

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**-NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Department of Commerce, Labor
and Environmental Protection
AGENCY: Division of Environmental Protection TITLE NUMBER: 47

CITE AUTHORITY W.Va. Code 20-5H-6

AMENDMENT TO AN EXISTING RULE: YES NO

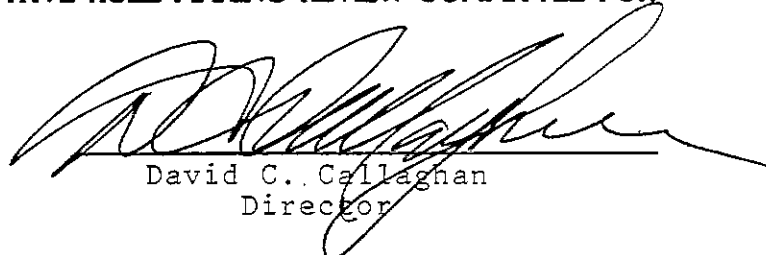
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: "Underground Storage Tank Regulations"

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


David C. Callaghan
Director

7.00



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol, Room M-146
Charleston, West Virginia 25305-0310
Telephone: (304) 558-0400
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

June 30, 1993

David C. Callaghan, Director
Division of Environmental Protection
10 McJunkin Road
Nitro, West Virginia 25143-2506

Re: Proposed Rule - Title 47, Series 36 - Underground Storage
Tank Regulation

Dear Director Callaghan:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

A handwritten signature in cursive script that reads "John M. Ranson".

John M. Ranson
Cabinet Secretary

JMR:ro

cc: Gil Sattler

t:\cov-ust.rul

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 47, Series 36, "Underground Storage Tank Regulations"

Type of Rule: Legislative Interpretive Procedural
 Department of Commerce, Labor & Environmental Resources

Agency: Division of Environmental Protection, Office of Waste Management

Address: 1356 Hansford Street, Charleston, WV 25301

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS			NO CHANGE		
EQUIPMENT					
OTHER					

2. **Explanation of above estimates:** These regulations require certification of individuals who install, repair, retrofit, upgrade, perform change-in-service or close underground storage tank systems. Any increased operating costs will be offset by the collection of application fees from the applicants.
3. **Objectives of these rules:** The objective of this rule is to add a procedure for certification of individuals who install, repair, retrofit, upgrade, perform change-in-service or close underground storage tank systems to protect human health and the environment.

Rule Title: Title 47, Series 36, "Underground Storage Tank Regulations"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. No impact.

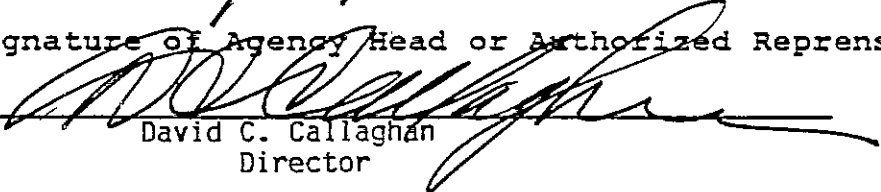
B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.
No impact.

C. Economic Impact on Citizens/Public at Large. No impact.

Date:

6/30/93

Signature of Agency Head or Authorized Representative


David C. Callaghan
Director

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DATE: August 12, 1993

TO: Legislative Rule-Making Review Committee

FROM: Division of Environmental Protection,
Office of Waste Management

LEGISLATIVE RULE TITLE: Title 47, Series 36 "Underground Storage Tank
Regulations"

1. Authorizing statute(s):
West Virginia Code, Chapter 20, Article 5H, Section 6
2. a. Date filed in State Register with Notice of Comment Period:
June 30, 1993.
b. What other notice was given of the public comment period:
None
c. Date to end comment period: July 31, 1993.
Comments were received.
d. Date of Public Hearing: None.
e. Date the agency-approved rule is filed in the State Register:
August 12, 1993
3. Name and phone number of agency contact person:
Gil Sattler, UST Program Manager (UST) 558-6371
4. If the statute under which you promulgated the submitted rules requires
certain findings and determinations to be made as a condition precedent
to their promulgation:

Not Applicable

PREAMBLE TO A PROPOSED RULE CONCERNING
UNDERGROUND STORAGE TANKS

AGENCY: Department of Commerce, Labor and Environmental Resources,
Division of Environmental Protection

REGULATION: Title 47, Series 37, "Underground Storage Tank Regulations"

AUTHORITY: West Virginia Code 20-5H-6

ACTION: Filing of an Agency Approved Rule with the Legislative Rule -
Making Review Committee.

