

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE:

**AST PROGRAM PROPOSED
FEE RULE
47CSR63, 47CSR64, 47CSR65**

HELD JULY 30, 2015

6:00 P.M.

*Donna H. Miller
Court Reporter*

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A P P E A R A N C E S

ON BEHALF OF THE DEP:

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PAT CAMPBELL and
JOE SIZEMORE
Division of Water and Waste Management

P R O C E E D I N G S

1 MS. GILLENWATER: Good evening everyone.
2 Can everyone hear me? I'm not going to worry about
3 the microphone, but if we have any speakers who
4 would like to use the microphone, we do have that
5 here.

6 Before we get started, I would like to
7 remind everybody that we do need you to sign in.
8 So, is there anybody who hasn't signed in? If so,
9 if you could go back and do that now, that would be
10 great.

11 All right. Well, without further ado,
12 we'll go ahead and get started. I'm Kelley
13 Gillenwater with the West Virginia Department of
14 Environmental Protection's Public Information
15 Office. I am the facilitator for tonight's public
16 hearing to discuss three DEP-proposed legislative
17 rules relating to aboveground storage tanks. Those
18 draft rules are:

19 47CSR63, the Aboveground Storage Tanks Rule
20 47CSR64, Rules Governing Aboveground
21 Storage Tank Fee Assessment, and
22 47CSR65, the AST Administrative Proceedings
23 And Civil Penalty Assessment Rule

1 Also here this evening we have Pat
2 Campbell and Joe Sizemore, of the DEP's Division of
3 Water and Waste Management, and Jake Glance, also of
4 the Public Information Office.

5 The purpose of tonight's hearing is to
6 give members of the public the opportunity to share
7 comments with the DEP about the three proposed AST
8 rules.

9 This hearing is being recorded by a
10 court reporter so that the comments shared can be
11 part of the public rulemaking record.

12 To ensure that we successfully achieve
13 the purpose of this hearing, we ask that everyone be
14 respectful and considerate of each other by
15 refraining from interrupting others while they are
16 speaking and keeping your comments on topic so that
17 our time together is used efficiently.

18 For those wishing to speak, when I call
19 your name to come up to provide comments, please
20 state your name, and also please say if you are
21 representing any groups or organizations.

22 Also, because we are commenting on
23 three separate rules tonight, please be specific on
24 which of the three rules or whether you are

1 commenting on all three of the rules tonight.

2 If you have written comments that you
3 would like to submit in addition to, or in lieu of,
4 your spoken comments, please hand them to me after
5 you speak or at the conclusion of the hearing.
6 Several of you have already turned those in, so
7 thank you for that.

8 If no one has questions about the
9 hearing format, we'll begin with our first speaker.
10 Okay, we only have five speakers so far who have
11 signed up to make comments.

12 Our first is Rebecca Randolph, and as
13 Rebecca makes her way up to the front, if we could
14 have Tom Rhule ready to speak, and then Angie
15 Rosser.

16 Rebecca.

17 MS. RANDOLPH: Rebecca Randolph with the
18 West Virginia Manufacturers Association. The West
19 Virginia Manufacturers Association applauds the
20 efforts of the DEP to develop a rule that's
21 consistent with the changes made to the aboveground
22 storage tank act. While the rule provides a more
23 reasonable regulatory approach, concerns remain
24 among WVMA member companies.

1 In the proposed rule, the DEP expresses
2 a strong preference for overseeing all aspects of
3 the AST's existence. From the time it's constructed
4 or installed, through modification, nonuse,
5 upgrading and tank closure. For example, requiring
6 notices before a tank can be constructed or modified
7 is not consistent with the Act.

8 The DEP is only authorized to regulate
9 closures as provided in Section 5 of the Act. The
10 location of tanks and specified usage are not
11 intended to be governed by the DEP, and should be at
12 the discretion of the tank owner or operator based
13 on industry operating standards.

14 We look forward to seeing how the DEP
15 will implement the most important change in the Act
16 which allows the DEP to approve industry standards,
17 in lieu of the more prescriptive standards the DEP
18 has set forth in the rule.

19 We encourage the DEP to recognize the
20 effectiveness of the industry standards that we as
21 manufacturers have been following for years, and
22 allow us to continue in that same vein.

