to the Committee on

NATURAL RESOURCES

THE JUDICIARY

47-36

A BILL to amend and reenact section one, article three,
chapter sixty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to authorizing the division of environmental
protection to promulgate legislative rules relating to
underground storage tanks.

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) The legislative rules filed in the state register.

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (requirements for determining conformity of
10 general federal actions to applicable air quality
11 implementation plans (general conformity), 45 CSR 35), are
12 authorized.

13 (b) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (emission standards for hazardous air pollutants
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five, article twenty, chapter sixteen, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (standards of performance for new stationary
10 sources, 45 CSR 16), are authorized with the amendment set
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by
20 inserting a new subdivision to read as follows:

21 '1. Part 60.335(f)(1).'

22 (d) The legislative rules filed in the state register
23 on the fifteenth day of August, one thousand nine hundred
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 modified by the division of environmental protection to
3 meet the objections of the legislative rule-making review
4 committee and refiled in the state register on the
5 nineteenth day of December, one thousand nine hundred
6 ninety-four, relating to the division of environmental
7 protection (permits for construction and major modification
8 of major stationary sources of air pollution for the
9 prevention of significant deterioration, 45 CSR 14), are
10 authorized.

11 (e) The legislative rules filed in the state register
12 on the twelfth day of August, one thousand nine hundred
13 ninety-four, authorized under the authority of section
14 four, article five, chapter twenty-two, of this code,
15 modified by the division of environmental protection to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-third day of November, one thousand nine hundred
19 ninety-four, relating to the division of environmental
20 protection (requirements for determining conformity of
21 transportation plans, programs and projects developed,
22 funded or approved under title 23 U.S.C. or the federal
23 transit act, to applicable air quality implementation
24 plans, 45 CSR 36), are authorized.

1 (f) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 ninth day of December, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (to prevent and control air pollution from the
11 operation of coal preparation plants and coal handling
12 operations, 45 CSR 5), are authorized.

13 (g) The legislative rules filed in the state register
14 on the thirteenth day of September, one thousand nine
15 hundred ninety-four, authorized under the authority of
16 section four, article five, chapter twenty-two, of this
17 code, modified by the division of environmental protection
18 to meet the objections of the legislative rule-making
19 review committee and refiled in the state register on the
20 twelfth day of January, one thousand nine hundred
21 ninety-five, relating to the division of environmental
22 protection (to prevent and control air pollution from
23 hazardous waste treatment, storage or disposal facilities,
24 45 CSR 25), are authorized.

1 (h) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the
8 twenty-third day of November, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (acid rain provisions and permits, 45 CSR 33),
11 are authorized.

12 (i) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section two,
15 article one, chapter twenty-two, of this code, modified by
16 the division of environmental protection to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-third day
19 of November, one thousand nine hundred ninety-four,
20 relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23 (j) The legislative rules filed in the state register
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article five, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of November, one thousand nine hundred
7 ninety-four, relating to the division of environmental
8 protection (provisions for determination of compliance with
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 five, article twenty, chapter sixteen, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-third day of November, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (to prevent and control air pollution from
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the fourth
4 day of January, one thousand nine hundred ninety-five,
5 relating to the division of environmental protection (dam
6 safety, 47 CSR 34), are authorized with the amendments set
7 forth below:

8 On page 9, section §47-34-3, by striking out
9 3.5.2.c.A, and substituting therefor the following:

10 "3.5.2.c.A. An impoundment exceeding forty (40) feet
11 in height or four hundred (400) acre-feet storage volume
12 shall not be classified as a Class 3 dam."

13 On pages 17 and 18, section §47-34-7, at the end of
14 section 7.1.1.b.C. by adding the following:

15 "The design precipitation for a Class 3 dam may be
16 reduced based on Risk Assessment pursuant to paragraph
17 3.5.4 of this rule, but in no case to less than a P100
18 rainfall of six (6) hours in duration."

