

RESPONSE TO COMMENT
Title 47 Series 63
Aboveground Storage Tanks Rule

The comment period for §47-63 was open from June 25, 2015 to July 30, 2015. A public hearing was held on July 30, 2015. Six people spoke at the public hearing and 60 people/entities submitted written comment before the close of the comment period. Four comment submittals were received after the close of the comment period, most of which had been brought forth by others and responded to. Below are comments received and agency responses.

Comment #1 A commenter suggested that the last phrase, "and piping, respectively" within definition §2.6 be eliminated. The commenter added that if this section of the definition is kept, that the final "and" be changed to an "or" in order to make the definition internally consistent.

Response: WVDEP appreciates this comment but the agency believes the definition of Certified API Inspector is clear.

Comment #2 A commenter stated there is no such thing as "associated piping" under the AST act.

Response: The phrase "associated piping" was removed from the agency approved rule.

Comment #3 The commenter believes that definitions §2.46 and §2.47 are redundant and one should be removed and the other used throughout the Rule. It is difficult to distinguish between "permanent closure" and "permanently out of service". Only distinction appears to be that a permanent closure is a residue free tank while a permanently out of service tank needs cleaned to this degree. In addition, the commenter would like to delete the phrase, "and associated piping." from either/both definitions to ensure consistency with the statutory definition of "aboveground storage tank"

Response: The term "Permanently out of service (POS)" was amended to add clarity. This term is a tank status or a way of describing an AST. The term "permanent" closure is a process that is undertaken to make a tank permanently out of service. Both terms are necessary in the act.

Comment #4 Commenters felt that temporarily out of service(TOS) (§2.64.) status is unnecessary or that tanks storing fluid but not receiving or dispensing fluid for longer than 180 days should still be considered in use. Tanks may or may not be needed for 180 days, or even years, but they do not go out of service during that time. If a tank meets standards set by DEP then there is no need for DEP to set an arbitrary time when a tank goes in or out of service. Another commenter found the change of status to be burdensome.

Response: The change of status requirement was changed from 180 days to one year on the agency approved rule. Bear in mind TOS tanks can still hold fluid.

Comment #5 Commenter stated that the adoption of One-Size-Fits-All requirements for regulated Level 1 AST's and regulated level 2 ASTs is Arbitrary and Capricious. The terms 'AST" and "AST system" often appear

to be used inconsistently and interchangeably throughout the proposed rule. The proposed rule should be clarified further that piping and all its ancillary equipment is not part of the AST or AST system if such piping, equipment, device or system is located beyond the first point of isolation.

Response: The agency believes that the regulatory requirements applicable to a level 1 AST in the agency approved rule are protective and necessary. The definition of level 1 AST considers in the size, location and contents of the tank. If the criteria are met to meet level one status, the tank requires a high level of attention and regulation. It should be noted that ancillary equipment is potentially subject to the AST act in that all parts of the system up to the first point of isolation are included in the definition of "AST" at 22-30-3(1).

Comment #6 A commenter felt that the requirement for submitting amended notification form should be 24 hours after change in substance or location to a ZCC. Change of operational status should require a 60 day requirement for submitting amended notification form.

Response: WVDEP believes notification of a change in substance or location within the ZCC in three days is adequately protective and achievable for tank owners and operators. Also, the requirement to submit information concerning a change in operating status was moved to one year, recognizing that these tanks are subject to continuing regulatory requirements.. The agency believes that due to the manner in which some tanks are used, this approach is protective and achievable and avoids overly burdensome and frequent subsequent notifications that will potentially tie up resources of the agency.

Comment #7 The commenter feels that nonoperational tanks (as of June 12, 2015) should not be required to be registered since they neither contain fluid, nor will contain fluid while in nonoperational status as long as the nonoperational tanks are not subject to sections 5, 8, 9 and 10 of this rule.

Response: WVDEP disagrees with this comment. The Act requires the registration of all tanks at 22-30-4(a).

Comment #8 Commenter states compartmental tanks should consider each compartment a separate tank for calculating the 1,320 gallon AST threshold

Response: WVDEP disagrees with this comment. To consider the aggregate volume of the AST is a comprehensive and protective approach to AST regulation.

Comment #9 The commenter believes that for compartmented and manifold tanks, the total capacity for all compartments should not be considered if there is a point of isolation between the compartments or manifolds. He goes on to say that for manifolded tanks, they are designed to be connected and would never meet the qualifier of being, "connected in a manner that prevents fluids flowing from one tank to another under any condition".

Response: WVDEP disagrees with the comment. A compartmented tank is a single tank separated into multiple compartments; therefore, the entire volume of the tank should be considered in determining applicability to the AST Act. For manifolded tanks, WVDEP believes that the total capacity of the tanks should be considered unless the tanks are connected in a

manner that prevents fluids flowing from one tank to another under any conditions. WVDEP clearly indicates the capacities of manifolded tanks that are isolated from each other are not combined to determine applicability with the AST Act or Rules. Isolation of manifolded tanks is possible.

Comment #10 A commenter suggested that WVDEP should encourage the use of smaller tanks "manifolded" in a way to protect against overfilling of a tank, but designed in a way to assure that a leak in one tank does not result in draining other "manifolded tanks.

Response: WVDEP agrees that this is an acceptable approach. This approach is a management decision and not a regulatory matter to be codified in a formal rule.

Comment #11 A commenter suggested that the word timely be deleted from section 3.1.c.1; whether a payment is received in a timely manner or not should not preclude storage of materials once the registration fee is paid.

Response: The word "timely" was removed from the agency approved rule.

Comment #12 The proposed rule fails to adequately distinguish between "regulated" ASTs and ASTs subject to registration but not regulation. The proposed rule fails to properly distinguish between those requirements that are applicable to all ASTs and those requirements that are applicable to regulated ASTs. There needs to be clarification concerning applicability to regulated ASTs or registration only ASTs.

Response: WVDEP has amended the rule in various areas in an attempt to differentiate the difference between a regulated AST and an AST subject to registration and labeling only.

Comment #13 A commenter stated that the second sentence in section 3.1.c.2 should be limited to "regulated tanks" since non-regulated AST's are not subject to a certificate to operate requirement.

Response: WVDEP has amended the rule in various areas in an attempt to differentiate the difference between a regulated AST and an AST subject to registration and labeling only.

Comment #14 Two commenters noted that if a tank has been registered in the past with a list of potential contents then the switching to one of these registered contents should not require a three day notice.

Response: WVDEP agrees with this comment.

Comment #15 Relative to section §3.1.d.3. the commenter feels that the example given is confusing because under the AST Act a process vessel is not an AST at all. He suggests the wording read as such, "Change in use of a storage tank to or from the statutory definition of an AST, i.e., changing the container's use from being a storage tank to a process vessel." He also suggests that if the WVDEP is trying to explain the need for an amended registration for changing the status of a tank from regulated (Level 1 or 2) to non-regulated (Not level 1 or 2) then a new section should be added entitled, "Change in the classification of an AST to or from a regulated AST"

Response: A change was made to this section to add clarity.

Comment #16 The commenter suggests the following rewording of section §3.1.d.4. , "Substantive Change in the substance or substances stored in the tank. Changes in formulations...that would not substantially change the response actions for releases would not be considered a substantive change in substance the contents of a tank."

Response: WVDEP believes this section is clearly stated.

Comment #17 A commenter noted that if a compartment in a larger tank meets the definition of a tank, its contents should not be aggregated with other tank contents in determining whether they meet the AST threshold of 1320 gallons. If there is a point of isolation between two manifolded tanks, those tanks should not be aggregated for purposes of determining whether the tanks meet the AST threshold of 1320 gallons.

Response: WVDEP disagrees with the comment. A compartment tank is a single tank separated into multiple compartments; therefore, the entire volume of the tank should be considered in determining applicability to the AST Act. For manifolded tanks, WVDEP believes that the total capacity of the tanks should be considered unless the tanks are connected in a manner that prevents fluids flowing from one tank to another under any conditions. WVDEP clearly indicates the capacities of manifolded tanks that are isolated from each other are not combined to determine applicability with the AST Act or Rules. Isolation of manifolded tanks is possible.

Comment #18 A commenter stated that DEP has no legal authority to determine when ownership of a tank is transferred. Authority to operate needs to transfer with ownership.

Response: This is a comment on the §47-64 fee rule and it was answered in that rule's response.

Comment #19 A commenter stated that DEP only has authority to oversee installation and closure. When and where regulated ASTs are located or go in or out of service are not for the DEP to micromanage through notices or approvals. Requiring notices or approvals before a tank can be constructed, modified, or moved is not countenanced by the AST act.

Response: WVDEP disagrees with the commenter. WVDEP believes prior notification of installations and closure is important to protect public health and the environment. WVDEP proposes in the AST Rule that the tank owner/operator must submit installation paperwork for new ASTs to the Secretary for administrative review prior to installation of the AST. This is to be done to ensure that an AST is not being installed in violation of the AST Act, AST Rule, or in a critical area that poses a threat to public health and the environment.

Comment #20 A commenter suggested that the language in 3.1.f should be modified to delete the phrase "constitutes a transfer of ownership that." so that a corporation through amendments to articles or incorporation or a merger does not constitute a "change in ownership" effecting legal responsibility for AST's.

Response: WVDEP disagrees with this comment. The agency must be made aware of the legal name of the owner of an AST in order to effectively administer the Act and its associated rules.

Comment #21 A commenter noted that the rule is helpful in outlining procedure to seek compliance with alternative measures. We support DEP's interpretation of the words "should", "may", "recommends", etc., in

regards to industry standards, to actually mean "shall". We support inspection requirements to be included along with any alternative compliance measures. Should include a public notice and comment requirement of permit or plan modification requests.

Response: WVDEP appreciates this comment. The agency notes that a vast majority of sites that utilize above ground storage tanks are subject to various permitting standards including NPDES, mining or oil & gas. These permitting activities do include provisions for public notice and comment whether it be for initial issuance, re-issuance or modification. These existing standards will remain applicable.

Comment #22 The commenter requests the language of section §4.1.a. be revised so that it clearly includes language which limits this to only regulated AST's.

Response: WVDEP agrees with this comment and this section has been amended to reflect applicability.

Comment #23 The commenter feels that waiting for the issuance of a certificate to operate will potentially impede operations. He asks if the agency intends to require the issuance of a certificate to operate for all new tanks before they can be operated. If not, he feels that restructuring this section is needed. If so, he strongly objects as it may cause delay in operations. He feels that requiring AST owners and operators to suspend the use of tanks (and empty them) for an indeterminate period is unreasonable and infeasible, particularly if the use of the AST is critical to the operations of a new owner or operator.