23 We will provide more detailed written
24 comments on all three of the rules, but this

1 specifically addressed 47CSR63.

2 Thank you.

3 MS. GILLENWATER: Thank you. Tom Rhule.

4 MR. RHULE: My name is Tom Rhule, and I'm
5 with the Environmental Justice Committee of the
6 Mountain Party of West Virginia. This has to do
7 with the first of the three, 47CSR-whatever.

8 MS. GILLENWATER: 63.

9 MR. RHULE: Thank you. I'm going to read
10 the comments, and I'll hand you a copy of exactly
11 what I read.

12 Above Ground Storage Tanks "AST's" with
13 TENORM in them. TENORM is the common acronym for
14 Technologically Enhanced Naturally Occurring
15 Radioactive Materials. I am here to talk about
16 TENORM in oil and gas production AST's.

17 In states where they actually promote a
18 healthy environment instead of using that slogan as
19 a propaganda tool to cover up for industrial
20 excesses, the average cost to dispose of TENORM
21 waste is well over four hundred dollars per barrel
22 plus hauling expenses. Here, they're encouraged to
23 dump it casually into public landfills.

24 Recently the State of Pennsylvania

1 summarized its 24-month TENORM study with this
2 caution. As long as industry handles it properly,
3 TENORM won't be a problem. So Pennsylvania's
4 Department of Environmental Protection is now
5 charged with making certain that industry operators
6 properly identify, transport and dispose of TENORM
7 waste. Pennsylvania has stepped up to regulate
8 TENORM because the EPA cannot, due to loopholes in
9 Federal law.

10 Not so in West Virginia. Here, as in
11 Pennsylvania, TENORM is defined in law, but here it
12 is totally ignored by regulators. Unfortunately,
13 EPA Region 3 local officials have chosen to not
14 require our regulators to enforce our own TENORM
15 regulations.

16 There are actually two West Virginia
17 agencies charged with the primary responsibility of
18 seeing to it that workers and the public aren't
19 harmed by excessive radioactive waste, but neither
20 have stepped up in any meaningful way. The DEP and
21 the DHHR.

22 Instead of requiring proper
23 identification of the waste from hydrofracking at
24 the wellhead and tracking it to its final

1 disposition, which would indeed go far to promote a
2 healthy environment, our regulators simply ignore
3 the threat of TENORM.

4 Recently the DEP encouraged the dumping
5 of sludge from settling ponds dredged from a Fayette
6 County Class II injection well into a public
7 landfill in Raleigh County. How radioactive was
8 that sludge? We don't know exactly because the DEP
9 encouraged the contractor to excavate, haul and dump
10 without measuring for radioactivity. In its 2008
11 study the International Association of Oil and Gas
12 Producers estimated that type of sludge having as
13 high as 5,000 times normal background radiation.

14 We can assume that it was radioactive
15 because the injectate in the well after the
16 radionuclides were settled out was over 40 times the
17 amount allowed in all other classes of West Virginia
18 waste wells. Again, Class II wells enjoy an
19 exemption from Federal regulations. So instead of
20 taking responsibility for the hazard posed by
21 TENORM, West Virginia regulators simply chose to
22 passively ignore State regs. Consequently, that
23 sludge will be leaching untold amounts of
24 radioactive particles into Raleigh County's

1 environment from now on.

2 That's how much the DEP cares about
3 promoting a healthy environment.

4 There are a number of large aboveground
5 storage tanks at every Class II injection well site.
6 According to EPA estimates there are as many as
7 seven hundred Class II wells across West Virginia.

8 So what about the TENORM in all those
9 storage tanks? No one in West Virginia has ever
10 been required to measure that. Unfortunately, under
11 the current proposal, no one ever will.

12 At the aforementioned Fayette County
13 site, there are a number of large so-called brine
14 storage tanks. If you travel through Frackistan,
15 which is what the people of Doddridge and
16 surrounding counties now call where they live,
17 you'll also see tank farms on well pads holding
18 brine, which, by the way, is DEP slang for the
19 wastewater from fracking. But don't be fooled,
20 because they aren't for grandma's dill pickles.
21 They contain frack waste that settles inside the
22 tanks and form a sludge.

23 So what about the TENORM in the storage
24 tanks? What do operators do with the tons of sludge

1 that forms in all those tank bottoms? How does the
2 DEP make certain that it doesn't end up in your
3 favorite fishing hole?

