



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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7/31/2015 1:28:47 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE No TITLE-SERIES **47-64**
RULE NAME **Aboveground Storage Tank Fee Assessments**

CITE AUTHORITY **22-30**

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.

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: 47-64



Rule Id: 9873



Document: 26983



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

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

PRIMARY CONTACT

Joseph M. Sizemore
601 57th Street, SE

Charleston, STATE ZIP

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AUTHORIZING STATUTE(S) CITATION
22-30-5(b)(7)

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD
Thursday, June 25, 2015

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?
None.

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED
Thursday, July 30, 2015

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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)

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ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,
AMENDMENTS, REASONS FOR AMENDMENTS.

Attached

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE
FOLLOWING PUBLIC HEARING: (BE EXACT)

Friday, July 31, 2015

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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IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. GIVE THE DATE UPON WHICH YOU FILED IN THE STATE REGISTER A NOTICE OF THE TIME AND PLACE OF A HEARING FOR THE TAKING OF EVIDENCE AND A GENERAL DESCRIPTION OF THE ISSUES TO BE DECIDED.

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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DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS
None

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)

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601 57th Street, SE

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

This rule will impact revenues of state government by authorizing the assessment and collection of fees for aboveground storage tanks in the state of West Virginia. The fees collected will offset the costs associated with administering the Aboveground Storage Tank program

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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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**

PERSONAL SERVICES

CURRENT EXPENSES

**REPAIRS AND
ALTERATIONS**

ASSETS

OTHER

ESTIMATED TOTAL REVENUES	1,515,283	1,515,283	1,515,283
-------------------------------------	------------------	------------------	------------------

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

The current increase represents an Annual Operating Fee and Annual Response Fee being assessed and collected for all level one and two regulated ASTs currently registered in West Virginia. The next increase as well as Fiscal Year (upon full implementation) amount represents the Annual Operating Fee and Annual Response Fee continuing to be assessed and collected on all Level 1 and 2 tanks currently registered in West Virginia.

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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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.

This is a new rule. It establishes a fee assessment and collection mechanism to defray costs associated with implementing the Aboveground Storage Tank Act and its associated Rules. While the fiscal impacts have been carefully contemplated and scrutinized, this Fiscal Note remains an estimate based on information currently available to WVDEP.

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

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

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CITE AUTHORITY **22-30**

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

This rule establishes schedules of registration fees, annual operating fees and annual response fees for aboveground storage tanks governed by the Aboveground Storage Tank Act, W. Va. Code § 22-30-1 et seq. The fees collected will offset the costs associated with administering the Aboveground Storage Tank Program.

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
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT

SERIES 64
RULES GOVERNING ABOVEGROUND STORAGE TANK FEE ASSESSMENTS

§47-64-1. General.

1.1. Scope and Purpose. -- This rule establishes schedules of registration fees, annual operating fees, and annual response fees for aboveground storage tanks governed by the Aboveground Storage Tank Act, W. Va. Code § 22-30-1, et seq. This rule applies to any person who is subject to regulation by that Act.

1.2. Authority. -- W. Va. Code §§ 22-30-12 and 22-30-13.

1.3. Filing Date. --

1.4. Effective Date. --

§47-64-2. Definitions. – Unless the context in which used clearly requires a different meaning, the definitions contained in the Aboveground Storage Tank Act (the Act), W. Va. Code § 22-30-3, and the Aboveground Storage Tank Rule, 47 CSR 63, apply to this Rule.

§47-64-3. Fee Assessment.

3.1. Inventory Registration Fee

3.1.a. The Secretary shall collect an inventory registration fee from each owner of an AST subject to registration under the Aboveground Storage Tank Act.

3.1.a.1. For the initial inventory and registration, the fee shall be \$40.00 per tank. For fee purposes, the initial registration period is June 6, 2014 through June 30, 2015.

3.1.a.2. For all ASTs installed after June 30, 2015, the registration fee shall be \$20.00 per tank.

3.1.b. A transfer fee of ten dollars (\$10.00) per tank shall be charged to transfer tank ownership. The new owner is responsible for the transfer fee. For administrative purposes ~~The~~ transfer of ownership shall not be considered complete until the Secretary receives a completed amended registration and payment of the transfer fee.

3.2. Annual Operating Fee

3.2.a. The Secretary shall collect an annual operating fee from owners of Level 1 and Level 2 ASTs that have not undergone permanent closure or change-in-service to a non-regulated tank.

3.2.a.1. The operating fee for Level 1 ASTs shall be \$201.00 per tank per year.

3.2.a.2. The operating fee for Level 2 ASTs shall be \$40.00 per tank per year.

3.3. Annual Response Fee

3.3.a. The Secretary shall collect an annual response fee from owners of Level 1 and Level 2 ASTs, unless the owner's tanks have undergone permanent closure or change-in-service to a non-regulated tank. This fee shall be reviewed annually in accordance with W. Va. Code § 22-30-13(b) and be deposited into the Protect Our Water Fund.

3.3.b. The response fee for Level 1 and Level 2 ASTs shall be varied to produce a fund balance of no more than \$1 million dollars after three years from June 12, 2015 and to maintain an aggregate fund balance of \$1 million at the beginning of each calendar year thereafter.

3.4. Fee Calculation

3.4.a. For tanks that came into service before July 1, 2015, the owners shall pay an initial inventory and registration fee as provided in paragraph 3.1.a.1 above.