19 On page 40, section §47-34-13, by striking out section
20 13.2 and substituting therefor the following:

21 "Performance Requirements - All dams completed before
22 July 1, 1973, shall meet the applicable design requirements
23 of Section 7 of this rule. Those dams which do not meet
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned
2 pursuant to the provisions of this rule. In developing the
3 required plans, specifications, and documentation necessary
4 to bring the structure into conformity with section 7 of
5 this rule, the design engineer may consider in his
6 submitted analyses, peculiarities and local conditions for
7 each impounding structure with recognition of the many
8 factors involved, some of which may not be precisely known.
9 Existing construction documentation and the historical
10 performance of the structure including documented storms
11 and spillway flows may be considered by the engineer as
12 part of the evaluation of the structure. Upon approval by
13 the Director of the plans, specifications, and
14 documentation submitted by the engineer, the Director may
15 issue a certificate of approval."

16 (m) The legislative rules filed in the state register
17 on the fifteenth day of August, one thousand nine hundred
18 ninety-four, authorized under the authority of section
19 fifteen, article one, chapter twenty-two, of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the eleventh
23 day of January, one thousand nine hundred ninety-five,
24 relating to the division of environmental protection

1 (regulations governing environmental laboratories
2 certification and standards of performance, 47 CSR 32), are
3 authorized.

4 (n) The legislative rules filed in the state register
5 on the twenty-eighth day of February, one thousand nine
6 hundred ninety-four, authorized under the authority of
7 section three, article two, chapter twenty-two-c, 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 twenty-eighth day of July, one thousand nine hundred
12 ninety-four, relating to the division of environmental
13 protection (state water pollution control revolving fund
14 program, 47 CSR 31), are authorized.

15 (o) The legislative rules filed in the state register
16 on the ~~fifteenth~~ thirty-first day of ~~August~~ July, one
17 thousand nine hundred ~~ninety-four~~ ninety-five, authorized
18 under the authority of section six, article seventeen,
19 chapter twenty-two, of this code, modified by the division
20 of environmental protection to meet the objections of the
21 legislative rule-making review committee and refiled in the
22 state register on the eighteenth day of January, one
23 thousand nine hundred ninety-six, relating to the division
24 of environmental protection (underground storage tanks, 47

1 CSR 36), are authorized.

2 (p) The legislative rules filed in the state register
3 on the fifteenth day of August, one thousand nine hundred
4 ninety-four, authorized under the authority of section six,
5 article eighteen, chapter twenty-two, of this code,
6 modified by the division of environmental protection to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the
9 thirteenth day of January, one thousand nine hundred
10 ninety-five, relating to the division of environmental
11 protection (hazardous waste management regulations, 47 CSR
12 35), are authorized.

13 (q) The legislative rules filed in the state register
14 on the twenty-second day of July, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article three, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-ninth day of August, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (standards for certification of blasters-surface
23 coal mines, 38 CSR 2C), are authorized with the amendments
24 set forth below:

1 On page 4, section 38.2C.4, after the words "Form
2 MR-30-TR." by inserting a second paragraph to read as
3 follows:

4 "In lieu of completing the training program, the
5 applicant for certification or re-certification may
6 complete a self-study course using the study guide and
7 other materials available from the Division of
8 Environmental Protection."

9 On page 8, subsection 8.2, after the words "refresher
10 training course" by inserting the phrase "or complete the
11 self-study course."

12 On page 8 at subsection 10.1 by striking out the
13 phrase "a cessation order and/or take other action as
14 provided in West Virginia Code 22-3-16 and 17" and the
15 phrase "the provisions of West Virginia Code 22-3-1 et
16 seq., rules promulgated under that article, or".

17 On page 9, subsection 11.1, by striking out the
18 subsection and inserting in lieu thereof a new subsection
19 to read as follows: "11.1. **Suspension** - Upon service of a
20 written notice of violation by the Director to a certified
21 blaster, the Director may suspend his or her certification.
22 Prior to the issuance of such an order, the certified
23 blaster shall be granted a hearing before the Director to
24 show cause why his or her certification should not be

1 suspended."

2 On page 9, subsection 11.2, by striking out the phrase
3 "or cessation order" in the first sentence.

4 On page 9, Section 12, by striking out the phrase
5 "cessation order".

6 (r) The legislative rules filed in the state register
7 on the fifteenth day of August, one thousand nine hundred
8 ninety-four, authorized under the authority of section
9 nine, article three, chapter twenty-two, of this code,
10 modified by the division of environmental protection to
11 meet the objections of the legislative rule-making review
12 committee and refiled in the state register on the sixth
13 day of January, one thousand nine hundred ninety-five,
14 relating to the division of environmental protection (rules
15 and regulations relating to abandoned mine lands and
16 reclamation, 38 CSR 2D), are authorized.