Response: WVDEP agrees with the comment and has changed the Sections to clarify that a tank owner has 30 days from acquiring an AST to properly register it.

Comment #24 A commenter noted that reference to a "permittee" will not be appropriate if there is a plan and no permit under qualifying alternative standards.

Response: WVDEP agrees that the term permittee could be narrowly construed, but the agency intends to view the plan holder as a permittee for practical purposes under the AST Act.

Comment #25 Commenter states minimum spacing requirements between tanks and prohibiting placement of ASTs in certain areas is not included in any other state or federal regulatory program and are impractical. Another commenter wants this section to be revised to expressly limit the application of these provisions to regulated AST's. Another commenter encourages WVDEP to conduct a careful review of the rules to ensure that appropriate qualifying language is included in recognition of the alternative compliance option provided by 22-30-5(c).

Response: The spacing requirements are for new installations and are required by industry standards such as Section 2.4 of PEI 200 and Section 22.4.2.1 of NFPA 30-2012. Furthermore, if visual inspections are to be used for leak detection, then spacing requirements are important to ensure that all areas of the tank can be seen. Finally, WVDEP believes that the alternate regulatory framework offered by 22-30-5(c) is adequately addressed by the agency approved rule.

Comment #26 The commenter suggests the following rewording for clarity purposes in section §4.2.a., “For those entities subject to site-specific permits and plans issued under Chapter 22 of the West Virginia Code...”

Response: WVDEP believes that the rule’s language is adequately clear.

Comment #27 A commenter felt that Section 4.3.a. should be rewritten to say, “For those entities subject to site specific permits and plans, the Secretary may, at the request of an AST owner or operator and in lieu of the standards contained herein, amend those permits or plans to include conditions pertaining to the management and control of regulated tanks, to the extent necessary to protect waters of the State.”

Response: WVDEP believes that the proposed language is adequately clear.

Comment #28 A commenter felt that there are some situations where the DEP may give relief from industry standards. DEP may wish to say "the Secretary may interpret" which gives flexibility to approve an alternative interpretation when appropriate. To confirm that API 653 is not the only industry standard that may be followed, e.g. should be placed in front of its reference. It was further suggested that the agency retain some discretion in certain instances to allow a tank owner to deviate from a certain standard on a case by case basis if such deviation is determined to be necessary, rather than sticking strictly to a "shall" interpretation for all 'should', 'may' and 'recommends' terminology in industry standards.

Response: WVDEP agrees with the commenter and has indicated that API 653 is but one of the possible standards that may be utilized in management of their ASTs.

Comment #29 A commenter suggested that all but the first sentence in section 4.2.a.2.B be deleted as there is no reason to require an owner/operator who is in compliance with industry standards to comply with recommendations or suggestions or alternate practices which are not requirements.

Response: WVDEP disagrees with this statement and believes that compulsory compliance with applicable industry standards is necessary if a tank owner/operator is choosing this option for tank operation and maintenance.

Comment #30 The commenter suggests the following revision to this provision, "a statement indicating which industry standards (including, but not limited to API 653 Standards for Tank....."

Response: WVDEP agrees with the commenter and has indicated that API 653 is but one of the possible standards that may be utilized in management of their ASTs.

Comment #31 A commenter stated that the intent of Section 4.2.b is unclear. All regulated tanks are subject to inspection regardless of the standard that applies.

Response: WVDEP believes this section of the rule is adequately clear.

Comment #32 A commenter stated that it is their understanding the siting requirements of 4.3 of the proposed rule would apply to only "new AST's for which physical installation began on or after the effective date of this rule. The commenter suggested the deletion of Section 4.3 of the Proposed Rule in its entirety as the adoption of a one-size-fits-all siting restriction to be applicable to every future regulated AST discounts the

innumerable site-specific considerations that may arise and goes beyond the scope of the WVDEP's authority under the AST Act. Another commenter stated that with regard to the provision requiring compliance with applicable setback and distance requirements, these are under the local jurisdiction and State Fire Marshal and should remain so.

Response: Section 4.3 was amended in the agency approved rule to add clarity and discretion. The reference to the State Fire Marshall remains in this section as the agency believes these requirements are protective and should not be excluded from this rule.

Comment #33 Commenters stated that there is no reason to make state and local fire codes enforceable conditions in the AST rules and that fire codes are sufficiently enforceable by the proper authorities. Commenters believe that these sections on compliance with the State Fire Marshal are independently applicable and enforceable and there is no need to duplicate them in the proposal.

Response: The reference to the State Fire Marshall remains in this section as the agency believes these requirements are protective and should not be excluded from this rule.

Comment #34 A commenter stated that the Proposed Rule would establish new requirements to maintain a spacing of three feet between tanks and between tanks and dike walls. The commenter believes that this requirement is arbitrary and in direct conflict with current construction standards for well pads.

Response: WVDEP disagrees with the commenter. The requirement is hardly "arbitrary" as noted by the commenter. The requirement is consistent with industry standards such as PEI 200 Section 2.4 and NFPA 30-2012 Section 22.4.2.1. The agency does note that some flexibility was added to section 4.3.a.

Comment #35 Commenter states that specific distance requirements should be removed and replaced with a requirement for unobstructed views in 4.3.b.

Response: The phrase "substantially unobstructed view to determine leakage" has been added to this section.

Comment #36 The commenter suggests that because there are certain tanks that are factory built with less than 3 feet of space between tank and dike, that the wording be revised to mandate a sufficiently unobstructed view to determine leakage, without specifying a specific blanket distance.

Response: The phrase "substantially unobstructed view to determine leakage" has been added to this section.

Comment #37 A commenter noted that some smaller tanks come with their own secondary containment that is less than 3 feet but do not obstruct visual inspection. Specifying a certain distance should be removed and mandate only a sufficiently unobstructed view to determine leakage.

Response: The phrase "substantially unobstructed view to determine leakage" has been added to this section.

Comment #38 A commenter stated that the AST act gives no authority to DEP to approve or disapprove sites for tank installation

Response: Section 4.3.c was amended in a way to be less prescriptive but allow the agency to use discretion to prevent tank installations that pose a threat to human health or the environment.

Comment #39 A commenter requested justification for removing the entire general operations and maintenance and a life-cycle preventive maintenance plan section. The Rule should specify standards for determining if a person is "qualified to perform tank inspections." All required plans (SPCC, SPRP, Groundwater Protection Plan, etc.) should be submitted to DEP and subject to public inspection. ASTs in the ZCC should be required to provide SPRPs to applicable public water systems and County and Municipal Emergency Management Agencies.

Response: The Life Cycle Maintenance Plan requirement was removed from the statute and therefore removed from the rule. "Qualified" is defined in the rule at 47 CSR 63-2.51. While the rule does not require the SPRP to be directly shared with the applicable public water systems and County and Municipal Emergency Management Agencies, section 22-30-10 of the act requires significant information to be shared with these groups. The agency believes this required dialogue will be protective of human health and the environment.

Comment #40 A commenter noted that section 5 does not clearly limit the scope to regulated Level 1 and Level 2 AST's. In addition, the use of the term "AST system" should be defined as encompassing only regulated Level 1 and Level 2 AST's.

Response: WVDEP believes the applicability of this section of the rule is clear.

Comment #41 A commenter stated that an appropriate alternative to the inspection and certification requirements for regulated Level 2 AST's would be to authorize oil and gas operators to inspect and certify regulated Level 2 AST's in accordance with the requirements of 35 C.S.R. 1, and 35 C.S.R.4 or 35 C.S.R. 8 which require annual inspections to be submitted by March 31st each year.

Response: WVDEP disagrees with this comment. The qualifications for a storage tank inspector with regard to annual certifications are mandated in the Act at 22-30-6.

Comment #42 A commenter stated that small shop built tanks, tanks not greater than 21,000 gallons that do not contain extremely hazardous substances are overly burdened. The commenter further stated that these tanks should be exempt from internal inspections and should be consistent with industry standards and those standards set by other AST programs.

Response: The agency believes that the regulatory requirements applicable to regulated ASTs in the agency approved rule are protective and necessary. The definition of regulated ASTs considers the size, location and contents of the tank. If the criteria to meet the definition of a regulated AST are satisfied, the tank merits considerable attention and regulation. The agency believes that the current requirements for internal inspections are protective and necessary.

Comment #43 The commenter feels that the wording in section §5.1 is too broad and suggests the following revision, "The owner or operator shall establish and implement routine inspections of the conditions at of each storage tank facility with regulated ASTs."

Response: The agency believes this language in §5.1 is clear.

Comment #44 A commenter stated that inspection requirements under section 5.1 are excessive, particularly where secondary containment is in place. The commenter suggested that 7 day inspections be expressly limited to "regulated Level 1 AST's" and that the Proposed Rule be revised to require visual inspections of regulated AST's and related secondary containment once per calendar month, and no more frequently than once per week for regulated Level 1 AST's containing fluids on the List of Lists in a concentration of one percent or greater excluding petroleum.

Response: The agency notes that the requirement for a visual inspection every seven days is already limited to Level 1 ASTs as the commenter suggests. WVDEP believes the required frequency for visual inspections of the AST and AST system are protective and necessary.

Comment #45 A commenter noted that the inspection requirement in section 5.1 that states "(a) check of the facility to ensure that no potential hazardous environmental conditions exist" is overbroad. The commenter suggested revision of the language to only require it to focus on ASTs located at a particular facility, and any hazardous environmental conditions that may be associated there within.

Response: This section does specify, "Hazardous environmental conditions exist associated with the regulated AST system." The agency believes this provision is clear.

Comment #46 Commenter states including "safety hazards" within the operational and maintenance plan is unnecessary, as they are addressed in safety plans required by other programs for mining operations.

Response: There is not a 5.1.a.5 in the agency approved rule.

Comment #47 A commenter stated that the rule requiring monthly checks of mechanical overfill prevention equipment would be beyond the capabilities of owner/operator, thus requiring a tank contractor with expertise.

Response: WVDEP disagrees with comment. The requirement for monthly checks of the overfill is in accordance with the STI SP001 and API 653 inspection checklists.

Comment #48 The commenter suggests changing the language from "immediately as possible" to either "in a timely manner" or "as soon as practicable".

