



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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9/9/2014 10:43:38 AM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY Water Resources Division Of Water And Waste Management
RULE TYPE Interpretive AMENDMENT TO EXISTING RULE No **TITLE-SERIES** 47-62
RULE NAME Initial Inspection, Certification and Spill Prevention Response Plan Requirements

CITE AUTHORITY 22-30-23

COMMENTS LIMITED TO
Oral And Written

DATE OF PUBLIC HEARING
Thursday, October 09, 2014 6:30 PM

LOCATION OF PUBLIC HEARING
WVDEP - HQ
601 57th St. SE
Charleston, WV 25304

DATE WRITTEN COMMENT PERIOD ENDS
Thursday, October 09, 2014 8:30 PM

WRITTEN COMMENTS MAY BE MAILED TO
WVDEP - Public Information Office
601 57th Street, SE
Charleston, WV 25304

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 47-62



Rule Id: 9623



Document: 26199



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**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

AGENCY Water Resources Division Of Water And Waste Management
RULE TYPE Interpretive AMENDMENT TO EXISTING RULE No **TITLE-SERIES** 47-62
RULE NAME Initial Inspection, Certification and Spill Prevention Response Plan Requirements

CITE AUTHORITY 22-30-23

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

This Interpretive Rule is designed to protect the public water supply resources, the health and safety of our citizens, the environment, and the economy of the State of West Virginia from potentially dangerous substances stored in aboveground storage tanks.

This Interpretive Rule applies to owners or operators of aboveground storage tanks, as that term is defined in W. Va. Code § 22-30-3(1), who are required to complete an inspection of all registered tanks and to certify that inspection to the Department of Environmental Protection on or before January 1, 2015, and to submit to the Department of Environmental Protection a site specific Spill Prevention Response Plan for all registered tanks or tank facilities on or before December 3, 2014. This Interpretive Rule shall continue from its effective date until June 1, 2015, unless sooner terminated, continued or reestablished as a Legislative Rule pursuant to W. Va. Code § 29A-3-1, et seq.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Interpretive** AMENDMENT TO EXISTING RULE No TITLE-SERIES **47-62**
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CITE AUTHORITY **22-30-23**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

The proposed legislative rule will not have an impact on the costs and revenues of state government.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Water Resources Division Of Water And Waste Management**
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CITE AUTHORITY **22-30-23**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0.00	0.00	0.00
PERSONAL SERVICES	0.00	0.00	0.00
CURRENT EXPENSES	0.00	0.00	0.00
REPAIRS AND ALTERATIONS	0.00	0.00	0.00
ASSETS	0.00	0.00	0.00
OTHER	0.00	0.00	0.00
ESTIMATED TOTAL REVENUES	0.00	0.00	0.00

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

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CITE AUTHORITY **22-30-23**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

This Interpretive Rule provides guidance and clarification for complying with the initial inspection and certification requirements set forth in the Aboveground Storage Tank Act (the Act) at W. Va. Code § 22-30-6 and the requirements for submitting Spill Prevention Response Plans set forth in the Act at W. Va. Code § 22-30-9. No impact to the costs and revenues of state government is anticipated.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

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PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Interpretive** AMENDMENT TO EXISTING RULE No TITLE-SERIES **47-62**
RULE NAME **Initial Inspection, Certification and Spill Prevention Response Plan Requirements**

CITE AUTHORITY **22-30-23**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

This Interpretive Rule provides guidance and clarification for complying with the initial inspection and certification requirements set forth in the Aboveground Storage Tank Act (the Act) at W. Va. Code § 22-30-6 and the requirements for submitting Spill Prevention Response Plans set forth in the Act at W. Va. Code § 22-30-9.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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TITLE 47
INTERPRETIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT

SERIES 62
INITIAL INSPECTION, CERTIFICATION, AND SPILL PREVENTION
RESPONSE PLAN REQUIREMENTS UNDER W. VA. CODE §§ 22-30-6 AND 22-30-9

§47-62-1. General.