SUMMARY: Today's filing amends the Underground Storage Tank Regulations by
requiring certification by the director of individuals who install,
repair, retrofit, upgrade, perform change-in-service or close
underground storage tank systems. The Division of Environmental
Protection views this as a necessary mechanism for the protection
of human health and the environment.

Response to comments:

A. 20-5H-6(12) states that the Director shall promulgate rules and regulations including requirements for certification of installation, removal, retrofit, testing and inspection of underground storage tanks and leak detection systems by a registered professional engineer or other qualified person. The mandate of Article 5H is to protect human health, safety and the environment. In order to achieve this there must be adequate protection to prevent and to reduce the potential for hazardous situations occurring.

The association which filed the comments concerning the proposed regulations represents a small group of the regulated community and one of the groups of owners/operators who would be most financially able to respond to problems and hazardous situations created by unqualified persons performing UST installations, repairs, retrofits, upgrades, change-in-service or closures. Mom and Pop UST owners do not have the financial resources or in-house personnel to respond to problems created by work performed by unqualified persons.

The federal regulations list in their "Certification of Compliance" for UST installations and upgrades an option of having an installer certified or licensed by the implementing agency and the US EPA has continually sited developing a certification or licensing program for UST installers as an activity in the yearly grant applications

B. We feel that this wording is correct as written. To change the wording as suggested would put the burden on the seller to determine if the tank is a regulated tank.

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF COMMERCE, LABOR, AND ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 36
UNDERGROUND STORAGE TANK REGULATIONS

FILED

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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, and closure of underground storage tanks in this State.

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

1.3. Filing Date. --

1.4. Effective Date. --

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

2.1. 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 ~~the~~ July 1, 1992, with the following modifications:

2.1.1. 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."

2.1.2. The provisions contained in 40 C.F.R. §280.20(e) shall be deleted and replaced by Section 3 of these regulations.

2.1.3. The provisions contained in 40 C.F.R. §280.22 shall be deleted and replaced by Section 4 of these regulations.

2.1.4. 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 §20-5H-13."

2.1.5. 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 these regulations."

2.1.6. The phrase "section 3004(u) of the Resource Conservation and Recovery Act, as amended" that appears in 40 C.F.R. §280.60 shall be deleted and replaced by the phrase "W. Va. Code §20-5H-14."

2.1.7. The provisions contained in Appendices II and III of 40 C.F.R. Part 280 shall be deleted.

~~2.1.8. A Section 5 is added to these regulations prohibiting carriers from dispensing regulated substances into Underground-Storage Tanks of owners or operators not in compliance with these regulations.~~

~~§47-36-3. Certification Requirements.~~

~~3.1. Certification of Installation. All owners or operators of underground storage tanks must ensure that one or more of the methods of certifying tank installation, as described under Section XI of Appendix I of these regulations (excluding item B), is used to demonstrate compliance with 40 C.F.R. §280.20(d).~~

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

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

3.2. After December 31, 1994, no individual shall conduct an underground storage tank system installation, repair, retrofit, upgrade, change-in-service or closure unless the individual present at the underground storage tank system site and exercising responsible supervisory control over the installation, repair, retrofit, upgrade, change-in-service, or closure is currently certified by the director in accordance with this Section. The underground storage tank system owner and operator must ensure that the individual performing the installation, repair, retrofitting, upgrade, change-in-service and/or closure is certified by the director.

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

3.2.1.a. 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.

3.2.1.b. 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.

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

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

3.3.1. Class A certificate will allow the individual certified to install, repair, retrofit or upgrade an underground storage tank system.

3.3.2. Class B certificate will allow the individual certified to perform a change-in-service or close an underground storage tank system.

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

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

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

3.4.3. The applicant shall demonstrate ethical practice. Such 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 subsection.

3.4.4. The applicant must demonstrate two (2) years of experience in underground storage tank system installation, repair, retrofitting, upgrading, performance of a change-in-service and closure conducted after December 22, 1988, as is applicable to the Class A and/or B certificate. Closely related work experience may be substituted on a year for year basis upon approval by the director. A civil or mechanical engineering degree from a recognized college or university may be substituted for the required experience.