4 Currently it does not, although in
5 other states with agency officials who actually do
6 promote a healthy environment, similar tanks require
7 a licensed expert to certify that the sludge is
8 safely removed, then hauled away to be dumped in an
9 appropriate place.

10 Thank you.

11 MS. GILLENWATER: Angie Rosser, and if we
12 could have Jan Vineyard and Bill Price ready to
13 speak next.

14 MS. ROSSER: Good evening. I'm Angie
15 Rosser, representing the West Virginia Rivers
16 Coalition. We are a statewide water quality
17 advocacy organization promoting fishable, swimmable
18 and safe and sustainable drinking water sources
19 across the state.

20 And here we are again talking about
21 tanks. We thank the DEP for all their hard work
22 over the past year-and-a-half. We really appreciate
23 the extensive public input process that happened
24 last year, and I think resulted in a good rule that

1 received a great deal of input from all interested.

2 It's just unfortunate that it was never
3 introduced for the legislature's consideration as it
4 was supposed to be, and as far as I can tell,
5 responses to that public comment process was never
6 completed or registered.

7 So I can't say why that happened. I
8 don't know for sure but the result was further
9 delayed in implementing regulations governing
10 aboveground storage tanks.

11 We're pleased the agency did move
12 forward on the registration and the initial
13 inspection requirements, but what we're looking at,
14 at best, are standards that probably won't go into
15 effect until mid-2016, two-and-a-half years after
16 the Freedom Industries leak.

17 The gross neglect and lack of adequate
18 regulations and oversight of the Freedom tanks
19 revealed the need for immediate action to protect
20 the public, but the reality is, not much has changed
21 in terms of setting and enforcing tank standards
22 with last year's rule appearing to be hijacked by
23 what ended up as Senate Bill 423. In our view 423
24 severely rolled back the number of tanks subject to

1 the Act's regulation and made many accommodations to
2 industry, some logical and reasonable, some
3 questionable, and some clearly that move us backward
4 in protecting water supplies.

5 But that is water under the bridge, so
6 to speak, and here we are with a new law and a new
7 rule. Considering the new legal framework the
8 agency is now working within, overall it's a decent
9 rule, but we question the rationale for relaxed
10 standards and timelines in comparison to last year's
11 rule that appeared throughout.

12 One section we examined closely is
13 Section 4 that deals with the opportunity for tank
14 owners to request amendments to their existing
15 permits or plans as an alternative means to achieve
16 compliance with the Act.

17 We want to see that this does not
18 become a loophole for tanks to be subject to
19 requirements less stringent than the Act's
20 intention.

21 We are encouraged that the rule puts
22 forth inspection requirements that appear that they
23 will be in line with requirements of the Act. We
24 are also encouraged to see that the rule -- the

1 modifications that incorporate industry standards
2 will not be discretionary, but will be required.
3 But the question remains will that be enough.
4 Freedom Industries responsibilities to follow
5 industry requirements or standards clearly was not.

6 Asked in relation to this is that in
7 this process of tank owners seeking alternative
8 means of compliance be a transparent process. We
9 want the public to receive notice of such requests,
10 and the amendments to these permits and plans that
11 are involved, that the public has opportunity to
12 review and comment on those.

13 We believe this can be done online in a
14 cost-efficient way that doesn't place undue burden
15 on the agency who already institutes this process
16 for other types of permit modifications.

17 Another important aspect of the rule
18 are the financial responsibility requirements. We
19 think the amounts are not sufficiently high enough.
20 They need increased at least for Level 1 tanks that
21 stand to do the most damage to public health and the
22 environment.

23 The bond amount should be in line with
24 the potential liability that would be incurred if a

1 tank fails. As the rule stands, for Freedom
2 Industries tank 346 that contained the 48,000
3 gallons of MCHM, the bond amount would have been
4 \$9,600. Clearly not enough to cover the damage
5 involved in compensating victims, that would include
6 residents, schools, businesses, the emergency
7 response required and the site remediation that
8 we're facing now.

9 Finally, related to the 47CSR64, on the
10 fee assessment rule, it makes perfect sense that the
11 registration operating and response fees will
12 support the program. It's so important that this
13 program be adequately funded and staffed in order to
14 protect the water -- or to protect the public and
15 our water supplies.