1.1. Scope. – This Interpretive Rule provides guidance and clarification for complying with the initial inspection and certification requirements set forth in the Aboveground Storage Tank Act (“the Act”) at W. Va. Code § 22-30-6 and the requirements for submitting Spill Prevention Response Plans set forth in the Act at W. Va. Code § 22-30-9.

1.2. Authority. – W. Va. Code § 22-30-23

1.3. Filing Date. –

1.4. Effective Date. –

1.5. Applicability. – This Interpretive Rule applies to owners or operators of aboveground storage tanks, as that term is defined in W. Va. Code § 22-30-3(1), who are required to complete an inspection of all registered tanks and to certify that inspection to the Department of Environmental Protection on or before January 1, 2015, and to submit to the Department of Environmental Protection a site specific Spill Prevention Response Plan for all registered tanks or tank facilities on or before December 3, 2014. This Interpretive Rule shall continue from its effective date until June 1, 2015, unless sooner terminated, continued or reestablished as a Legislative Rule pursuant to W. Va. Code § 29A-3-1, et seq.

1.6. Purpose. – This Interpretive Rule is designed to protect the public water supply resources, the health and safety of our citizens, the environment, and the economy of the State of West Virginia from potentially dangerous substances stored in aboveground storage tanks.

§47-62-2. Definitions.

2.1. “AST” means aboveground storage tank.

2.2. “Level 1 AST” means an AST that is determined by the Secretary to have the potential for high risk of harm to public health or the environment due to its contents, size or location, except for ASTs containing potable water, filtered surface water, demineralized water, noncontact cooling water or water stored for fire or emergency purposes, food or food-grade materials, or hazardous waste tanks subject to regulation under 40 C.F.R. § 264. An AST that meets any of the following criteria is a Level 1 AST:

2.2.a. An AST located within a zone of critical concern, wellhead protection area or groundwater intake area under the influence of surface water; or

2.2.b. An AST that contains substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a “hazardous substance” (42 U.S.C. § 9601(14)); or

2.2.c. An AST with a capacity of 50,000 gallons or more, regardless of location or contents; or

2.2.d. Any AST, regardless of contents, size or location, that the Secretary determines exhibits a potential for high risk of harm to public health or the environment. The Secretary, in his or her discretion, may consider factors including, without limitation, tanks that contain substances that are on the federal Environmental Protection Agency’s “Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act (EPCRA), CERCLA, and § 112(r) of the Clean Air Act (CAA)” (known as “the List of Lists”) as provided by 40 C.F.R. §§ 355, 372, 302, and 68), regardless of the AST’s location. The Secretary shall provide notice to the AST owner or operator of the Level 1 designation.

2.3. “Level 2 AST” means an AST that is determined by the Secretary to have the potential for lesser risk of harm to public health or the environment than a Level 1 AST due to its contents, size or location (i.e., an AST located in an isolated area with respect to public water systems, waters of the State or populated locales), or an AST that does not qualify as either a Level 1 AST or a Level 3 AST.

2.4. “Level 3 AST” means an AST that is determined by the Secretary to have the potential for low risk of harm to public health or the environment due to its contents, size or location or because the AST is subject to strict regulations, including regular inspections, under another program (i.e., ASTs containing potable water, filtered surface water, demineralized water, noncontact cooling water or water stored for fire or emergency purposes, food or food-grade materials, or hazardous waste tanks subject to regulation under W. Va. Code § 22-18-1, et seq. and 40 C.F.R. § 264).

2.5. “Wellhead protection area” means the surface and subsurface area surrounding a well, wellfield or spring that supplies a public water supply through which contaminants are likely to pass and eventually reach the water well(s).

§47-62-3. Initial Inspection and Certification.

3.1. For Level 1 ASTs, the initial inspection of each tank shall be performed by a qualified professional engineer; or by a qualified person working under the direct supervision of a professional engineer; or by an individual certified to perform tank inspections by the American Petroleum Institute (API); or by a person certified to perform tank inspections by the Steel Tank Institute (STI). The inspection shall be certified by the professional engineer (for those inspections conducted by a professional engineer or a qualified person working under the direct supervision of a professional engineer) or by the API certified inspector or by the STI certified

inspector on a form prescribed by the Secretary and submitted to the Secretary on or before January 1, 2015.