Response: WVDEP disagrees with this comment. Malfunctioning equipment must be replaced or repaired as soon as possible to protect human health and the environment.

Comment #49 The commenter suggests the following revision to §5.2.a for clarity, "the owners or operators of an existing regulated aboveground storage tank shall submit a certification that each such regulated AST and its associated secondary containment..."

Response: The agency notes that the term "regulated AST" appears in §5.2.a of the rule and therefore believes the applicability of this section is clear.

Comment #50 A commenter stated that a "Professional engineer" has already been defined as a WV PE. What is intended by "qualified professional engineer as determined by the State Board of Registration for Professional Engineers?" Will the Board be issuing AST qualifications for WV PE?

Response: The use of the term "professional engineer" in this section does not differ in meaning found in the definitions at 47 CSR 63-2.50. Questions about future plan or initiatives of the State Board of Registration for Professional Engineers should be directed to the Board.

Comment #51 A commenter proposed that the WVDEP should incorporate into the Proposed Rule a streamlined program through which individuals may obtain certification to perform AST inspections and certifications. The commenter stated that it should be less time consuming and less costly than that offered by the Steel Tank Institute.

Response: A Worker Certification Program like that utilized in the UST program is not planned at this time due to the Agency's limited resources.

Comment #52 A commenter stated that the word "regulated" should appear in front of the first use of the words "aboveground storage tank" in section 5.2.b.

Response: The agency believes that it is clear that this portion of the rule is applicable to regulated aboveground storage tanks.

Comment #53 A commenter noted that DEP has no authority to prohibit Level 1 or 2 tank owners or their designees from certifying tank inspections in certain years; owners or their designees are allowed to certify that the inspections are done every year.

Response: The language was changed in this section of the rule from "certified" to "conducted". The agency believes this adequately clarifies this section of the rule with regard to the tank inspection and subsequent certification.

Comment #54 The commenter finds the term certified and certifications to be confusing since the AST Act defined who is certified to perform work. As such he suggests the following changes: "...every third year thereafter shall be certified performed by a Professional..."

Response: The language was changed in this section of the rule from "certified" to "conducted". The agency believes this adequately clarifies this section of the rule with regard to the tank inspection and subsequent certification.

Comment #55 A commenter stated that Interpretive Rule 47 CSR 62 inspections should be considered to meet the initial inspection criteria under section 5.2.b.2.

Response: The agency notes that this is the language that currently appears in this section of the rule.

Comment #56 The commenter finds the term certified and certifications to be confusing since the AST Act defined who is certified to perform work. As such he suggests the following changes: "...every fifth year thereafter shall be certified performed by a Professional..."

Response: The language was changed in this section of the rule from "certified" to "conducted". The agency believes this adequately clarifies this section of the rule with regard to the tank inspection and subsequent certification.

Comment #57 The commentator suggest the removal of the word, "properly" from the qualifier as the Interpretive rule did not require inspection of Level 2, which were defined differently under the AST Act and proposed rules, by a certified person, but also a tank owner.

Response: WVDEP notes that some ASTs that meet the current definition of Level 2 were inspected by Professional Engineers, API or STI inspectors previously. The rule intends to accept these previous inspections as meeting the initial inspection requirement.

Comment #58 A commenter noted that the inspection and certification section is confusingly written. Both the statutory inspection/certification and the alternative, off year inspection/certification use the same terms. It would be helpful if this were differently stated.

Response: The language was changed in this section of the rule from "certified" to "conducted". The agency believes this adequately clarifies this section of the rule with regard to the tank inspection and subsequent certification.

Comment #59 The commenter finds the term certified and certifications to be confusing since the AST Act defined who is certified to perform work. As such he suggests the following changes: "...the tank owner or operator shall certify perform annual inspections...or STI inspections and certification, unless...certified inspector who certifies the tank. In intervening years, The inspection certification performed by the tank owner or operator...obvious changed occurred to the AST system in that intervening years between certifications inspections..."

Response: The language was changed in this section of the rule from "certified" to "conducted". The agency believes this adequately clarifies this section of the rule with regard to the tank inspection and subsequent certification.

Comment #60 A commenter suggested that the first certification be 180 days after the rule becomes final, then on January 1, 2018, and then every January 1 thereafter.

Response: The WVDEP has added this proposed language to the agency approved rule.

Comment #61 The commenter suggests that since January 1 is a recognized holiday, that the submissions occur, "on or before January 1 of each year thereafter."

Response: The WVDEP has added this proposed language to the agency approved rule.

Comment #62 The commenter suggests combining this provision with 5.2.b.3 since they are closely related.

Response: The WVDEP believes the language is adequately clear in its current form.

Comment #63 The commenter feels that because the provisions appear as subparagraphs of section 5.2.b.5, it is unclear whether these forms are to be submitted every year or every 3rd/5th year. If the tank owner is required to submit in intervening years, how does this align with 5.2.b.3 which states that the owner does not have to certify in off year inspections? The commenter also wants to verify that failure to meet the requirements of the proposed rule will not render a tank "Not fit for service", and that these designations are intended to take into account the various deadlines for compliance in the proposed rule. He requests that language be added to the proposed rule that a tank will be deemed Not Fit for Service when there is an imminent threat of a release or other significant concern about a regulated tank.

Response: The language was changed in this section of the rule from "certified" to "conducted". The agency believes this adequately clarifies this section of the rule with regard to the tank inspection and subsequent certification. To clarify, each regulated AST must be certified annually, what varies is who conduct the tank inspection.

Comment #64 A commenter stated that there are times that a tank may not meet the minimum requirements of the proposed rule, but the tank may still be fit for service. We assume that the DEP did not mean that any failure to comply with this rule renders a tank unfit for service. A Not Fit for Service designation should only be required where the tank poses an imminent threat of release.

Response: The word "integrity" was added to 5.2.b.5.C to add clarity to this section.

Comment #65 The commenter finds the term certified and certifications to be confusing since the AST Act defined who is certified to perform work. As such he suggests the following changes: " In certifying and evaluating a regulated AST system, the certifying and inspecting person shall, at a minimum...."

Response: The language was changed in this section of the rule from "certified" to "conducted". The agency believes this adequately clarifies this section of the rule with regard to the tank inspection and subsequent certification.

Comment #66 A commenter requested clarification from the WVDEP that inspections conducted pursuant to the 2014 interim rules will satisfy requirements of section 5.2.a

Response: Section 5.2.b.1 and 5.2.b.2 state that ASTs properly inspected and certified by a PE, an API certified inspector or a STI certified inspector under the Interpretive Rule (47 CSR 62) will be considered to have met the initial inspection criteria under this Rule.

Comment #67 A commenter requested that because STI SP001 does not require internal inspection of tanks having a capacity of less than 30,000 gallons if periodic leak testing is performed that section 5.3.a be revised as follows: "For regulated AST's installed prior to June 12,2015, formal internal inspections of regulated AST's having capacity of 30,000 gallons or greater shall be performed to the extent required pursuant to STI SP001 or API 653 and shall, at a minimum, include evaluation of the following:" Similarly the commenter requested

that the same modification be made to section 5.3.b as smaller tanks are not designed to be entered and safety issues arise.

Response: The agency acknowledges this comment may have some merit and will give it further consideration during the rulemaking process to determine whether or how to modify the section.

Comment #68 A commenter objects to the conditions in §5.3.b.1.B, C, D and E in order to qualify for an exemption from internal inspections for smaller new AST's.

Response: The agency acknowledges this comment may have some merit and will give it further consideration during the rulemaking process to determine whether or how to modify the section.

Comment #69 The commenter suggests adding the word "or" to the end of section §5.3.b.1.C

Response: The word "or" was added to this section.

Comment #70 A commenter suggested adding the words "or the American Petroleum Institute" after "manufacturer" in the second line.

Response: "...or the American Petroleum Institute or Steel Tank Institute" was added to this section.

Comment #71 The commenter wants to clarify if section §5.3.f. also applies to tanks that have not had an internal inspection meeting the requirements of §5.3.e.

Response: The agency responds that if an inspection does not fully comply with the requirements of §5.3.e., then the provisions of §5.3.f. apply.

Comment #72 A commenter suggest that language be added to rule section §5.3.g to be consistent with rule §5.2.e that allows tank owners or operators to request waivers for good cause shown.

Response: WVDEP appreciates this comment. The agency interprets 5.3.g not to preclude using the waiver option afforded by 5.2.e. In this instance, the tank would be considered not fit for service and therefore 5.2.e would be applicable.

Comment #73 A commenter stated that the term "excessive foundation settlement" is an imprecise term and that section 5.4.a.3 should read as "Excessive foundation settlement as determined by a registered professional engineer."

Response: 5.4.a requires the evaluation of the damaged tank to be completed by a professional engineer or API or STI certified inspectors Therefore it is implied this determination will be made by a PE or other qualified person.

Comment #74 A commenter noted that the draft rule allows SPRPs to be updated every 7 years but it should instead comply with the 5 year requirement in the SB423. SPRPs and contact information should be required

to be provided to downstream PWS and local EMS personnel. SPRP should require inclusion of the spill hotline telephone number.

Response: The rule has been amended to reflect the updating requirement specified by the Act. Also, while the rule does not require the SPRP to be directly shared with the applicable public water systems and County and Municipal Emergency Management Agencies, section 22-30-10 of the act requires significant information to be shared with these groups. The agency believes this required dialogue will be protective of human health and the environment.

Comment #75 A commenter stated that the plan in Section 5.5 should be called the Spill Response and Prevention Plan

Response: WVDEP agrees with this comment and this section has been changed to be consistent with the Act.

Comment #76 A commenter suggested section 5.5.a be amended by adding a new second sentence reading as follows: Plans submitted to the secretary pursuant to the Interpretive Rule (47 CSR 62) shall constitute compliance with the requirement to submit a plan."

Response: Section 5.5.a has been amended to recognize plans previously submitted under the authority of 47 CSR 62 as satisfying the initial SPRP submittal required by 47 CSR 63.

Comment #77 The commenter wants to clarify that if an owner/operator submitted the SPRP by December 2014, then they will not need to resubmit it by December 2015

Response: Section 5.5.a has been amended to recognize plans previously submitted under the authority of 47 CSR 62 as satisfying the initial SPRP submittal required by 47 CSR 63.

Comment #78 A commenter suggest that there should be a process in section 5.5.a.1 that would allow tanks owners or operators to certify that the spill prevention plan was reviewed and no changes were necessary to update the plan. This would be in lieu of resubmitting the plan.