16 We would generally like to see more
17 resources put into the agency. They have hard
18 working staff, but they seem spread thin. It's a
19 big job with big responsibilities, and protecting
20 our water resources is a responsibility of the
21 highest order, and we want the agency to make sure
22 this program, when it fully launches, there is the
23 staff power to manage it.

24 That concludes my oral comments. I

1 also am submitting written comments that are more
2 extensive and detailed, and are endorsed by eight
3 different citizen advocacy organizations.

4 Thank you.

5 MS. VINEYARD: My name is Jan Vineyard,
6 and I'm representing the West Virginia Trucking
7 Association. Thank you very much for this
8 opportunity, and we appreciate the progress that's
9 been made. It's amazing. We've all lived this for
10 a long time, but we've gotten to what we need to do
11 is to protect the environment and worry about those
12 that caused the most harm.

13 The trucking industry is really
14 concerned about one part, and that's 47-63-12.1, and
15 that's the delivery prohibition. We've very
16 familiar with this prohibition, because we have it
17 with underground tanks, and we've seen lots of
18 issues with it in the past.

19 We think continuing to put the burden
20 of -- that the burden should be with the
21 registration compliance, not on the hauler, but on
22 the product supplier.

23 When you think about the hauler going
24 out to locations, somebody has ordered something,

1 and you get there, and they tell you they've been
2 registered, and you all of a sudden see that they
3 don't have something on it, then you have the burden
4 to take that part back and that liability. It
5 definitely needs to be with the owner.

6 Additionally a tank owner should be
7 cited if they knowingly receive property in an
8 unregistered tank, not the person who took the
9 product to them. It's our assertion that it's
10 provisions outside the authorization of the previous
11 Senate Bill 373 and of 423, and we maintain that
12 this provision was discussed at length with
13 legislative leaders during the session, and they did
14 not want that language included in the bill, and
15 we'd appreciate your concerns over that.

16 Thank you.

17 MS. GILLENWATER: Thank you, Jan. Bill
18 Price.

19 MR. PRICE: Thank you. I'm Bill Price. I
20 work for the Sierra Club, and I'm based here in
21 Charleston, West Virginia. My comments tonight are
22 going to be more about my own personal story.

23 My birthday is on January the 10th. On
24 January 9th of 2014, I got an early birthday present.

1 I woke up -- or actually, I found out about it the
2 evening of the 9th. I found out I couldn't turn my
3 water on. Along with 299,999 other folks, I
4 couldn't turn my water on except to flush my
5 commode. I couldn't drink it. I couldn't bathe in
6 it. I couldn't use it to cook, couldn't do any of
7 that.

8 As I began to look into why that was, I
9 found out that there was a tank upriver on the Elk
10 River that had been leaking, God knows for how long,
11 that it had been discovered, and it was now leaking.

12 what I heard from public officials was
13 shock. Oh, my God. How did this happen? And shock
14 can be good. Surprise of, well, I just don't
15 understand how this can happen, and a guarantee that
16 this would be a wake-up call, and we would never
17 have to face this again.

18 I can tell you I wasn't all that
19 shocked. I wasn't all that surprised. I was
20 somewhat taken aback by the magnitude of the
21 situation, that that many people were on one water
22 intake. But to say that I was shocked that
23 regulation had not been enforced and that it was
24 lax, not at all, because I grew up in the coalfields

1 of southern West Virginia on a private well, where
2 we were always concerned about what was coming out
3 of our tap to the degree that we eventually ended up
4 putting in a filtration system on our private well,
5 because we could not trust that toxins, and I'm
6 trying to use not the word I would use, but crap was
7 in our water.

8 But I took some public officials at
9 their word when they said this is a wake-up call.
10 We will not get in this situation again, and in
11 fact, was very happy with a legislative session that
12 was just coming in when the water crisis occurred,
13 took upon itself, with a lot of citizen input, make
14 no mistake about it, a lot of citizen input, took
15 upon itself to craft what I thought was a good bill.
16 It was a strong bill.

17 Were there some tweaks that needs to be
18 made? Yes. Was there some haste in the way that
19 was put together? Yes. No doubt.