3.2. For Level 2 and Level 3 ASTs, the initial inspection of each tank shall be performed by any of the persons listed in Section 3.1 above; by the owner or operator of the AST; or by any person designated by the owner or operator of the AST. The inspection shall be certified as set forth in Section 3.1 above (if the inspection is conducted by a person listed in that section) or by the owner or operator of the AST (if the inspection is conducted by the owner or operator or a person designated by the owner or operator) on a form prescribed by the Secretary and submitted to the Secretary on or before January 1, 2015.

3.3. Regardless of tank classification (i.e., Level 1, Level 2 or Level 3), the inspections shall be conducted in accordance with the industry standard appropriate to the tank or tank facility (*see*, industry standards in Appendix A) and shall, at a minimum, conform to the requirements set forth in Appendix B.

§47-62-4. Initial Submission of Spill Prevention Response Plans.

4.1. The owner or operator of a Level 1 AST shall submit a site specific Spill Prevention Response Plan (“SPRP”) that, at a minimum, conforms to the requirements set forth in Appendix C and in accordance with W. Va. Code § 22-30-9 by December 3, 2014.

4.2. The owner or operator of a Level 2 AST shall submit a site specific SPRP that, at a minimum, conforms to the requirements set forth in Appendix C and in accordance with W. Va. Code § 22-30-9 by December 3, 2014. Alternatively, if the owner or operator of a Level 2 AST has been issued a permit by the Secretary under Articles 3, 4, 6, 6A, 11, 15 or 18 of Chapter 22 of the West Virginia Code, and thus has also submitted to the Secretary as part of the permitting process a Groundwater Protection Plan, the owner or operator may submit to the Secretary a certification that such plan is current and list the applicable permit number(s) that correspond with such plans; Provided, that the Secretary may request additional information, if necessary, in order to ensure that such plans conform with the requirements of W. Va. Code § 22-30-9.

4.3. The owner or operator of a Level 2 AST who is required to maintain on-site Spill Prevention Plans pursuant to 35 CSR 1 or Spill Prevention, Control, and Countermeasures Plans pursuant to 40 C.F.R. § 112 may submit the applicable plan to the Secretary in lieu of the SPRP by December 3, 2014. The Secretary may request additional information, if necessary, in order to ensure that such plans conform with the requirements of W. Va. Code § 22-30-9. Alternatively, the owner or operator may submit a site specific SPRP that, at a minimum, conforms to the requirements set forth in Appendix C and in accordance with W. Va. Code § 22-30-9 by December 3, 2014.

4.4. If the owner or operator of a Level 3 AST, other than hazardous waste tanks regulated by W. Va. Code § 22-18-1, et seq. and 40 C.F.R. § 264 (i.e., ASTs containing potable water, filtered surface water, demineralized water, noncontact cooling water or water stored for fire or emergency purposes or food or food-grade materials), maintains an Emergency Response Plan as required by the federal Environmental Protection Agency pursuant to the Public Health Security

and Bioterrorism Preparedness and Response Act (“the Bioterrorism Act of 2002”), 42 U.S.C. § 300i-2, the owner’s or operator’s submission of that plan to the federal Environmental Protection Agency may be in lieu of submission of a SPRP to the Secretary by December 3, 2014. Alternatively, the owner or operator of a Level 3 AST may submit a site specific SPRP that, at a minimum, conforms to the requirements set forth in Appendix C and in accordance with W. Va. Code § 22-30-9 by December 3, 2014.

APPENDIX A

American National Standards Institute
(ANSI)
1819 L Street, NW, 6th Floor
Washington, DC 20036
www.ansi.org

American Petroleum Institute (API)
1220 L Street, N.W.
Washington, DC20005
www.api.org

American Society of Mechanical Engineers
(ASME)
ASME International Three Park Avenue
New York, NY10016-5990
www.asme.org

American Society for Non-destructive
Testing (ASNT)
1711 Arlington Lane
Columbus, OH 43228-0518
www.asnt.org

American Society for Testing and Materials
(ASTM)
100 Barr Harbor Drive
West Conshohocken, PA 19429-2959
www.astm.org