17 (s) The Legislature hereby authorizes and directs the
18 division of environmental protection to promulgate the
19 legislative rules filed in the state register on February,
20 seventh, one thousand nine hundred ninety-five, authorized
21 under the authority of section five, article twenty,
22 chapter sixteen, of this code, relating to the division of
23 environmental protection (prevention and control of
24 particulate air pollution from combustion of fuel in

1 indirect heat exchangers, 45 CSR 2), effective the first
2 day of May, one thousand nine hundred ninety-five, with the
3 amendments set forth below:

4 On page eight, section 3.4(e) after the word "operated" by
5 adding the words "at normal operating loads";

6 And,

7 On page thirteen, section 9.4 by striking the words
8 "monthly or", and, following the words "quarterly basis" by
9 striking the word "as"; and by inserting the words "unless
10 otherwise" following the words "quarterly basis".

11 And,

12 On page thirteen, by creating a new section, designated
13 section "45.2.10. Variances.

14 10.1. In the event of an unavoidable shortage of fuel
15 having characteristics or specifications necessary for a
16 fuel burning unit to comply with the opacity standards set
17 forth in section 3 or any emergency situation or condition
18 creating a threat to public safety or welfare, the Director
19 may grant an exception to the otherwise applicable visible
20 emission standards for a period not to exceed fifteen (15)
21 days, provided that visible emissions during the exception
22 period do not exceed a maximum six (6) minute average of
23 thirty (30) percent and that a reasonable demonstration is
24 made by the owner or operator that the emission standards

1 under section 4 of this rule will not be exceeded during
2 the exemption period."

3 10.2. In the event a fuel burning unit employing a
4 flue gas desulphurization system must by-pass such system
5 because of necessary planned or unplanned maintenance,
6 visible emissions may not exceed twenty percent (20%)
7 opacity during such period of maintenance. The Director
8 may require advance notice of necessary planned
9 maintenance, including a description of the necessity of
10 the maintenance activity and its expected duration and may
11 limit the duration of the variance or the amount of the
12 excess opacity exception herein allowed. The Director
13 shall be notified of unplanned maintenance and may limit
14 the duration of the variance or the amount of excess
15 opacity exception allowed during unplanned maintenance.

16 And, by renumbering subsequent sections.

17 (t) The legislative rules filed in the state register
18 on the nineteenth day of August, one thousand nine hundred
19 ninety-four, authorized under the authority of section
20 four, article three, chapter twenty-two, of this code,
21 relating to the division of environmental protection
22 (surface mining and reclamation regulations, 38 CSR 2), are
23 authorized "with the amendments set forth below"

24 On pages 2 and 3, by striking out subsections 1.6, 1.7

1 and 1.8 in their entirety;

2 On page 6, by inserting a new subsection 2.20, to read
3 as follows, and renumbering subsequent subsections;

4 "Chemical Treatment means - the treatment of water
5 from a surface coal mining operation using chemical
6 reagents such as but not limited to sodium hydroxide,
7 calcium carbonate, or anhydrous ammonia for purposes of
8 meeting applicable state and federal effluent limitations.
9 Chemical treatment does not include passive treatment
10 systems such as but not limited to limestone drains,
11 wetlands, alkaline addition, application of flyash,
12 agricultural lime, or injection of flyash, limestone, or
13 other minerals into underground coal operations."

14 On page 16, section 2, by striking out subsection 2.92
15 and renumbering the subsequent subsections.

16 On page 25, by striking the second paragraph of
17 subsection 3.1 (o) and inserting in lieu thereof a new
18 second paragraph 3.1 of subsection 3.1 (o), to read as
19 follows: "Any permit application which references an
20 approved centralized ownership and control file may be
21 determined to be complete and accurate for the purposes of
22 this subsection. Each centralized ownership and control
23 file shall at a minimum:"

24 On page 63, by striking out subsection 3.25 (e).

1 On page 63, by striking out the first sentence in
2 subsection 3.26, and inserting in lieu thereof the
3 following:

4 "(a) All changes including name changes, replacements,
5 and additions to the ownership or control data relative to
6 a permittee or assignee who will function as an operator
7 pursuant to the provisions of paragraph (c) of subsection
8 3.25 of this rule shall be reported to the Director."