Response: WVDEP disagrees with this comment. 22-30-9(a) requires resubmittal of the plan every five years.

Comment #79 A commenter suggested that the time period to submit a revision or addendum in a plan in section 5.5.a.2 be extended to 180 days to be consistent with Federal SPCC requirements.

Response: WVDEP disagrees with this comment. 22-30-9(c) requires resubmittal of a rejected plan within 30 days.

Comment #80 A commenter stated that the phrase "approved by the Secretary" in section 5.5.b.1.A be deleted as there is no provision in the Groundwater Protection Act or the Groundwater Protection Regulations which require the Secretary's approval of a GPP.

Response: In practical terms, GPPs are submitted to the agency as part of an NPDES or other permit type application, and reviewed accordingly. Issuance of the permit is conditioned upon a GPP being acceptable. Thus, approved by the Secretary.

Comment #81 A commenter stated that it appears that those who are having their permits or plans, such as a GPP, amended to include enforceable tank standards, cannot have such plans certified as an alternative to the SPRP. This seems backward to us.

Response: WVDEP would like to clarify that this provision of the rule does not prohibit the use of the GPP to satisfy both 22-30-5(c) and 22-30-9(d). What this section of the rule mandates is that if an existing plan is going to be used to satisfy management and control requirements of an AST, the plan must be submitted to the agency for review, not simply certified.

Comment #82 A commenter suggested that section 5.5.b.1.D be deleted as the legislature provided that owners/operators with SPCC plans need only certify compliance with requirements for a spill prevention and response plan. W.va. Code § 22-30-9(d).

Response: WVDEP would like to clarify that this provision of the rule does not prohibit the use of the GPP to satisfy both 22-30-5(c) and 22-30-9(d). What this section of the rule mandates is that if an existing plan is going to be used to satisfy management and control requirements of an AST, the plan must be submitted to the agency for review, not simply certified.

Comment #83 The commenter feels that this section should be deleted entirely since it is not supported by the language of the AST Act which allows for a GPP or SPCC plan in lieu of and SPRP with no limits as seen in 5.5.b.1.D. If the section is not deleted entirely, the commenter would like to revise the wording as such, "...pertaining to the management and control of regulated tanks under subsection 4.2 of this rule, then the tank owner or operator must submit documentation required by 4.2 of this rule disclose that information as part of the certification to the Secretary under and cannot certify the plan as described in paragraph 5.5.b.1 of this rule.

Response: WVDEP would like to clarify that this provision of the rule does not prohibit the use of the GPP to satisfy both 22-30-5(c) and 22-30-9(d). What this section of the rule mandates is that if an existing plan is going to be used to satisfy management and control requirements of an AST, the plan must be submitted to the agency for review, not simply certified.

Comment #84 A commenter stated that the rule, section 5.5.c.5 should be revised to state that the secretary will identify the nearest downstream public water supply intake and provide this information to the AST owner/operator.

Response: This information is indeed provided to the tank owner upon successful registration of the AST; however, this section specifies that this information must appear in the SPRP prepared by the tank owner.

Comment #85 A commenter suggested that section 5.5.d should be revised to state that the AST system owner/operator shall annually review the SPRP contact information and update the information only if changed have occurred.

Response: WVDEP disagrees with this comment. This information is of paramount importance and every effort should be made to obtain and update it annually as the information may change.

Comment #86 The commenter suggests that the term "reportable release" be replaced with the term "confirmed release" to avoid confusion between 6.2 and 5.5.e

Response: WVDEP agrees with this comment and this change was made in the agency approved rule.

Comment #87 A commenter requested clarification of section 5.5.b.1.A as to the process and procedure for certification and the factors, timing and form of an Agency approval or denial of the GPP certification that may be used in lieu of a SPRP.

Response: Should an entity choose to ask for a modification to include tank requirements in the permit/plan the action would be taken consistent with the rules and timing associated with that particular regulatory program.

Comment #88 The commenter would like the WVDEP to limit this section to any signs put into place after the effective date of the proposed rules since a number of facilities have already begun placing signs in accordance with the AST Act which required signage by June 12, 2015, while reserving the right to have signs replaced if deemed not sufficiently legible or visible.

Response: The agency understands there has been some investment in tank labeling by some entities, but going forward, for consistency purposes, the agency cannot accept labeling that is not compliant with the current AST Act

Comment #89 A commenter suggested that section 5.6.a should state that the label or marking is not required on AST's that have undergone permanent closure or are permanently out of service.

Response: WVDEP disagrees with this comment. The definition of Permanent closure in section 2.46 specifies that tanks that undergo permanent closure are no longer ASTs as defined by the Act. Therefore these structures do not require signage. (Related to a comment below)

Comment #90 A commenter stated that there are facilities that use large drainage systems as secondary containment and/or have tanks that are clustered within secondary containment such that the views of label and signs are blocked by other tanks or equipment. DEP should limit itself to setting criteria for the signs and not specify from where they are visible.

Response: WVDEP disagrees with this comment and expect tank owners and operators to make every effort to ensure signs are visible as required by this section.

Comment #91 Commenter states WVDEP should set requirements for the content of signs and not specify line of sight requirements

Response: WVDEP disagrees with this comment and expects tank owners and operators to make every effort to ensure signs are visible as required by this section.

Comment #92 A commenter asked if the substances have to be reported on a sign. Does the requirement that flow control points be identified mean that signs as large as those mandated for tanks are required? Clarify this in the rule.

Response: WVDEP disagrees with this comment and believes it is clear that 5.6.c does not require printed signs.

Comment #93 A commenter suggested that the following points be clarified in the rule: they assume that placing the substance flowing through AST pipes on signs is not required, that flow control point signs do not have to be same size as mandated for AST's, and that "other suitable means" should include operator process knowledge.

Response: Same as above

Comment #94 A commenter stated that section 5.6.c is an operational requirement and does not belong in the "labeling and signage requirements" section"

Response: Same as above

Comment #95 A commenter stated that tanks that have been permanently closed are no longer capable of holding fluids, are no longer ASTs as defined in the Act, and therefore are not subject to signage requirements.

Response: DEP concurs with this comment.

Comment #96 A commenter stated that 5.6.d applies to permanently closed ASTs which are no longer ASTs within the definition of the AST act because they no longer "made to contain an accumulation of more than" 1,320 gallons of fluid.

Response: DEP concurs, same as above.

Comment #97 A commenter stated that required signage became effective on June 12, 2015 and that over 40,000 ASTs should have signage in place based on the language contained in 11 of the AST Act. Thus requiring owners and operators to revise labels or signs is unreasonable and unnecessary. The commenter requested that 5.6.b, 5.6.c, and 5.6.d be deleted from the Proposed Rule as many of the requirements are unreasonable or unrealistic. Furthermore the commenter requested that the label, marking or sign be designed to be "reasonably visible based on topography and development of the area in which the AST is located." The commenter stated that if specific signage requirements of 5.6 are to be retained, it's applicability should be limited to regulated AST's

Response: WVDEP disagrees with this statement. The agency believes there must be a standardized approach to signage for AST much like the standard conditions for NPDES permit signage. Also, the requirements found in 5.6 are analogous to recommendations that have been

available on the WVDEP website since June 2015. Also, note that 22-30-1 requires signage for "all" AST in WV.

Comment #98 A commenter felt record keeping requirements for logging verifiable content levels, deliveries received, amounts stored, and dispensing activities should be reinstated. It should be a requirement to notify the nearest downstream public water supply upon a confirmed release.

Response: WVDEP believes that the operation and maintenance requirements of the rule combined with the robust tank registration requirements are adequate to track material stored in the ASTs at each site. Furthermore, WVDEP believes that notification requirements of the ACT in section 22-30-10 as well as the spill notification requirements found in 6.2.a of the rule are sufficient to allow needed information to be shared in a timely manner in case of a release.

Comment #99 The commenter suggests that the reference to the location of the leak detection records be deleted from section 6.1.a.2 in favor of the language of 6.1.b

Response: WVDEP disagrees with this comment and believes the requirements found in the rule concerning retention of leak detection records is achievable and protective.

Comment #100 The commenter suggests adding a section that defines the length of time that the records must be maintained.

Response: Unless otherwise specified, AST owners / operators are to keep the specified records indefinitely.

Comment #101 The commenter states that some installation and manufacturer's documentation may not be available for existing tanks and that only those records available as of the effective date will be required.

Response: WVDEP understands that some manufacturer's information may not be available for existing tanks. The agency believes that tank owners should document any information that is not readily available and retain this documentation as a proof of the claim of unavailability.

Comment #102 A commenter urged the WVDEP to streamline section 6.2, 6.3, and 7 of the Proposed Rule as in its current state the rule is extremely complicated and at times excessive if an event is minor.

Response: WVDEP believes the requirements of these sections are protective, achievable and necessary.

Comment #103 A commenter noted that responsibility for calling EMS should be more circumscribed. The Spill Hotline should report to other emergency responders as appropriate and allow facility to respond to the release.

Response: WVDEP strongly disagrees with this statement. The agency believes the EMS notification requirement of this section is protective, achievable and necessary.

Comment #104 The commenter requests that this section specify which county or municipal agencies must be contacted and would prefer that the contact be limited only to the spill hotline which can get in touch with

local agencies if needed. The commenter also repeats his request of the adoption of a minimum threshold before notification is required.

Response: WVDEP strongly disagrees with this statement. The agency believes the EMS notification requirement of this section is protective, achievable and necessary. It should also be noted that the notification requirements are based on the requirements of 47CSR11 which does not specify reportable quantities.

Comment #105 A commenter urged the WVDEP to amend section 6.3 so that the Secretary may, but does not have to, calculate a penalty based on each day of violation. The commenter stated that this would allow the Secretary to determine a proposed penalty on a case-by-case basis.

Response: This is a comment on the Civil Administrative Penalty (CAP) rule §47-65 and it was answered in that rule's comment response.

Comment #106 The commenter suggests that for clarity, this section be retitled, "Criteria for Design, Construction, and Installation of Regulated ASTs"

Response: WVDEP believes the title of this section is sufficiently clear.

Comment #107 We are concerned over the weakening of AST Design standards including the removal of explicit language for corrosion protection, a release prevention system, a release detection monitoring system, and vault requirements. We question only having secondary containment requirements for Level 1 tanks and adding the word "may" for ancillary equipment. This makes the rule appear optional. We question the extension of the deadline for fixing deficiencies in a fit for service tank.