American Water Works Association
(AWWA)
6666 West Quincy Avenue
Denver, CO 80235
www.awwa.org

National Association of Corrosion Engineers
(NACE)
P. O. Box 218340
Houston, TX 77218
www.nace.org

National Fire Protection Association
(NFPA)
Batterymarch Park
Quincy, MA 02269
www.nfpa.org

Petroleum Equipment Institute (PEI)
P. O. Box 2380
Tulsa, OK74101-2380
www.pei.org

Steel Tank Institute (STI)
570 Oakwood Road
Lake Zurich, IL 60047
www.steeltank.com

Underwriters Laboratories (UL)
333 Pfingsten Road
Northbrook, IL 60062
www.ul.com

APPENDIX B**INTERIM INSPECTION CHECKLIST
for INITIAL AST INSPECTION**

1. **AST Design** (determination that the AST continues to meet design standards)
2. **AST Construction and Installation** - including but not limited to:
 - Determination of proper foundation
 - Compatibility of AST system with material stored
3. **General Maintenance and Testing of AST system** – Examination of the tank system exterior surfaces for:
 - Flaws
 - Areas of wear
 - Corrosion
 - Distortions
 - Deterioration
 - Any other conditions that might adversely affect structural integrity such as results of a leak test, internal inspection, or other tank integrity examination such that a determination on the suitability of the tank for continued use can be clearly established.
4. **Corrosion Protection and Maintenance** (existing and past corrosion protection) - Provide assessment of the following, as applicable:
 - Galvanic and/or Impressed Current Systems
 - External Coatings
 - Internal Coatings or liners
5. **Release Detection Method and Procedures**
6. **Release Prevention Methods and Procedures**
7. **Secondary Containment Structures (including the following):**
 - Capacity requirements (including sufficient freeboard for precipitation events)
 - Compatibility requirements
 - Soundness/Integrity
8. **Record Keeping:**
 - Leak Detection System
 - Corrosion Protection system
 - General Operation and Maintenance (including upgrades and repairs to AST system)

APENDIX C

SPILL PREVENTION RESPONSE PLAN CHECKLIST

1. Fully Identify and Describe the Activities and Processes that Occur at the Site.

2. Identify Applicable Hazard and Process Information Including the Following:

- A list (name and Chemical Abstract Service number) of all types of fluids stored in ASTs
- Amount of fluids stored in each AST (provide maximum capacity and average storage volumes)
- Name and amounts of wastes generated that are stored in ASTs

3. Material Safety Data Sheets (MSDS) for Each Fluid Stored in ASTs at the Location.

- The MSDS must include the health hazard number identified by the national Fire Protection Association

4. Provide Site Maps/Drawings of the Aboveground Storage Tank Facility, to Include the Following Information:

- Show site boundary, abutting properties, nearby streets and/or waterways
- Identify and locate major on-site structures, including all ASTs and buildings
- Identify and locate all drainage pipes and water outlets
- Identify and locate all monitoring and/or observation wells
- Show legend, north arrow, and scale (preferably 1"=10' to 1"=25')

5. Provide a Preventive Maintenance Program Detailing the Following:

- Leak detection monitoring
- Inspection procedures
- Identification of AST System stress points
- Employee training programs
- Corrosion protection and monitoring
- Security Systems
- Spill prevention measures

6. Emergency Response Information:

- Identify all facility staff to include name and title with duties and responsibilities for developing, implementing, and maintaining the facilities Spill Prevention Response Plan
- Provide detail description of the chain of command at the aboveground storage tank facility
- Contact information for all facility emergency coordinators
- Contact information for all known emergency response contractors
- Detail the specific response that the facility and contract emergency personnel shall take upon the occurrence of any release of fluids from an AST at the facility
- Provide contact information for the person or persons to be notified in the event of a release from an aboveground storage tank. At a minimum this list should include contact information for the following:
 - County and municipal emergency management agencies
 - The nearest downstream public water supply (this information will be provided to the tank owner by WVDEP when their AST registration is approved, for inclusion in this plan)
 - WVDEP Spill line (1.800.642.3074).