20 But what happened in the last
21 legislative session was not tweaks. It was a
22 bulldozing over of the concerns of the public to
23 profits of an industry and industries in this state.
24 That sounds very much like the way it's been for a

1 Long, long time.

2 That's water under the bridge and where
3 we're at now. But I want to tell you that that may
4 be water under the bridge, but there is more water
5 coming, and we have not solved, by any stretch of
6 the imagination, the issues around water quality in
7 this state, and we no longer feel that the people
8 who said this will never happen again; that this is
9 a wake-up call were true to their word, because if
10 there is going to be a wake-up call here, it's going
11 to be generated by the public holding the officials
12 accountable for their actions, and I feel that's
13 happening.

14 I almost didn't make it back to this.
15 I was in Boone County today talking to people that
16 are concerned about the streams that they live near,
17 and I said, you know, I've got to get back for this
18 hearing, and they said can you tell them that we
19 matter too; that just because we're not on a public
20 water system doesn't mean that we don't have the
21 right to drink clean, safe water.

22 This rule, this regulation, this
23 legislative does nothing to better protect those
24 people on a well system, a water system that carries

1 their family. It has nothing that fully protects
2 people on private wells.

3 That situation has got to be, got to
4 be, addressed in this state. Everywhere we're at.

5 So we do have some suggestions about
6 how you can strengthen what you've got while the
7 people begin to build up power to change the overall
8 story of water quality in this state. We don't want
9 to see any relaxation of timeline for enforcement.
10 That's why we're saying go for it. We don't want to
11 see any weakening of standards.

12 Public notice and comment when there's
13 a major change of an amendment to a permit has got
14 to be in the rule. The public has a right to weigh
15 in on these matters every time there's an amendment
16 that comes up.

17 You simply must establish registration
18 fees that will adequately fund and staff the program
19 that the DEP, in their hardworking lives, they need
20 more staff, and they need more resources, because
21 they need to do a better job, and I think the will
22 here in the regulatory agency is there. So we have
23 to give them resources. The legislature has to give
24 them resources.

1 Simply, as I said the other night on
2 another rule, I grew up with a value that if you
3 mess it up, you clean it up. So we must increase
4 the bond amounts to cover any potential liability of
5 the take failure, and that responsibility is on the
6 industries, not on the taxpayers.

7 Thank you.

8 MS. GILLENWATER: Thank you, Bill. Is
9 there anyone else who did not say they were
10 speaking?

11 MR. BAKER: Yes, I came in just a little
12 later to sign up.

13 MS. GILLENWATER: Okay. If you could come
14 up, and just state your name for the group.

15 MR. BAKER: That's me right there, Lew
16 Baker.

17 MS. GILLENWATER: All right. Lew Baker.

18 MR. BAKER: I'm Lewis Baker. I work for
19 West Virginia Rural Water Association, which is a
20 nonprofit made up of most of the public drinking
21 water and waste water systems in the state.

22 My job is Source Water Protection
23 Specialist for rural water. I've done that for
24 about two decades now.

1 We've submitted comments. I believe my
2 executive director dropped off some written comments
3 yesterday. I have a copy. I'd like to read from
4 that, just so people here in the audience have a
5 chance to know what our concerns are, and of course,
6 I guess the written copy will be --

7 MS. GILLENWATER: It will be part of the
8 rulemaking record.

9 MR. BAKER: For me, the most important
10 thing about all of these laws and rules is, if you
11 spill something, say something. Say it quickly and
12 say it to the people downstream that need to know.

13 All the other parts of the regulation
14 and the law to me are not nearly as important as
15 that communication. Use the telephone. You know,
16 that was invented, what, over 100 years ago. It's a
17 nice tool, and it's not used near enough. Not in
18 this state, not in most states.

19 Usually, if somebody needs to call
20 because a spill happened, they call a spill hotline,
21 federal government or state government. Most places
22 are not required to call a downstream intake.

23 In the State of Pennsylvania, that's
24 been the case, after they had a spill in the winter

1 of '88-'89, Ashland Oil had a huge tank at a tank
2 farm upstream of Pittsburgh, and that tank was
3 constructed on site, filled with diesel without
4 first filling it with water to see if it would hold
5 pressure, and it fell apart, and that came down the
6 Ohio River.

7 That was one of the primary reasons,
8 along with the Exxon-Valdez wreck that the federal
9 government wrote a bill about oil spills, and
10 everybody has to report oil spills now, doesn't
11 matter how little really. If it's a sheen, you are
12 supposed to report it.