Response: WVDEP believes that this section is adequate protective with regard to corrosion protection, release prevention systems, release detection monitoring systems, vaults and ancillary equipment. Also, it should be noted that nothing in this section limits secondary containment requirements to Level 1 ASTs. In fact, the Groundwater Protection Rule (47CSR58) requires secondary containment for all ASTs and has for 20 years.

Comment #108 A commenter suggest that the compliance with the manufacturer's requirements, and one industry standard, should be sufficient to comply with the rule as it may be impractical to comply with all industry standards. (For example, STI and API standards may exist but be somewhat different)

Response: WVDEP disagrees with this statement. The agency believes it is clear in the referenced sections that tank owner / operators must have a clear path to follow applicable industry standards. It is not feasible or the intent of the rule to require tank owner / operators to comply with conflicting requirements. The agency expects a logical approach to tank operation and maintenance that the tank owner / operator can clearly articulate, document and justify.

Comment #109 A commenter stated it may not be practical to comply with all "applicable industry standards and codes of practice." STI and API standards may exist for a steel tank and may differ somewhat.

Response: WVDEP disagrees with this statement. The agency believes it is clear in the referenced sections that tank owner / operators must have a clear path to follow applicable industry standards. It is not feasible or the intent of the rule to require tank owners / operators to comply with conflicting requirements. The agency expects a logical approach to tank operation and maintenance that the tank owner / operator can clearly articulate, document and justify.

Comment #110 A commenter stated that the WVDEP does not have pre-installation authority under the AST act to require AST owners to get approval before they can put AST's in place.

Response: WVDEP disagrees with this comment. A notification prior to tank installation is a requirement associated with the UST program and has proved protective and beneficial to both the agency and tank owner / operators. WVDEP believes 22-30-5(b) (1) and (2) clearly establish the authority to establish criteria for the design and construction of tanks. The agency believes that to properly control design and construction, notification of the proposed tank prior to installation is necessary.

Comment #111 A commenter suggested adding the following at the end of section 8.2.b.4: "or procedure in place to assure appropriate liquid levels are maintained prior to and expected storm which is anticipated to cause flooding of the secondary containment system."

Response: WVDEP disagrees with this statement. Furthermore the agency notes that this section addresses tank flotation not collected precipitation in secondary containment structures.

Comment #112 A commenter stated that DEP has no authority to require tank owners to get approval before they can put tanks in place.

Response: WVDEP disagrees with this comment. A notification prior to tank installation is a requirement associated with the UST program and has proved protective and beneficial to both the agency and tank owners / operators. WVDEP believes 22-30-5(b)(1) and (2) clearly establish the authority to establish criteria for the design and construction of tanks. The agency believes that to properly control design and construction, notification of the proposed tank prior to installation is necessary.

Comment #113 Commenter states WVDEP does not have the authority to require tank owners get approval for AST installation.

Response: WVDEP disagrees with this comment. A notification prior to tank installation is a requirement associated with the UST program and has proved protective and beneficial to both the agency and tank owners / operators. WVDEP believes 22-30-5(b)(1) and (2) clearly establish the authority to establish criteria for the design and construction of tanks. The agency believes that to properly control design and construction, notification of t proposed tank prior to installation is necessary.

Comment #114 The commenter feels that the 30 day advance review and approval are overly restrictive as the work must already be done in accordance with industry standards and the proposed rules. He also notes there is no timeframe for WVDEP to complete its review and requests that this section be deleted.

Response: WVDEP disagrees with this comment. A notification prior to tank installation is a requirement associated with the UST program and has proved protective and beneficial to both the agency and tank owners / operators. WVDEP believes 22-30-5(b)(1) and (2) clearly establish the authority to establish criteria for the design and construction of tanks. The agency believes that to properly control design and construction, notification of the proposed tank prior to installation is necessary.

Comment #115 A commenter stated that the DEP should not impose a precise, numeric permeability standard as is defined in section 8.2.i.1 and that the DEP should adopt the definition of "impermeable" contained in the ACT.

Response: WVDEP disagrees with this statement and believes that a clear performance standard for the permeability of secondary containment is needed. Also, the agency does not believe that "impermeable" is defined in the AST Act as the commenter suggests.

Comment #116 The commenter would like the qualitative permeability standards (10⁻⁷ cm/sec) in 8.2.i.1 and 8.2.i.4 removed since the AST Act defines "secondary containment" to be "sufficiently impervious to contain fluids" and if earthen "for a minimum of 72 hours". In addition there is no quantitative language in the definition of "release prevention barrier" in the AST Act.

Response: WVDEP disagrees with this statement and believes that a clear performance standard for the permeability of secondary containment is needed. Also, release prevention barrier is defined in the rule. This term is an established concept found in industry standards applicable to ASTs.

Comment #117 A commenter suggested that the DEP change section 8.3, 8.4 and 8.6 to read "in accordance with manufacturer's or fabricators instructions or appropriate industry standard including, but not limited to, API standards." Another commenter suggested that the term, "if available" inserted after, "manufacturer's or fabricator's instructions" since for some existing regulated ASTs, these no longer exist in section 8.3 and 8.4.

Response: WVDEP believes the language that currently appears in the rule is both protective and achievable.

Comment #118 A commenter stated that piping connected to ASTs is already regulated, up to the first point of isolation; there is no need to specially reference it.

Response: WVDEP agrees with this comment and the reference to piping was removed from these sections.

Comment #119 A commenter stated that there is no reason to reference piping up to the first point of isolation as it is already regulated.

Response: WVDEP agrees with this comment and the reference to piping was removed from these sections.

Comment #120 The commenter states that the definition of "aboveground storage tank" already includes piping connected to the tank up to the first point of isolation so any specific reference to piping is redundant and any piping past the first point of isolation is beyond the scope of the AST Act. The commenter would like the separate piping references in 8.3.b and 8.3.c deleted.

Response: WVDEP agrees with the commenter and removed "the piping" from the text in 8.3b and 8.3c.

Comment #121 A commenter stated that not every tank needs to be equipped with a gauge. Use of a gauge stick could be sufficient to determine depth of tank contents.

Response: WVDEP disagrees with the commenter that a change is needed in the section because the text clearly indicates that "other measuring devices" can be used to meet the requirement.

Comment #122 The commenter notes that the wording in these two sections is inconsistent which leads to confusion. He suggests either deleting a section or rewording them for consistency. He also notes that the provision in 8.7.g concerning a valve requirement that is not applicable to a connection located at a point higher than the highest liquid level in the AST should also apply to 8.6.d

Response: WVDEP made a change in section 8.7.g to clarify that the "operating valve" meant a "shut off" valve.

Comment #123 A commenter stated that for consistency, references to "vents" should be changed to "venting". 8.3a mandates emergency vents for only regulated tanks storing flammable or combustible fluids. 8.6.e.2 require it for all ASTs.

Response: WVDEP disagrees with the commenter. Section 8.6.e.2 is a subsection of 8.6.e which clearly states that the requirement is for Regulated ASTs. WVDEP disagrees that a change from vents to venting is necessary in the text.

Comment #124 A commenter noted that Weak roof to shell tank designs are acceptable under API 653 and should not be prohibited.

Response: WVDEP agrees and deleted this requirement because it is allowed under NFPA; however, it should be noted that UL 142 does not allow for weak roof to shell tank designs in new construction.

Comment #125 A commenter suggested that the DEP clarifies that all of Section 8.7.a applies only to new and replacement piping.

Response: WVDEP disagrees with the commenter that is necessary to add anything to indicate that all sections of Section 8.7.a applies only to new and replacement piping. Section 8.7.a clearly states that it applies to new and replacement piping; therefore, it follows that 8.7.a.1 and 8.7.a.2 would apply to new and replacement piping.

Comment #126 A commenter noted that annual tightness testing for regulated piping will be difficult to perform. To perform tightness testing on the pipe there must be isolation points at both ends of the pipe. In the case of ASTs, in almost all cases one end of the pipe will be at the tank and the other end will be at the cutoff valve, which would be the first point of isolation.

Response: WVDEP would note that Section 8.7.e does not solely require annual tightness testing. The section allows for monitoring of double wall piping and allows other testing methods described in API 570. WVDEP clearly acknowledges that the piping that would fall under this section is the piping between the tank and the first point of isolation; however, WVDEP also recognizes that AST system configurations in WV vary widely and to assume that the first point of isolation occurs only a few inches from the tank is not an accurate assumption for some systems.

Comment #127 A commenter stated that installation of automatic line leak detectors may be difficult to impossible to install on all pressure piping systems. The commenter states that section 8.7.e should also allow the use of monitored double walled piping should.

Response: WVDEP agrees with the commenter and that is why WVDEP changed this Section after the same comment was made in 2014 during that comment period on the then proposed AST rule.

Comment #128 A commenter suggested that automatic line leak detectors required by section 8.7.e be limited to small bore pipe such as those used at retail gasoline outlets. The commenter also stated that they do not believe that this technology exist for large bore (6"-12") piping and that the methods listed by NWGLDE appears to be static leak detection and thus not sufficient to cover the proposed rule. One commenter requests this section be deleted or at a minimum the frequency be reduced, since he feels it is excessive and extremely difficult to perform.

Response: WVDEP disagrees with the commenter. Section 8.7.e offers multiple ways to comply with the requirements. The use of automatic line leak detectors is only one method.

Comment #129 A commenter noted that it is unclear meaning of "operating valve". WE assume this refers to a shutoff valve that is operable as opposed to a valve that may serve other purposes in governing fluid movement in and out of the tank.

Response: WVDEP agrees and "operating valve" was changed to "shut off valve".

Comment #130 A commenter noted that if all piping must have an annual tightness test, and API 570 is an acceptable alternative to pressure testing pipes, is there ever any need under this rule to pressure test pipes? The commenter recommends that section 8.7.i be deleted as unnecessary given the more specific requirements of 8.7.a through 8.7.h. If retained, the commenter would like more specificity as to exactly what tests are being referenced.

Response: The requirements of API 570 are acceptable in lieu of annual tightness testing. The commenter may be assuming that everyone has systems like their system or would manage their AST in a similar manner. WVDEP recognizes the numerous tank configurations that exist in WV

and are attempting to offer flexibility to the regulated community by allowing them to choose the method by which they would ensure that piping was not leaking.

Comment #131 The commenter suggests that for clarity, this section be retitled, "Criteria for Corrosion and Deterioration Prevention for Regulated ASTs."

Response: WVDEP disagrees with the commenter and will not make the suggested change.