3.4.4.a. Applicants shall provide the director a listing of the work performed, site locations, and the names of the companies/employers for whom the work was conducted.

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

3.4.5.a. Examinations administered to applicants for certification shall be written, multiple choice examinations. The questions used in the examination shall be derived 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 and closure.

3.4.5.b. 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 deem necessary.

3.4.5.c. 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.

3.4.5.d. No applicant will be allowed to take an examination more than three (3) times within a 12 month period. Applications will be deemed current for a period of one year from the date they are received by the director. After one year, a new application must be filed and the application fee paid.

3.4.6. At the time of the examination the applicant shall remit a nonrefundable \$100 fee by check or money order. This fee shall be deposited in the Underground Storage Tank Administrative Fund. A fee of \$50 shall be assessed for each retesting within the same year.

3.5. All certificates and certificate renewals shall 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 they expire. An individual whose certificate has expired prior to his or her submission of an application for renewal shall be considered a new applicant for certification.

3.5.1. An individual may renew their certificate for another two (2) year period by paying the renewal fee and completing the requirements of either Section 3.5.2. or Section 3.5.3.

3.5.2. 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:

3.5.2.a. The course must be relevant to the subject area of installation, repair, retrofitting, upgrading, change-in-service, closure 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

3.5.2.b. Applications for approval of specific training programs shall be submitted by the training provider to the director in writing. Such submissions shall contain a complete course outline, training material, sample certificates, methodology for verifying attendance, 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, or closure.

3.5.3. Submitting on a form supplied by the director a certificate renewal application and successfully passing the written examination described in 3.4.5. At the time of the examination, the applicant applying for renewal must remit a nonrefundable \$50 fee by check or money order.

3.6. 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.

3.6.1. 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 or closure is to be conducted.

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

3.7.1. 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 3.4.5., failure to submit required documentation, 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 regulations of West Virginia, for ethical considerations enumerated in Section 3.4.3., and/or any other cause that, in the opinion of the director, constitutes adequate grounds for denial or revocation of a certificate.

3.7.2. An individual who has been denied issuance or renewal of certification or who has had a certificate revoked may appeal the action to the Water Resources Board.

3.8. Any individual who violates the provision of Section 3 of these regulations shall be subject to enforcement action under Chapter twenty, Article five-h (\$20-5H-1 through \$20-5H-23).

\$47-36-4. Notification Requirements.

4.1. Except as provided in Section 4.1.1, 4.1.2, or 4.1.3 of these regulations, 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 these regulations.

4.1.1. 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 Section 4.1 of these regulations 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 CERCLA.

4.1.2. 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 Section 4.1 of these regulations.

4.1.3. The owner or operator of an underground storage tank that was installed on or before December 22, 1988, need only complete Sections I through X of the form prescribed in Appendix I of these regulations. Tank systems installed after December 22, 1988, must comply with the provisions of Section 4.2 of these regulations.

4.2. All owners and operators of UST systems installed after December 22, 1988, must provide the director, in addition to the provisions of Section 4.1.3 of these regulations, notification of compliance with the following requirements:

~~4.2.1. 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).~~

4.2.1. 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).

4.2.2. 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.

~~4.2.2.~~ 4.2.3. Cathodic protection of steel tanks and piping in accordance with the provisions of 40 C.F.R. §§280.20(a) and 280.20(b).

~~4.2.3.~~ 4.2.4. Spill and overfill prevention equipment in accordance with the provisions of 40 C.F.R. §280.20(c).

~~4.2.4.~~ 4.2.5. Financial responsibility in accordance with the provisions of 40 C.F.R. Part 280 Subpart H.

~~4.2.5.~~ 4.2.6. Release detection in accordance with the provisions of 40 C.F.R. §§280.41 and 280.42.

4.3. All owners and operators of UST systems to be installed on or after the effective date of these regulations, 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. All owners and operators of UST systems to be installed after the effective date of these regulations, must ensure that 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).~~

4.4. All owners and operators of UST systems must ensure that:

4.4.1. When the system was installed between 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).

4.4.2. 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. 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. After June 10, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such 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 Regulations (47 C.S.R. 36) to determine if you must provide this notification."

4.6.1. 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. Except as provided in Section 4.6.1 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.