13 One of the key provisions in the nice,
14 long Pennsylvania spill bill was the requirement
15 that if you have a spill from any of the regulated
16 tanks under that law, and in fact, they wrote their
17 law in the winter right after their spill, kind of a
18 presage of what happened here.

19 One of the key requirements, Chapter 9
20 of that law, is that if you have a regulated tank,
21 you have to have a Spill Prevention Spill Response
22 Prevention plan. In your plan you have to list
23 every intake for public water supplies and
24 industrial downstream for 20 miles; you have to have

1 the emergency contact numbers for all those people;
2 and then, in the event of a spill, you have two
3 hours to call everybody on that list, starting with
4 the closest one. The whole rest of the law is not
5 near as important as that section.

6 When we had our spill, our original
7 spill bill, I like to call it spill bill instead of
8 a tank bill, because I think it's more important to
9 focus on what matters. It's a spill. Not that it
10 came from a tank, because we have spills from all
11 kinds of things.

12 But our original spill bill, before the
13 legislature worked on it and improved it, it was
14 actually modeled on the Pennsylvania bill, cut and
15 paste, large sections of it.

16 Some sections were left out, including
17 that very most important piece, which is call
18 somebody downstream, and you've got a limited amount
19 of time to call them. That was left out.

20 What we eventually got put back in was
21 a much weaker version, which you have the emergency
22 phone number for the first downstream intake, but I
23 don't think the law that we've got or the rules as
24 proposed specify that you actually make the call.

1 It's just that you know who's the first one
2 downstream.

3 We have no time limit, if you are
4 actually doing the call. For our spill hotlines, we
5 have -- I think the wording is you have to call
6 immediately after a spill, but then you are not in
7 any kind of trouble unless you wait more than 24
8 hours to make that immediate phone call.

9 You know, spills travel with the speed
10 of the streams and the rivers, and those typically
11 flow on the order and magnitude of a mile-an-hour on
12 a slow day, and more like three or four-miles-an-
13 hour on a fast day. In 24 hours a spill can go
14 pretty far, and get way past the first intake, and
15 way past a whole lot of others.

16 So a two-hour time limit is reasonable.
17 Something longer is not.

18 We notice some other things in the
19 rule, this second rule, that the first one, like
20 Angie said, became moot. But this rule has a
21 definition for a facility that's pretty much the
22 definition that was in the first one, and in here a
23 facility is, you know, a place where there's a
24 storage tank, and the definition says it's a

1 location where there's a storage tank.

2 If we're going to talk about location,
3 it's important to know an accurate location, like a
4 latitude and longitude, that has some accuracy to
5 it. This definition of the facility specifies that
6 you might have an oil and gas facility. That's the
7 only specific kind that's mentioned in here, and it
8 kind of makes sense to carve that out, because most
9 of the tanks, by large measure, are the oil and gas
10 industry tanks.

11 It says you might have an oil and gas
12 facility. Well, most of those oil and gas tanks are
13 tied to, and take fluids from, an oil and gas well.

14 There are other agencies that define
15 oil and gas facilities. So, under the Tier 2
16 reporting that is done to the state, and Homeland
17 Security I think gets the information on the Tier 2
18 reporting, an oil and gas facility is defined there,
19 and they used the word "well." It's not just tanks.
20 It's also wells, and it's the piping connected.

21 The federal government, after that
22 national oil spill law, has a definition for oil and
23 gas facilities, and you have to report under that
24 the Spill Prevention and Control and Countermeasure

1 Plan, SPCC, and EPA guidance on that talks about not
2 just the tanks, but the wells and the pipe in-
3 between.

4 EPA's guidance, they've got a new
5 guidance out. It's hundreds of pages long for these
6 facilities, and as part of our comments, we've got
7 an attachment, which is -- I can show you, it's just
8 a page out of their guide, but it's got a little
9 schematic that shows several different oil and gas
10 facilities. It's got a number of tanks, you know,
11 humpjacked to represent the wells and the piping
12 between them.

13 It's up to the owner/operator when they
14 report on their facility, you know, to define how
15 big that facility is. What's the area we're talking
16 about?

