

Rule Section	Comment	Response
3.20	<p>Numerous commenters requested that WVDEP establish registration program.</p> <p>A commenter felt that the rule should provide certainty regarding when WVDEP would invoice tanks. The commenter suggested that the end of each calendar year would be appropriate.</p>	<p>WVDEP believes that the proposed fees are sufficient to adequately fund and staff the program.</p> <p>WVDEP anticipates that invoicing for the annual operating fees will be performed shortly after the effective date of the Fee Rule and then annually thereafter .</p>
4.00	<p>A commenter felt that any fees imposed under the rules should be subject to facility caps.</p>	<p>WVDEP disagrees with the commenter, but understands the commenters concerns. The WVDEP is required to administer the AST Program through the collection of fees. WVDEP arrived at the proposed fees after evaluating the number of personnel needed to implement the AST Act and associated rules taking into account; salaries and benefits, equipment, training, and inspection frequency.</p>
3.20	<p>A commenter felt that the Level 1 tank fee are excessive and arbitrary and sought justification as why there was a large difference between the two fees. The commenter felt that the level 1 fees should be reduced to be more in line with the level 2 fees.</p>	<p>WVDEP disagrees with the commenter. The proposed fees are not arbitrary. WVDEP evaluated the number of personnel needed to implement the AST Act and associated rules taking into account; salaries and benefits, equipment, training, and inspection frequency. Level 1 tanks are required to be inspected once every three years. The inspection frequency is the largest single factor affecting the difference in fees for Level 1 and Level 2 costs.</p>
3.20		

A commenter felt that the annual response fee were troubling because each Level 1 and Level 2 AST would be assessed a fee and that cost was not stated in the fee rule. The commenter suggested that the annual fee should be based on the number, contents, and location of the ASTs.

3.20

Commenter questions DEP authority to decide when a transfer of tank ownership occurs. Also recommends DEP allow for 30-day post sale period to transfer registrations among owners.

3.1.b.

Commenter would like insight in to Protect Our Water Fund fees.

3.30

Commenter believes a 50% late penalty is excessive.

6.20

Commenter questioning indexing of Registration and Protect Our Water Fund fees.

WVDEP understands the commenters concerns of not knowing exactly how much the annual response fee will be each year. However, the language within the Fee Rule is consistent with Section §22-30-13 (b) of the AST Act which clearly specifies, "the secretary shall vary the fees annually to a level necessary to produce a fund of no more than \$1 million after three years from the effective date of this article, and to maintain an aggregate fund of \$1 million at the beginning of each calendar year thereafter."

WVDEP understands sale of assets between companies can be complex and extend over time. Language clarifying that ownership transfers are not administratively complete until WVDEP receives necessary information has been added to the Rule. WVDEP in response to comments for 47-63 has elected not to alter language relative to a 30-day transfer.

Until WVDEP assesses and collects the initial POW Fund fees it has no way to determine what future POW fees will be, hence the lack of clarity in the rule. In the broadest of terms, if WVDEP collects \$20/tank from 30,000 tanks, \$600,000 of the required \$1,000,000 will be in hand, leaving an additional \$400,000 to be collected over two years.

The 50% late fee is consistent with late fees in the UST program. Further WVDEP normally invoices ~90 days before the fee due dates.

WVDEP concurs with the commenter and has made appropriate changes to Section 7.