Comment #132 A commenter stated that not all ASTs will require active corrosion prevention. Cathodic Protection is just one of the possible means of corrosion prevention, but some aspects of these sections (e.g. 9.2.g) suggest that cathodic protection might be required for all regulated tanks, particularly following upgrades. Another commenter states this section coupled with other provisions of the rule may be interpreted to apply to all tanks regardless of construction and are impractical to apply to existing tank bottoms

Response: WVDEP in attempt to clarify the commenter's concern has added the following text to Section 9.2., "To the extent that a cathodic protection system is used as corrosion prevention."

Comment #133 A commenter noted that Section 9.3.d and API 651 requires checking of impressed current system every year. Eliminate the every 3 year requirement.

Response: WVDEP disagrees with the commenter. The annual requirement is to check the leads and wiring associated with the rectifier used on an impressed current system. The three year requirement for testing is for CP testing of the anodes to determine if they need to be replaced.

Comment #134 A commenter stated that they were seeking confirmation that the 60 day checks on impressed current rectifier need not be performed by a NACE expert, but can be done by qualified plant personnel.

Response: WVDEP agrees with the commenter that checking the rectifier could be done by plant personnel but would note that Section 9.3c does not require a NACE expert to confirm the 60 days checks on the rectifier. A NACE corrosion expert is necessary for design and installation of impressed current systems.

Comment #135 A commenter that noted they didn't believe that coatings should be required for all regulated ASTs particularly if other corrosion prevention is being used.

Response: Section 9.4.a does not require all regulated ASTs to utilize coatings for corrosion protection if they are using other methods. WVDEP has added the following text (When exterior coatings are used as a means of corrosion protection) to the section in an attempt to clarify that coatings are one option that can be used for corrosion protection, not a requirement for all tanks.

Comment #136 A commenter stated that they do not believe that it is possible for anyone to ensure that a coating can permanently bond to an AST, as suggest in section 9.4.b.

Response: The intent is to ensure that the tank owner/operator uses a coating that is appropriate to the tank and can bond to the tank.

Comment #137 Commenter states this section is unworkable and cosmetic repairs would qualify as a "major modification" according to section 2.42 which they object to

Response: WVDEP disagrees with the commenter. First, this appears to be an old recycled comment relating to a previous version of the rule as the comment references the definition of major modification as being in section 2.42 which it is not. Furthermore, a cosmetic repair would not be a major modification. The definition of a major modification clearly indicates that the repair would have to "alter the original design of the AST system and may affect the structural integrity of that storage tank system" in order to qualify as a major modification. A cosmetic repair should not affect structural integrity of the AST.

Comment #138 A commenter stated that tank repairs under section 9.4 and 9.5 be carried out based on overall shell thickness and not in accordance with section 9.4.e.1 through 9.4.e.5 which details insignificant areas of rust spots or blisters.

Response: WVDEP agrees that shell thickness is extremely important as it relates to AST integrity and is certainly something that should be evaluated by the tank owner. However, section 9.4 and 9.5 are ongoing maintenance requirements to help prevent the AST from degradation processes that would eventually affect shell thickness and ultimately AST integrity. These requirements are consistent with industry standards such as API 2610 (Section 12.2.5.1.2) and are on checklist for inspection under both API 653 and STI SP001.

Comment #139 A commenter questioned the weakening of release prevention methods including transfer operations not continuously monitored, removal of secondary containment requirements for all but Level 1 tanks, changes of freeboard calculations from the 25 year, 24 hour storm event, no longer being required to keep certain leak detection records, and keeping secondary containment free of debris and vegetation.

Response: WVDEP disagrees that the changes weaken the rule. WVDEP believes that the changes offer flexibility and does reduce some paperwork, but does not adversely affect protection of public health and the environment.

Comment #140 The commenter suggests that for clarity, this section be retitled, "Criteria for Release Prevention Measures, Leak Detection and Secondary Containment for Regulated ASTs".

Response: WVDEP disagrees with the commenter and will not make the suggested change.

Comment #141 A commenter noted that spill and overfills that occur within secondary containment are not releases and are not subject to corrective action. The commenter feels that this section is redundant since it specifically refers to sections 6 and 7. He also states that if it retained that clarifying language be added to sections 6 and 7 so that they apply only to releases or threatened releases outside of secondary containment. He notes that a minor spill or overflow into secondary containment should not trigger these requirements.

Response: WVDEP agrees with the commenter that releases from spill and overflow that remain within the secondary containment are not subject to corrective action. However, WVDEP also recognizes that some spills and overfills may be very large and may escape the secondary containment. Furthermore, if a tank owner/operator has a defect within their secondary containment, even a small spill or overflow incident may cause a release to the environment thus requiring corrective action.

Comment #142 A commenter stated that requirements for secondary containment in section 10.2 should be based on risk and the impact of human health and the environment in the event of a release. The commenter also states that tanks that do not contain hazardous substances should be waived or that the Secretary could add exemptions under 22-30-25.

Response: WVDEP disagrees with the commenter that only tanks that do not contain hazardous substance should be waived for exemption. Chemicals other than those are designated on the List of Lists as hazardous substances have the ability to adversely affect public health and the environment. Furthermore, secondary containment for all tanks is required under the Groundwater Protection Rule (§47CSR58-4.8). The AST Act regulates level 1 and level 2 tanks which is designed based upon risk and potential impact to human health and the environment.

Comment #143 A commenter stated that requiring secondary containment within a few months of the effective date for the rule allows too little time for its constructions.

Response: WVDEP disagrees with this comment. It should be noted that the secondary containment requirements Groundwater Protection Rule (§47CSR58-4.8) is applicable to all ASTs at industrial establishments. This rule has been in effect since June 1, 1994. However, the use of compliance schedules to assist the regulated community in fulfilling certain regulatory requirements is an option the agency can explore on a case by case basis.

Comment #144 A commenter stated that section 10.2.i.2.G should be deleted as the industry standard is a dike capacity or 110% of the largest tank and most tanks subject to the regulation have dikes sized to meet the standard.

Response: WVDEP disagrees with the commenter. There is nothing that prevents a tank owner/operator from applying the rule of thumb of 110% provided that volume is sufficient to contain released materials. Ultimately, the tank owner/operator is responsible for ensuring that the secondary containment is sufficient to contain releases.

Comment #145 A commenter proposed the inclusion of an exemption to requirements for secondary containment if the professional engineer certifying the SPCC plan concludes that secondary containment is impractical. In addition the commenter referenced the Oil Pollution Control Act which does allow the a PE to certify the impracticality of secondary containment. The commenter further stated that 10.2.c is overly prescriptive and requires secondary containment to hold spill or storm water for 72 hours. The commenter mentioned that this holding time is not prescribed in the federal program. The commenter urged the WVDEP to delete the language, "but in no case will that time be less than seventy-two (72) hours." in order to provide consistency in the two programs.

Response: WVDEP disagrees with the commenter. The AST Act is not part of the SPCC program. Furthermore, WVDEP would note that SPCC applicability to a facility does not extend to all facilities simply because they have a petroleum product or because they have a SPCC Plan developed for the site. There are very specific criteria that subject a site to SPCC. The WV Groundwater Protection Rule (§47CSR58) requires secondary containment be adequately designed and constructed to contain materials for a time sufficient to allow removal and disposal without additional contamination of groundwater, but in no case will that time be less than seventy two hours. The Groundwater Protection Rule has been in effect since 1994.

Comment #146 A commenter stated that to be consistent with the statute, section 10.2.a should read as follows: the owner or operator shall ensure that all regulated AST's including piping and dispensing systems up to the first point of isolation have a secondary containment system that collects and contains and unintentional release from the AST."

Response: WVDEP has added clarification that this requirement applies up to the first point of isolation.

Comment #147 A commenter stated that the rule 10.2.d requires a set frequency of conducting inspections. The commenter urged the WVDEP modifies this rule to require owners or operators to conduct inspection consistent with the SPCC plan as prescribed by the Federal SPCC rule.

Response: WVDEP disagrees with the commenter. The AST Act is not part of the SPCC program. Furthermore, WVDEP would note that SPCC applicability to a facility does not extend to all facilities simply because they have a petroleum product or because they have on file a SPCC Plan. There are very specific criteria that subject a site to SPCC.

Comment #148 A commenter stated that the supposition appears to be that all secondary containment will be in a diked area. In some instances secondary containment will be double walled tanks or common drainage areas.

Response: WVDEP disagrees. WVDEP does anticipate that many secondary containment systems will be diked areas based upon information collected during the AST registration process; however, section 10.2 clearly indicates that other secondary containment systems are also anticipated.

Comment #149 A commenter suggested that section 10.2.e.1 should include embedded geosynthetic clay or other compatible liners and contain a provision to allow the secretary to approve other materials.

Response: WVDEP agrees that geosynthetic clay or other compatible liners may be appropriate but does not feel it necessary to change the text of the rule to add this in. The rule clearly states that the Secretary may approve other construction materials that are shown to be appropriate.

Comment #150 The commenter argued that WVDEP needs to maintain a level of continuity and consistency with the Federal SPCC program in reference to the permeability of secondary containment, rule 10.2.g. The commenter stated that the Federal SPCC program does not specify permeability requirements, only that it be "sufficiently impervious." A commenter pointed out that the definition in the West Virginia Storage Tank Act

defines secondary containment as sufficiently impervious at 1×10^{-6} while sections 10.2.f and 10.2.i redefine sufficiently impervious as 1×10^{-7} . Another commenter suggested that section 10.2.f adopt the definition of permeability/impervious that is contained in the Act.

Response: WVDEP disagrees with the commenter. The AST Act is not part of the SPCC program. Furthermore, WVDEP would note that SPCC applicability to a facility does not extend to all facilities simply because they have a petroleum product or because they have on file a SPCC Plan. There are very specific criteria that subject a site to SPCC. Impermeably or impervious is defined within the Rule and would be applied to secondary containment for new Level 1 tanks. Sufficiently impervious is defined within the Rule and applies to existing regulated tanks and to new level 2 tanks and is consistent with the AST Act. The numerical value for permeability was added as an alternative way to measure acceptable secondary containment as callers to DEP had requested guidance on how to determine the integrity of their secondary containment. By having a numerical value, a number of different test methods could be used to determine if the secondary containment was acceptable.

Comment #151 A commenter suggested that deficiencies and reporting of deficiencies that do not result in a release need not be reported as is consistent with the Federal SPCC program.