17 The owner/operator can include lots of
18 wells scattered all over the state, if they want to,
19 and all of the tanks that they've got, but if they
20 do that, they have to include all the piping that
21 interconnects all that stuff, and they have to
22 account for any spills that might happen from any of
23 that stuff, from the tanks, from the pipes, from the
24 well locations. So it kind of makes sense to not --

1 a facility that's defined as something that's huge,
2 but something that makes sense.

3 EPA guidance also says you can't
4 basically jerrymander the size and shape of your
5 facility to skirt the rule.

6 So in West Virginia we talk about an
7 oil and gas facility only in terms of tanks. We
8 don't define what the size is. Our definition also,
9 and I should read this part, because I want to be
10 clear on it. The draft rule reads, in part,
11 "However, oil and gas entities with multiple tanks
12 at various locations may consider their or their
13 operator's office or laydown yard as their facility
14 location for purposes of AST registration."

15 To me, that would -- could be
16 problematic in that it could leave a lot of people
17 that are reporting where their tanks are, they are
18 just giving maybe a lat and long for the driveway to
19 their office, or for their laydown yard. The same
20 lat and long for every tank they own, no matter
21 where it is in the state.

22 The DEP doesn't have any quality
23 control over the system set up for the lats and
24 longs that are submitted to them. They just map

1 what they -- the lats and longs they receive. So
2 we'll end up having maps, trying to map out where
3 the tanks are in the state in relation to intakes.

4 The tank owners will receive notice
5 from the DEP telling them what is the first intake
6 downstream from their tank based on the locations
7 submitted. If they submit erroneous locations,
8 they'll be told the wrong intakes downstream.

9 Now, there's spill plans that they're
10 supposed to write. They are supposed to include
11 what's the downstream intake and that kind of thing,
12 and those plans should be shared with those
13 downstream water supplies so that those downstream
14 water supplies can take a look and see does that
15 look like accurate information in my mind. Or are
16 we talking about something that's not upstream from
17 me at all.

18 They might receive plans that have got
19 the wrong phone number for their water plan. Unless
20 we share information and we're transparent about
21 what we think we know, it's awful hard to make
22 corrections.

23 There's also in the rule a definition
24 from the word "location." It just circles back to

1 that's a facility. It doesn't say, you know,
2 location needs to be a latitude and a longitude with
3 a certain accuracy. It's says that's a facility.
4 So we have a circular definition in that it really
5 helps nobody.

6 There's some other definitions that are
7 not in the rule that probably ought to be, like the
8 definition for a Level 1 or 2 or 3 tank. Level 3
9 tanks, I think they are moot under the new rule.
10 Those are the ones that haul drinking water and that
11 kind of thing. But the Level 1 and Level 2 tanks,
12 that's what the rule is all about, but they are not
13 defined. They are mentioned throughout the rule.
14 They are not in the definitions. So that needs to
15 be back in there.

16 The Spill Prevention and Response
17 Plans, the 2014 draft rule required that those be
18 updated no less frequently than every three years
19 for Level 1 tanks and five years for Level 2 tanks.
20 SB423 changed this to five years for all the
21 regulated tanks.

22 Our new version of the draft rule says
23 the Level 2 tanks don't need to be updated every
24 five, they can be updated every seven. Probably the

1 rule ought to follow the new law on that schedule
2 for when they ought to be updated.

3 The spill Prevention Response Plan
4 should -- copies should be made available to the
5 public water supplies downstream, at least for these
6 regulated tanks, the ones that are in the critical
7 zones and the peripheral zones, and then any of the
8 other tanks that are regulated because they are so
9 big or what they've got in them.

10 The 2014 draft rule required that the
11 tank owners provide copies of those to the public
12 supplies, but then SB423 took that requirement away.
13 So now with the new rule it doesn't require that the
14 tank owner submit copies -- or supply copies to the
15 water supplies.

16 This being the case, I think it would
17 make sense for the DEP to at least strongly
18 recommend the tank owners supply copies to the water
19 systems so the water systems know they have good
20 neighbors upstream and they are trying to know who
21 is downstream.

22 Otherwise, or well, actually in
23 addition to that, the DEP should require that the
24 companies submit copies of their plans to the DEP,

1 instead of just saying that the plan is something
2 that needs to be done by the tank owner, and it's
3 kept on site, and if the DEP inspector wants to go
4 to the site and look at it, they can do so.

