



**WEST VIRGINIA  
SECRETARY OF STATE**

**NATALIE E. TENNANT**

**ADMINISTRATIVE LAW DIVISION**

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OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR  
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

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**

RULE IS LEGISLATIVE EXEMPT

**Yes**

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

**W. Va. Code § 29A-3-8 AND W. Va. Code § 22-1-3**

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS

**Thursday, November 20, 2014**

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: 26291

**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. – October 21, 2014

1.4. Effective Date. – November 20, 2014

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 as defined in § 22-30-3(1).

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 or unfiltered surface water or groundwater (excluding flowback water from oil and gas wells), demineralized water, noncontact cooling water or water stored for fire or emergency purposes, food or food-grade materials, empty mobile tanks, or hazardous waste tanks subject to regulation under 40 C.F.R. §§ 264 and 265,

exclusive of tanks subject to regulation under 40 C.F.R. § 265.201, 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, source water protection area or public surface water influenced groundwater supply source; 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 (except those specifically excluded as Level 1 tanks in Section 2.2 above); 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 contains potable water, filtered or unfiltered surface water or groundwater (excluding flowback water from oil and gas wells), demineralized water, noncontact cooling water, or water stored for fire or emergency purposes, food or food grade materials, empty mobile tanks, or hazardous waste tanks subject to regulation under 40 C.F.R. §§ 264 and 265, exclusive of tanks subject to regulation under 40 C.F.R. § 265.201.

### **§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 on-site or has submitted to the Secretary as part of the permitting process a Groundwater Protection Plan or Well Site Safety Plan, the owner or operator may submit to the Secretary the Plan or 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 and 265, exclusive of tanks subject to regulation under 40 C.F.R. § 265.201, 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, if the owner or operator of a Level 3 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 on-site or has submitted to the Secretary as part of the permitting process a Groundwater Protection Plan or Well Site Safety Plan, the owner or operator may submit to the Secretary the Plan, if not already submitted to the Agency, or 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. The owner or operator of a Level 3 AST may also 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](http://www.ansi.org)

American Petroleum Institute (API)  
1220 L Street, N.W.  
Washington, DC20005  
[www.api.org](http://www.api.org)

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

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

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

American Water Works Association  
(AWWA)  
6666 West Quincy Avenue  
Denver, CO 80235  
[www.awwa.org](http://www.awwa.org)

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

National Fire Protection Association  
(NFPA)  
Batterymarch Park  
Quincy, MA 02269  
[www.nfpa.org](http://www.nfpa.org)

Petroleum Equipment Institute (PEI)  
P. O. Box 2380  
Tulsa, OK74101-2380  
[www.pei.org](http://www.pei.org)

Steel Tank Institute (STI)  
570 Oakwood Road  
Lake Zurich, IL 60047  
[www.steeltank.com](http://www.steeltank.com)

Underwriters Laboratories (UL)  
333 Pfingsten Road  
Northbrook, IL 60062  
[www.ul.com](http://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)

**APPENDIX 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).