9 On page 64, after subsection 3.26 (a) (5) by inserting
10 a new subsection 3.26 (a) (6) to read as follows:

11 "(6) In the event that a permittee or operator has
12 incurred no changes in its ownership and control
13 information and therefore has not been obligated to file
14 a report within any consecutive twelve-month period, that
15 permittee or operator is required to notify the Director in
16 writing that no changes to the information required by
17 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
18 rule have occurred."

19 On page 64, by striking out subsection 3.27 (a) and
20 inserting in lieu thereof the following:

21 "(a) All active surface mining operations shall be
22 subject to the renewal requirements and provisions for
23 issuance of a renewal discussed in Section 19 of the Act:
24 *Provided*, That the Director may waive the requirement for

1 renewal if the permittee certifies in writing that all coal
2 extraction is completed, that all backfilling and regrading
3 will be completed within sixty (60) days prior to the
4 expiration date of the permit, and that an application for
5 Phase I bond release will be filed prior to the expiration
6 date of the permit. Failure of the permittee complete
7 backfilling and regrading within sixty (60) days prior to
8 the expiration date of the permit will nullify the waiver.

9 Those operations which have been granted inactive
10 status in accordance with subsection 14.11 of this rule
11 shall also be subject to the renewal requirements of
12 Section 19 of the Act.

13 Applications for renewal shall be filed on forms
14 provided by the Director and shall contain at a minimum the
15 following information:"

16 On page 79, by striking out subsection 3.32 (i) and
17 renumbering the remaining subsections.

18 On page 80, subsection 3.34 (b) after the word
19 "criteria" by inserting the words "paragraph (b) of
20 subsection 3.32 of this section";

21 On page 80, by striking out subsection 3.34 (b) (3)
22 and substituting therefor a new subsection 3.34 (b) (3), to
23 read as follows: "(3) The permittee was linked to a
24 violation, penalty or fee through ownership or control,

1 under the violation review criteria, paragraph (b) of
2 subsection 3.32 of this section at the time the permit was
3 issued and an ownership or control link between the
4 permittee and the person responsible for the violation,
5 penalty or fee still exists, or when the link was severed
6 the permittee continues to be responsible for the
7 violation, penalty or fee."

8 On page 82, by striking out subsection 3.34 (g) and
9 substituting therefor a new subparagraph (g) to read as
10 follows:

11 "(g) For purposes of this subsection, a permit is
12 issued when it is originally approved, as well as when a
13 transfer, assignment, or sale of permit rights is approved
14 pursuant to paragraphs (a) or (c), subsection 3.25 of this
15 rule, or where a permit is revised pursuant to subsection
16 3.26 of this rule."

17 On page 86, at the end of subsection 4.4, by adding
18 the following sentence: "Prospecting roads are to be
19 designed, constructed, maintained, and reclaimed in
20 accordance with the provisions of subsection 13.6 of this
21 rule."

22 On page 88, by inserting a new subsection 4.7 (a) (1)
23 to read as follows: (1) Minimize downstream sedimentation
24 and flooding and renumbering the remaining subsections.

1 On page 92, subsection 4.12, by inserting a new
2 sentence between the second and third sentence which reads
3 as follows: "Where the certification statement indicates a
4 change from the design standards or construction
5 requirements approved in the permit, such changes will be
6 documented in as-built plans and submitted for approval to
7 the Director as a permit revision."

8 On Page 148, section 11.6 (a) in the underscored
9 language, after the word, "completed" by inserting the
10 words "or nearly completed".

11 On Page 223, by striking out subsection 14.14 (g) (8)
12 and inserting in lieu thereof a new subsection 14.14 (g)
13 (8), to read as follows: "(8) Surface water runoff from
14 areas above and adjacent to the fill shall be diverted into
15 properly designed and constructed stabilized diversion
16 channels which have been designed using best current
17 technology to safely pass the peak runoff from a 100 year,
18 24-hour precipitation event. The channel shall be designed
19 and constructed to ensure stability of the fill, control
20 erosion, and minimize water infiltration into the fill."