3.4.b. For tanks that came into service on or after July 1, 2015, the owners shall pay the registration fee assessed in subdivision 3.1.b above.

3.4.c. All Level 1 and Level 2 ASTs shall pay an annual Operating Fee and an annual Response Fee as assessed in subsections 3.2 and 3.3 above. The fee shall be collected pursuant to the provisions of section 4 of this Rule.

3.4.d. The fees assessed pursuant to this Rule shall not be prorated. Once the registration fee, annual operating fee, and annual response fees are paid, the Secretary shall not refund any portion of those payments if the tank subsequently goes out of service or goes through a change-in-service in the year for which the fees were paid.

3.5. Fee Consolidation. – All fees assessed pursuant to this Rule shall be consolidated.

§47-64-4. Fee Collection.

4.1. The Secretary shall provide to each tank owner an invoice for the fees assessed pursuant to this Rule. The invoice shall include an itemized list of fees assessed and the date upon which the fees are due and payable. The invoice shall be provided in the form and manner as prescribed by the Secretary.

4.2. Fees assessed pursuant to this Rule shall be paid by check, money order, credit card or bank draft payable to the West Virginia Department of Environmental Protection. Payment of the entire amount of the fees assessed, as calculated on the assessment invoice, must be made in a single payment.

4.3. Fee payments shall be sent to the address on the fee assessment invoice by the date specified on the invoice. If the owner mails the fee payment, it shall be postmarked by the date specified on the invoice.

4.4. Correcting Fee Assessment Errors

4.4.a. If the Secretary undercharges a tank owner on a fee assessment invoice, the Secretary shall issue a corrected fee assessment invoice to the tank owner for payment.

4.4.b. If the Secretary overcharges a tank owner on a fee assessment invoice, the Secretary shall issue a corrected fee assessment invoice that is distributed for the next calendar year, unless the tank owner submits a written request for refund to the Secretary. The request for refund, along with documentation supporting the claim of erroneous assessment, shall accompany the payment of the assessed fee. The Secretary shall investigate the tank owner's claim and issue a refund for the amount in excess of the proper assessment if the tank owner's claim proves to be valid.

4.4.c. Any errors made in the calculation or assessment of fees, whether by the Secretary or as a result of inaccurate information submitted by the tank owner, shall be corrected within one year of the due date posted on the fee assessment invoice. Any errors not identified within this one year period shall be deemed waived.

§47-64-5. Fee Deposit.

5.1. For the initial registration fees assessed pursuant to paragraph 3.1.a.1 of this Rule, the Secretary shall deposit fifty percent of the fees collected into the special revenue account within the State Treasury designated the Aboveground Storage Tank Administrative Fund and fifty percent of the fees collected into the special revenue account within the State Treasury designated the Protect Our Water Fund.

5.2. The Secretary shall deposit the registration fees assessed for tanks that came into service after June 30, 2015 pursuant to subdivision 3.1.b of this Rule into the special revenue account within the State Treasury designated the Aboveground Storage Tank Administrative Fund.

5.3. The Secretary shall deposit the annual operating fees assessed pursuant to subsection 3.2 above and any penalties assessed in accordance with Section 6.2 below into the Aboveground Storage Tank Administrative Fund.

5.4. The Secretary shall deposit the annual response fees assessed pursuant to subsection 3.3 above into the Protect Our Water Fund.

5.5. The deposit of a fee payment into the State Treasury is not acquiescence by the Secretary that the tank owner has paid for the correct number of tanks. Each tank owner is obligated to notify the Secretary if the number of tanks assessed is incorrect. The Secretary shall make necessary corrections in accordance with subsection 4.4 above.

§47-64-6. Failure to Pay Fees.

6.1. A tank owner who does not make a full, timely payment of fees assessed pursuant to this Rule, or who otherwise fails to comply with the provisions of this Rule, ~~is~~ may be subject to the penalties provided in the Aboveground Storage Tank Act, W. Va. Code § 22-30-17.

6.2. The Secretary shall assess penalties on fee payments not received by the Secretary by the specified due date on the fee assessment invoice. Late fees shall be a cumulative sum based on the following penalty assessment: fifty percent of the balance assessed for delinquent fees in excess of 30 days after the due date specified on the fee assessment invoice.

6.3. An owner who fails to pay any of the fees required by the Aboveground Storage Tank Act and this Rule may be subject to civil action for collection of delinquent debts.

6.4. Failure to pay any of the fees required by the Aboveground Storage Tank Act and this Rule ~~my~~ may result in administrative actions against the tank owner, including revocation of AST certificate(s) to operate.

6.5. If a tank owner attempts to register an AST and the Secretary accepts the registration, but the tank owner is delinquent in payment of any of the fees required by the Aboveground Storage Tank Act and this Rule, the Secretary may deny issuance of the Certificate to Operate the subject tank.

6.6. If tank ownership changes and any of the fees required by the Aboveground Storage Tank Act and this Rule for the subject tank are delinquent, the unpaid fee balance shall transfer to the new owner.

§47-64-7. Inflation or Deflation Based Fee Adjustments.

7.1. ~~All fees~~ The annual operating fee set forth in this Rule ~~are~~ is based on calendar year 2016 dollar values. ~~All registration fees,~~ The annual operating fees, ~~and annual response fees~~ shall be indexed annually, up or down, based on the U.S. Department of Labor's Consumer Price Index (All items).

~~7.2.~~ 1.a. Invoices issued by the Department after July 1, 2017 shall reflect the cumulative inflation or deflation adjustment(s).