Response: WVDEP disagrees with the commenter. This section requires the reporting of defective secondary containment areas for Level 1 ASTs that cannot be repaired in a timely manner. Level 1 ASTs are high risk tanks and if they have faulty secondary containment they are of great concern to the WVDEP.

Comment #152 A commenter stated that the requirement to remove substances from a Level 1 AST as describe in section 10.2.g.1.A should only apply where there is a "probable, imminent and substantial endangerment to human health and the environment."

Response: WVDEP requires the reporting of situations where Level 1 ASTs have faulty secondary containment that cannot be repaired in a timely manner in order to protect public health and the environment. Upon notification of such an instance, WVDEP would work with the tank owner/operator to assess risk and determine the need to remove the contents of the tank as appropriate.

Comment #153 A commenter stated that many transfers are by fixed piping from one tank to another. Such piping is generally beyond the first point of isolation and therefore not subject to this rule.

Response: If piping is beyond the first point of isolation, it is not subject to the AST Act, but even the commenter concedes that not all piping affected by this section of the Rule is beyond the first point of isolation; therefore, WVDEP maintains that the requirements within the section are necessary to protect public health and the environment.

Comment #154 The commenter feels that the qualifier from 10.1.a.1 that an AST at an "oil and gas site that is connected directly to a pipeline or a well is not subject to constant monitoring" should apply to Section 10.2.g.1.c.

Response: WVDEP disagrees with the commenter. Section 10.2.g.1.c addresses the instance where a determination that the secondary containment is faulty for a Level 1 tank and cannot be repaired in a timely manner. In this situation, the AST would need to be emptied if it is determined to pose a risk to public health and the environment and having a person on site to oversee a transfer in this situation is fully warranted.

Comment #155 A commenter stated that double-walled tank systems without secondary containment on piping and ancillary equipment are standard installations and that this type of installation does not have a history of releases to the environment. Therefore requiring secondary containment of piping, dispensers, and ancillary equipment should be deleted from section 10.2.h. Another commenter urged DEP to eliminate the requirement for continuous monitoring of the interstitial space in double walled ASTs under Section 10.2.h because it is a hardship and not required under SPCC. A commenter stated that the requirement for secondary containment structures of "piping, dispenser and ancillary equipment" should apply to only the first point of isolation.

Response: A double walled tank system serves as secondary containment for the tank as long as it is monitored; however, releases could occur from attached piping and ancillary equipment that is located up to the first point of isolation. Therefore, this piping and ancillary equipment must have some form of secondary containment. In regards to the requirements of the SPCC program, it should be noted that the SPCC program is not part of the AST Act or Rule. WVDEP did consult with the SPCC regulations, industry standards, and AST rules from other States to create the AST Rule. Conflicts between these different regulations and standards occurred at times and WVDEP determined what they felt was most appropriate requirement in order to protect public health and the environment.

Comment #156 A commenter urged the WVDEP to exempt tanks from requiring a PE to design and certify secondary containment where the Federal SPCC regulation already requires a PE to certify the SPCC plan.

Response: The section of the rule clearly states that the design should be performed by a PE or other qualified person.

Comment #157 A commenter suggested amending that last sentence of section 10.2.i as follows: When a determining the largest AST in a containment area, the combine capacity of manifolded tanks must be considered unless there is a valve or other device which is capable of isolating one tank from the other(s).

Response: WVDEP disagrees with the commenter. The presence of a valve does not prevent an overflow of the secondary containment if a release occurs in one tank and drains the tanks manifolded to it. WVDEP has seen instances where these valves have been physically locked open. Furthermore, even if a valve was not locked open, the ability to enter the secondary containment to shut off the valve during a release may not be feasible; therefore, WVDEP maintain that considering the combined capacity of the manifolded tanks is appropriate and protective of public health and the environment.

Comment #158 A commenter stated that flapper valves should not be prohibited but be allowed wherever a discharge through them would not be a "release".

Response: WVDEP agrees in part with the commenter and has modified the language to indicate that flapper valves are prohibited unless the discharge to a wastewater treatment system

Comment #159 A commenter stated that the imposed requirements for external liners in Section 10.2 exceeds the scope of the federal program and urges the WVDEP to leave requirements for external liners to good engineering practices. Furthermore, the commenter urged the WVDEP to mirror the Federal SPCC and not mandate the removal of stormwater as required in section 10.2.k but continue to require the maintenance of the freeboard.

Response: WVDEP disagrees with the commenter that a change is needed in the section. The AST Act is not part of the SPCC program. WVDEP did consider the requirements of the SPCC program and did incorporate some of those requirements when appropriate.

Comment #160 A commenter stated that tank owners remove fluids from secondary containment on a regular basis, generally after a precipitation event. Keeping track of every discharge for a year is unnecessary recordkeeping. A commenter states that a written log of discharge events from a secondary containment should not be required, as is in section 10.2.k, when a discharge is being routed to a treatment facility.

Response: WVDEP agrees with the commenters and removed the requirement to keep a log of the discharges.

Comment #161 A commenter stated that three months to ensure all tanks have a secondary containment at a given facility is an unreasonable timeline given in section 10.2.l.1; especially for tank installs that previously did not require a secondary containment do to that fact that they do not hold hazardous substances. The commenter suggests extending the deadline to June 30th, 2017, for level 1 tanks and December 31st 2017 for level 2 tanks. Other commenters suggested that the length of time to upgrade containment in sections 10.2.l.1 and 10.2.l.2 be lengthened to the time period for upgrading leak detection.

Response: WVDEP disagrees with the commenter. The WV Groundwater Protection Rule (§47CSR58) requires secondary containment be adequately designed and constructed to contain materials for a time sufficient to allow removal and disposal without additional contamination of groundwater, but in no case will that time be less than seventy two hours. The Groundwater Protection Rule has been in effect since 1994; therefore, the commenter is incorrect when saying that secondary containment was not previously required because the substances in the tank are not hazardous. As for commenters concern that the amount of time to perform upgrades is insufficient, the Agency believes that the need for protection of public health and the environment must be considered in determining deadlines for compliance. Formal Administrative Orders that include a compliance schedule offer a mechanism for extension of deadlines, if needed. The need for this will be evaluated on a case by case basis.

Comment #162 A commenter stated that exemptions from the Secretary under 22-30-25 should be permitted in section 10.3 for tanks that contain non-petroleum, non-hazardous substances. As well, leak detection requirements should be risk based. A commenter stated that leak detection requirements of the rule will be difficult to comply with as product could be moving in and out of a tank on a continuous basis. In addition the commenter stated that breathing losses or temperature changes on large tanks are an impossible standard.

Response: Adequate leak detection is a hallmark of effective tank management and regulation. In developing the AST Rule, WVDEP relied heavily upon AST Rules from various states (especially Delaware and Pennsylvania) and various AST Industry Standards

Comment #163 A commenter suggest that annual tightness testing be included on the list of acceptable forms of leak detection in sections 10.3 and 10.3.e. Another commenter stated that the criteria for tank tightness testing are set out in 10.3.f, but tank tightness is not one of the specified means of leak detection in 10.3.e. Is the DEP requiring tank tightness testing for all tanks? Amend the section by adding tightness testing as one of the acceptable release detection methods.

Response: WVDEP has added annual tightness testing with inventory control as stated in the AST Act.

Comment #164 The commenter states that additional leak detection methods in 10.3.e should also be excluded here as they are unlikely to have manufacturer's specifications. He believes that the requirement to follow manufacturer's specifications only applies when those specifications exist. A commenter was concerned about specs on performance standards for equipment.

Response: Manufacturer specifications for leak detection would only be required to be utilized if the specifications existed; however, leak detection equipment generally has some specification associated with it. Also, the section of the Rule allows sufficient flexibility for the tank owners to develop and submit performance standards for their leak detection method(s).

Comment #165 A commenter suggested that visual inspections should be an acceptable for of leak detection in section 10.3.c, especially in cases where a sufficiently impervious containment area exists as leaks would be readily visible.

Response: WVDEP agrees in part with the commenter in that visual inspections should be allowed in cases where a release can be visually seen and this is allowed with the Rule. WVDEP has concerns that tanks resting directly on the ground may leak and go undetected for a long period of time. The commenter would seem to indicate that if the secondary containment system is sufficiently impervious this should be acceptable; however, it is worth noting that a large number of registered ASTs are old and that the secondary containment provisions of the Groundwater Rule (47CSR58) were promulgated in 1994. At that time, secondary containment structures were constructed around tanks but that containment doesn't extend in all cases to below the tank.

Comment #166 A commenter suggested amending section 10.3.c as follows: visual testing is an acceptable form of leak detection for regulated AST's so long as (a) the entire area of concern (e.g. the entire AST, including the AST bottom or above ground piping, flanges, valves, etc.) is readily accessible for view and properly illuminated by natural or artificial light at the time of the visual inspection or (b) any areas not readily accessible, such as tank bottoms, are located in sufficiently impervious secondary containment areas which are subject to frequent visual inspection for leaks. Visual test may be performed remotely by using mirrors, cameras or other suitable instruments. Another commenter feels that the requirement in the introductory statement that the AST bottom be "readily accessible for view and properly illuminated" is unnecessary and inappropriate for methods that channel fluids to an area for observation (10.3.c.1 and 10.3.c.2) since you are

no longer observing the tank bottom itself, but viewing the observation area which will be accessible for view and properly illuminated.

Response: WVDEP provided clarification to Section 10.3 to address the commenters concerns that allows for viewing an observation area is acceptable if the system is designed such to channel a leak to an area for observation.

Comment #167 A commenter stated that there are a wide range of different types of leak detection that might not be encompassed by the language of the rule.

Response: WVDEP agrees that a wide range of different types of leak detection might be utilized.

Comment #168 A commenter stated that section 10.3.e should be amended to add two new subsections as follows: 10.3.e.8 inventory control, 10.3.e.9 Tank testing, and that the current subsection 10.3.8 should be changed to 10.3.e.10 as these leak detection methods are recognized in the Act; 22-30-5(b)(3).

Response: WVDEP agrees in part with the commenter and has added in section 10.3.e.8 to read "inventory control system together with tank testing" as it is stated in the AST Act.

Comment #169 The commenter requests clarification from WVDEP to know if visual inspection will be considered acceptable even if all of the conditions from 10.3.c are not met for existing AST upon the effective date of the Rule. 10.3.m.1, 10.3.m.2

Response: Section 10.3.c allows visual inspection via differing scenarios but if a tank owner or operator cannot see leaks from the AST then visual inspection would not be considered acceptable.