5 Copies of these plans ought to be
6 submitted to DEP, and that ought to be public
7 information for people to get copies of from the
8 DEP.

9 Some minimum elements that ought to be
10 in the plan, the Spill Prevention Response Plan, how
11 about the spill hotline number? You know. That
12 plan is supposed to have in it who do you call in
13 case of a problem. It doesn't. The State hotline
14 number is not required to be in that plan.

15 In the 2014 rule, it was required to be
16 in there. The 2015 version instead refers to
17 Section 22-30-9, which lacks some important details,
18 like requiring that the hotline number be included.
19 These plans could definitely be strengthened if the
20 spill hotline number was in there, and like I said,
21 if the public water supplies and other people could
22 take a look at the plans, and if they say something
23 that wasn't accurate or was inadequate, they could
24 let the company know, let the DEP know, the plans

1 could be strengthened.

2 The plan is just something that is kind
3 of a guide that you go by when you actually have a
4 spill. So if it's not correct, or if it's
5 incomplete, it's not going to do much good when a
6 spill happens.

7 The spill plans should have in them the
8 same requirements as what Pennsylvania's got. Every
9 intake for 20 miles downstream and a two-hour time
10 limit. If you can't quite do that, see how much of
11 that you can do. But, to me, that's the least
12 burdensome rule you could have is, guess what? You
13 need to make a phone call.

14 Something that could be more burdensome
15 than that is if you don't make the phone call within
16 the timeframe, then you are in violation, and you've
17 got to pay a nice big fine or something. But, hey,
18 if we could get the requirement that you make a
19 call, and there's no fine for missing that, except
20 that your name gets published that you missed that
21 deadline, then maybe you'd be liable for a civil
22 suit, but don't put the fine in the rule if that's
23 going to keep it from being there.

24 The rule allows for substitutions, and

1 instead of submitting a Spill Prevention and
2 Response Plan, if you have a tank that's inside of a
3 protection area for groundwater system, and you have
4 a groundwater protection plan, actually the
5 groundwater protection plan I think they have like a
6 storm water section. But anyway, a substitute for
7 the SPRP, Spill Prevention Response Plan, could be a
8 groundwater protection plan. That's a requirement
9 of the West Virginia's Groundwater Protection Act.
10 So if you've got one of those, you could substitute
11 it. Or if you have a Spill Prevention Control and
12 Countermeasure Plan, a SPCC, that the Federal
13 government requires on the oil and gas industry. If
14 you've got one of those, you can substitute it.

15 Okay, well, that doesn't bother me, but
16 what does bother me is these things maybe don't have
17 all the information in them that you would want to
18 be in your Spill Prevention and Response Plan; maybe
19 they are not up-to-date, you know. Your GPP or your
20 SPCC, if you've got one. Maybe it's five years old,
21 and what emergency contact information you've got in
22 it is out-of-date, maybe there's nothing in it about
23 a downstream intake. I bet there's not.

24 So, anyway, everything that should be

1 in the SPRP should be in one of those substituted
2 plans if you are going to make a substitution.

3 The section of the rule, 7.3 discusses
4 a requirement for a temporary water supply. That
5 part of the rule should at least reference the
6 Public Service Commission's water rule 4.12.I, which
7 discusses the responsibilities of the water utility
8 when there is an unplanned service interruption.

9 That's my comments.

10 MS. GILLENWATER: Thank you, Mr. Baker.
11 Is there anyone else who did not sign up that would
12 still like to make some comments?

13 This concludes the public hearing on
14 the West Virginia DEP's proposed rules related to
15 aboveground storage tanks, Draft Rule 47CSR63,
16 47CSR64 and 47CSR65. This also concludes the formal
17 comment period for these draft rules.

18 Thank you for your participation. Have
19 a nice night and a safe trip home.

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CONCLUDED AT 6:55 P.M.

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REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Donna H. Miller, Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing was duly taken by and before me, under the West Virginia Rules of Civil Procedure, at the time and place and for the purpose specified in the caption thereof.

I do certify that the said hearing was correctly taken by me by means of the Stenomask; that the same was transcribed by me, and that the said transcript is a true record of proceedings had.

I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy.

Given under my hand this 31st day of
July, 2015.

Donna H Miller

Donna H. Miller
Notary Public



My commission expires October 1, 2023.