21 On Page 232, by inserting a new subsection, designated
22 subsection 14.19 (d) to read as follows: "(d) Timber from
23 clearing and grubbing operations may be wind-rowed below
24 the projected toe of the outslope in a manner that will

1 provide shelter and habitat for game and non-game wildlife
2 and provide for enhanced sediment control. These materials
3 may not be placed in natural water courses or where they
4 will be covered by spoil material at the toe of the
5 outslope. The wind-rows must be of relatively uniform
6 height and width and must be more or less evenly
7 distributed along the lower reaches and within the permit
8 area."

9 On Page 240, subsection 17.1, in the first sentence,
10 after the words "mining and reclamation," by striking out
11 the remainder of the paragraph and substituting therefor
12 the following: "required by the Act and these Rules,
13 including the engineering analyses and designs; the
14 development of cross-section maps and plans; the geologic
15 drilling and statement of results of test borings and core
16 samplings; preblast surveys; the collection of
17 site-specific resource information and production of
18 protection and enhancement plans for fish and wildlife
19 habitats and other environmental values; and the collection
20 of archaeological and historical information; and any other
21 archaeological and historical information required by the
22 federal department of the interior and the preparation of
23 plans that may be necessitated thereby; and the director
24 shall provide or assume the cost of training coal operators

1 that meet the qualifications concerning the preparation of
2 permit applications and compliance with the regulatory
3 program, and shall ensure that qualified coal operators are
4 aware of the assistance available under this section.

5 On Page 240, subsection 17.1, after the first
6 paragraph by inserting a new paragraph, to read as follows:
7 "The Director will develop a procedure for the interstate
8 coordination and exchange of information collected under
9 the Small Operators Assistance Program."

10 On Page 241, by striking out subsection 17.4 in its
11 entirety and substituting therefor the following: "17.4
12 Request for Assistance. Each applicant requesting
13 assistance shall provide information on forms provided by
14 the director in an application that shall be clear and
15 concise and shall be provided in a format prescribed by the
16 Director and/or a format required by the Federal Office of
17 Surface Mining Reclamation and Enforcement."

18 On Page 249, subsection 17.7 (a) (4), after the words
19 "twelve (12) month period" by striking the remainder of the
20 sentence and inserting in lieu thereof the words
21 "immediately following permit issuance."

22 On page 273, subsection 20.6 (a), after the word
23 "first" by striking out the words "thirty (30)" and
24 inserting in lieu thereof the word "fifteen".

1 On page 273, subsection 20.6 (c), after the words
2 "date of the" by striking out the words "Assessment Officer
3 receiving the
4 finding specified in paragraph (a) of this subsection." and
5 inserting in lieu thereof the words "issuance of a notice
6 or order";

7 On page 274, subsection 20.6 (d), by striking out the
8 first sentence, and inserting in lieu thereof the
9 following: "The time and place of an informal assessment
10 conference shall be posted at the Department of
11 Environmental Protection Office nearest to the operation.

12

13 NOTE: The purpose of this bill is to authorize the
14 Division of Environmental Protection to promulgate
15 legislative rules relating to underground storage tanks.

16

17 Strike-throughs indicate language that would be
18 stricken from the present law, and underscoring indicates
19 new language that would be added.



FILED

MAY 17 11 28 AM '96

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer help we can get)

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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Deputy Secretary of State

CATHERINE FREROTTE
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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

RECEIVED

MAY 10 1996

OFFICE OF WASTE MANAGEMENT
UST SECTION
CHARLESTON, WV 25301-1401

TO: Gil W. Sattler

AGENCY: DEP -Waste Mgmt.\Water Resources

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 8, 1996

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: 36 TITLE: 47 DEP -Waste Mgmt.\Water Resources

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Gil W. Sattler

TITLE OF PERSON SIGNING: ERPMT

DATE: 5/15/96

* 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.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

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(Plus all the volunteer
help we can get)

March 12, 1996

Gil W Sattler
DEP - Waste Mgmt/Water
Resources
1356 Hansford Street
Charleston, WV 25301

HB 4224 authorizing, **Title 47, Series 36, Underground Storage Tanks** passed the Legislature on **March 9, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4224** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4224 Section 64-3-1(d)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division