4.7.1. 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 and then submitting that form to the director within thirty (30) days of the transfer.

§47-36-5. Carriers.

5.1. 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 Title 47, Series 37 (Underground Storage Tank Fee Assessments); Title 47, Series 36, Section 4 (Notification Requirements); and Title 47, Series 37A, Section 5 (Capitalization Fees) of the Code of State Regulations and the owner or operator presents proof of the certification to the carrier.

5.2. Any carrier who violates the provision of Section 5.1 of these regulations shall be subject to enforcement action under Chapter twenty, Article five-h (~~\$20-5H et seq.~~ \$20-5H-1 through \$20-5H-23).

APPENDIX I

OMB NO. 2050-0068, Approval Expires 1/31/95

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. _____
<input type="checkbox"/> A. NEW FACILITY <input type="checkbox"/> B. AMENDED <input type="checkbox"/> C. CLOSURE	A. Date Entered into Computer _____
____ No. of tanks at facility ____ No. of continuation sheets attached	B. Data Entry Clerk Initials _____
INSTRUCTIONS	C. Owner Was Contacted to Clarify Responses. Comments _____
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 intrastate 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 Subtitle 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)

<p>Owner Name (Corporation, Individual, Public Agency, or Other Entity) _____</p> <p>Street Address _____</p> <p>_____</p> <p>City _____ State _____ ZIP Code _____</p> <p>County _____</p> <p>Phone Number (Include Area Code) _____</p> <p>_____</p>	<p>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</p> <p>Latitude _____ Longitude _____</p> <p>_____</p> <p>(if same as Section I, mark box here <input type="checkbox"/>)</p> <p>Facility Name or Company Site Identifier, as applicable _____</p> <p>Street Address (P.O. Box not acceptable) _____</p> <p>_____</p> <p>City _____ State _____ Zip code _____</p> <p>County _____ Municipality _____</p>
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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"/>	<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"/>	<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"/>	<input type="checkbox"/>
	Amendment of Information	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Cathodically Protected Steel	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Composite (Steel with Fiberglass)	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Lined Interior	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Polyethylene Tank Jacket	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Excavation Liner	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Other, Please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Has tank been repaired?	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Galvanized Steel	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Copper	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Double Walled	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Unknown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, Please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6. Piping (Type) (Mark all that apply)	Suction: no valve at tank	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Pressure	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
	Has piping been repaired?	<input type="checkbox"/>	<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	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Diesel	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Gasohol	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Kerosene	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Heating Oil	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Used Oil	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Other, Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<hr/>					
Hazardous Substance CERCLA name and/or, CAS number	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<hr/>					
Mixture of Substances Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<hr/>					
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"/>
<hr/>					
B. Estimate date tank closed (mo./day/year)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<hr/>					
C. Tank was removed from ground	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
D. Tank was closed in ground	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
E. Tank filled with inert material	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Describe	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<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"/>
<hr/>					
2. Site Assessment Completed	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<hr/>					
Evidence of a leak detected	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
TO THE PROPOSED AMENDMENTS TO
DIVISION OF ENVIRONMENTAL PROTECTION
UNDERGROUND STORAGE TANK REGULATIONS
47 CSR 36**

Prepared By

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**Counsel for
West Virginia Manufacturers Association**

July 31, 1993

I. INTRODUCTION

These comments address changes being proposed by the West Virginia Division of Environmental Protection, Office of Solid Waste, to the Underground Storage Tank Regulations, Code of State Regulations, Title 47, Series 36.

The West Virginia Manufacturers Association represents a broad spectrum of large and small industrial concerns throughout West Virginia. Our comments are offered in a constructive manner to assist in assuring that the UST program in the State is administered in an environmentally effective and cost efficient manner.

II. SUMMARY

The West Virginia Manufacturers Association recommends the Director of the Division of Environmental Protection not promulgate the proposed revisions to the UST regulations. By introducing new certification requirements, the proposed revisions are overreaching and contravene state law. In addition, interposing ethical standards into the existing rule is irrelevant and injects an unnecessarily subjective element into what should be a technical standard.

A basic tenet of administrative law is that an agency must adequately explain the facts and policies upon which it relies and which rationally support its conclusions. Such a demonstration has not been made. No need for this rule, even in such critical areas as human health or safety, has been presented to justify changing the existing system, and the net result is to impose additional, unwarranted costs on West Virginia businesses.

III. COMMENTS

A. The State Rule is More Stringent Than the Federal Rule.

The changes being proposed to 47 CSR 36 would require an individual to be certified by the Director in order to install or perform other work on underground storage tanks ("USTs"). The West Virginia Manufacturers Association believes the change to be unnecessary, costly, and in contravention of the West Virginia Underground Storage Tank Act, W.Va. Code §20-5H-1 et seq. ("UST Act").

W.Va. Code §20-5H-6(a) authorizes the Director to promulgate rules and regulations for the UST Act. However, subsection 6(a) expressly states, in part, that "[s]uch rules and regulations shall be no more stringent than the rules and regulations promulgated by the United States environmental protection agency pursuant to Subtitle I [the federal Resource Conservation and Recovery Act of 1976, codified at 42 U.S.C. §6901 et seq.]" (emphasis added). The rule proposed by the DEP is more stringent than the federal rule because it limits the manner in which certification is demonstrated and expands the class of persons who are responsible for certifying compliance with UST requirements.

The federal rule, 40 CFR §280.20(e), requires that owners or operators, not the installer, comply with one or more of six listed alternatives in order to demonstrate compliance with "paragraph (d) of this section." Paragraph (d) specifically refers to installation and provides reference to three national standards for the installation of tanks and associated piping. In addition, 40 CFR §280.22(e) requires that "[a]ll owners and operators of new UST systems must certify in the notification form compliance with" four standards, relating to installation; cathodic protection; financial responsibility; and release detection. Forty CFR §280.22(f)

requires that "[a]ll owners or operators of new UST systems must ensure that the installer certifies in the notification form" and continues to require compliance with 40 CFR §280.20(d), the installation section previously noted. All of these provisions in the federal rule require certification of UST installation; other activities involving USTs are not required to be certified. The proposed State rule is therefore more stringent, because it regulates the entire lifecycle of a UST by requiring a certified individual to be involved at various points in that cycle, not just installation as specified in 40 CFR Part 280.

The proposed State regulation is more stringent than the federal regulation even in regard to the installation process itself. The proposed regulation limits certification to only one means and not the "one or more" alternatives specified at 40 CFR §280.20(e) and duplicated in section XI of the form "Notification for Underground Storage Tanks", required to be submitted for new and upgraded USTs.

The federal requirements clearly place emphasis on compliance with the owners and operators of UST systems and, in instances in which certification is required, the owners and operators are responsible for certifying the work or ensuring that the installer certifies the installation was conducted in accordance with the requirements set forth in 40 CFR §280(d). Owners and operators are responsible for civil penalties (W.Va. Code §20-5H-16), financial responsibility (40 CFR §280.90, W.Va. Code §20-5H-10), notification (W.Va. Code §20-5H-8), and inspection, monitoring and testing (W.Va. Code §20-5H-13) among other things. We believe that the rule should continue to require compliance by owners and operators, since they continue to be responsible for proper tank installation, operation and closure under State law.

Expanding the reach of the program to another class of persons makes it more stringent than the federal rules.

It is our understanding that the proposed changes to the rule were conceived as safety measures to prevent injury to those who work on USTs. While this concern is understandable and commendable, it is misplaced in this rule. Worker safety should be addressed by the Occupational Safety and Health Agency or a similar state bureau. The DEP should protect the environment, and since it already has the ability to do so by requiring owners and operators to comply with certification requirements, there is no need to extend the reach of the rule to the person working on the UST. Therefore, the West Virginia Manufacturers Association urges the Director of the Division of Environmental Protection not to adopt the proposed changes to the present rule.

B. § 47-36-4.6.1. Notification.

The wording of section 4.6.1 should be changed to clarify the existing regulation. The section should state "[a]ny person who sells an existing underground storage tank must notify the director in writing at least thirty (30) days prior to the transfer of ownership." This would eliminate any misunderstanding created by the present section, which appears to require notification if a tank is sold which could be used as a UST, even if it is not.

IV. CONCLUSION

In closing, for the reasons outlined in our comments, the West Virginia Manufacturers Association recommends that the Director not promulgate the modifications to existing 47 CSR 36 with the exception of the clarification of Section 47-36-4.6.1.

Respectfully submitted this 31st day of July, 1993.

WEST VIRGINIA MANUFACTURERS ASSOCIATION

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