Comment #170 A commenter stated that non-operational and TOS tanks should be combined and there should be no prohibition against using a non-operational tank in the future should it comply with the legislative rule. Furthermore the commenter does not believe that all the maintenance, corrosion protection, inspections, and leak detection required by the proposed rule should apply to TOS tanks. A commenter stated that DEP has no authority under the AST act to declare tanks to be "nonoperational" other than in those situations where the tank does not meet tank criteria set in accordance with the Act or these rules. Another commenter suggested that the section on non-operational tanks be deleted as they are not regulated tanks.

Response: WVDEP disagrees that there should be no prohibition from using a non-operational tank in the future. By definition, non-operational tanks cannot be utilized again because it clearly states that to be non-operational the tank must have been empty and would not have material put into it or removed from it after the effective date of the Act (June 12, 2015). WVDEP agrees that much of the non-operational section should be removed but not deleted in its entirety. Also, WVDEP agrees that some changes to the TOS section were needed.

Comment #171 A commenter stated that there is no provision in the AST act for regulating tanks that are TOS. Regulated tanks that are TOS may be holding contents but aren't moving contents in and out according to the definition of TOS in 2.64. These tanks are storing fluids, which is the purpose of an AST. Regulated

tanks that meet the requirements of the Act should be able to store fluids forever, as long as they meet the standards of the DEP. Justify requiring a notification of a change in tank status if there is no movement in or out of the tank for 6 months.

Response: WVDEP has changed the requirement to notify of the TOS status from 180 days to one year. The importance of knowing the operational status of an AST goes back to the Risk that the AST presents. WVDEP has removed the requirement to remove tank contents has left requirements for leak detection, corrosion protection, inspection, etc.

Comment #172 A commenter urged the WVDEP to let AST owners manage their AST's in accordance with WVDEP's regulations, and leave out requirements for notifying when AST's are "nonoperational" or "TOS". The commenter noted that AST's are subject to the same continuing maintenance and inspections requirements regardless of if they are or are not considered TOS AST's. The commenter also stated that requiring regular annual inspections as well as an additional annual inspection when TOS AST's are put back in service is internally inconsistent within the TOS section. The commenter stated that if the WVDEP intends on conforming the AST program to the UST program it is a mistake do to the nature and differences of AST and UST. Another commenter stated that the entire section of 11.2 is confusing and should be rewritten. Another commenter felt as long as monthly leak detection, cp, and annual inspections were performed a TOS tank should be allowed to remain so indefinitely. He feels the requirement to "reuse, treat or dispose of the AST system contents in accordance with State and Federal requirements" is an unnecessary disruption in operations. He feels status should not matter as long as the tank is maintained in accordance with the proposed rules, especially if the owner continues CP, monthly leak detection, and annual inspections (11.2.a.2, 11.2.a.4, 11.2.a.5). A commenter stated that the requirement to empty the AST under section 11.2.a.3 should be deleted. A commenter stated that the inspection and testing frequencies should be no more frequent than required in 47-63-5.

Response: WVDEP has removed the requirement to empty the TOS AST but the tank owner/operator must understand that requirements remain for performing leak detection if material is left in the tank. WVDEP revised some of the testing and inspection requirements for TOS tanks.

Comment #173 A commenter requested that the WVDEP revise the definition of temporarily out of service in section 11.2 as follows: "The shutting-in or work over of an oil or natural gas well shall not render any of its associated aboveground storage tanks "temporarily out of service" for purposes of this Rule during the period that the well is shut-in or work is being performed on the well." The commenter stated that this language would clarify that such suspension in production will not trigger a change in the status of an AST.

Response: WVDEP disagrees with the commenter. If the tank is not receiving or dispensing product but its use is intended in the future, it's status would be TOS regardless of whether it is at an oil and gas site or a chemical facility.

Comment #174 A commenter stated that section 11.4.a should only apply to permanently closed AST and that a provision should be included to allow closed AST's that are properly labeled and marked to remain on site without being rendered unusable. Another commenter stated that rule 11.4.h should allow capped and labeled AST's to remain onsite without being rendered unusable.

Response: Section 11 applies to a tank going through the process to render it permanently out of service; therefore, the assumption in 11.4.a is that the tank has not yet undergone closure. WVDEP disagrees with the commenter that a permanently out service tank does not need to be rendered incapable of holding liquids. WVDEP maintains that a permanently closed tank must be dismantled or otherwise made incapable of holding liquids to be considered permanently closed.

Comment #175 The commenter suggests that the wording "all tanks taken out of service" should be changed to "all tanks permanently taken out of service" or "all tanks permanently closed" to avoid confusion.

Response: WVDEP agrees and has made the suggested change.

Comment #176 A commenter suggested that required closure activities be outlined in 47-63-11 as guidance developed by the Secretary has not gone through the public notification and comment process.

Response: WVDEP disagrees with the commenter that specific sampling criteria and standards for cleanup will vary with each site and chemical compound. It is just not practical to put this information into the Rule. The general procedures for closure are outlined in the Rule.

Comment #177 A commenter stated that the closure of all AST's should not be treated the same. A simplified closure process for small AST's (less than 2000 gallons) should not require a PE or a person certified in API or STI.

Response: WVDEP disagrees with the commenter. WVDEP is uncertain why the commenter feels that tanks under 2000 gallon should be provided an exemption on oversight for removal. The concern is for safety and an AST of 1890 gallons would have the same safety concerns as a 2100 gallon AST.

Comment #178 A commenter stated that the testing requirement for "areas where contamination is most likely" appears to be a solution looking for a problem. If the AST is closed, following all RCRA cleaning/disposal procedures, and no contamination is noted, no report should be required.

Response: WVDEP disagrees with the commenter. First, RCRA cleaning/disposal procedures may not be applicable to all tank closures. Second the wording used by WVDEP was to provide flexibility to sampling protocol, if it was needed.

Comment #179 A commenter stated that the closure of all AST's should not be treated the same. A visual inspection of the ground around small AST's (under 2000) should be permitted instead of sampling.

Response: WVDEP disagrees with the commenter. The size of the tank has no relation to the toxicity of the material stored within the tank.

Comment #180 The commenter suggests that section 12.1 be deleted entirely and all references to delivery prohibitions be removed since similar language was proposed in the AST Act and rejected and would therefore be an overreach of authority. Another commenter stated that delivery prohibition is outside the authorization of the AST Act. The burden should be place on the owner/operator for knowingly receiving product in an unregistered tank. Another commenter urged the WVDEP to delete section 12.1 in its entirety

as there is no reason to require paperwork for each tank to be made available for every delivery. The commenter stated that it should be sufficient to hold owners and operators accountable.

Response: WVDEP disagrees with this comment. Section 23 of the Act authorizes the promulgation of rules as necessary to implement the provision of this article. Valid registration and financial responsibility are two provisions of the AST Act that WVDEP considers essential to successful tank regulation. By mandating that product deliverers / transporters confirm compliance with these two critical requirements prior to placing material in a tank, WVDEP believes that it will promote voluntary compliance by tank owners. It should also be noted that the certificate to operate as well as most insurance policies are issued on an annual basis. This will allow for compliance verification of an AST once per year by a product deliverer / transporter central office or dispatcher, not prior to each and every delivery by an individual truck driver. Generally, ineligible tanks can be quickly identified by the agency through data analysis.

Comment #181 Commenter states that the bonding section of the rule as concerns financial responsibility is unsupported by the legislative statute.

Response: WVDEP disagrees that allowing bonding as a financial responsibility mechanism is inconsistent with the Act. The Act gives the Secretary suggestions of some financial responsibility mechanism but clearly indicates that it is not all that is allowed.

Comment #182 The commenter requests clarification as to the financial responsibility being attached to the owner or operator since at times these are different entities. Commenters stated that oil and gas industry is already subject to the financial bonding regulations of 22-6-1 and 22-6A-1 and that this be accepted as satisfying the financial responsibility requirements. If the WVDEP declines to accept that bonding, the commenter requests that section 13 be amended to allow for a blanket bond based on total number of tanks in service.

Response: The owner or operator must have financial responsibility. The decision on which one that will maintain the financial responsibility is an issue between the tank owner and operator because these two entities have a business arrangement to which WVDEP is not privy. WVDEP would consider both the owner and operator in violation if the owner/operator has an AST for which they do not have financial responsibility.

Comment #183 A commenter stated that the financial responsibility requirement at section 13 is disproportionately harmful to owners that have one small AST located at many different sites. The commenter further stated that an owner with many small sites would have a financial responsibility far greater than someone with the same number of tanks located at one large site. A commenter stated that if the existing bond programs are not utilized for financial responsibility that they urge the WVDEP to modify the definition of "facility" at 2.23 by inserting at the end of the second sentence the following: "and section 13 "financial Responsibility Requirements."

Response: All forms of financial responsibility used for compliance with the AST act must be for taking corrective action for releases as required by the AST Act. Bonding is but one of the many mechanism that may be utilized to accomplish compliance with the Act.

Comment #184 The commenter feels that both the financial test and guarantees provided by a corporate parent, sibling, or grandparent should be added to the list of acceptable mechanisms in 13.2 as found in 13.3.d

Response: WVDEP does not believe that is necessary the Rule allows for other forms approved by the Secretary.

Comment #185 A commenter requested that section 13.2.f be amended by deleting the words "for performing corrective action" in order to allow the use of insurance for the general financial responsibility obligation established in section 13.

Response: WVDEP disagrees with the commenter. The Act clearly notes that the purpose of the financial responsibility is for corrective action not general coverage.

Comment #186 A commenter request that the proposed rule clarify the process by which a site can be designated a Level 1 tank including a formal determination based on a high potential for harm due to contents, size and shape and that this determination should be made by order, entered after notice and an opportunity for objection and a prompt hearing before the Secretary and should be subject to appeal before the EQB

Response: WVDEP disagrees with the commenter as these determinations would need to be made on a case by case basis and it would not be possible to cover all situations within the rule.

Comment #187 Commenter stated that in addition, the fiscal note included with the proposed rule fails to address the economic impact of the proposed rule on persons affected by the rules and regulations as required by statute. The DEP should evaluate the economic imposed by the proposed rule on "persons affected by the rules" including the regulated community. The commenter stated that the economic impact of the requirements imposed by the proposed rule will be unmanageable for many smaller operations.

Response: WVDEP disagrees with the commenter. The commenter has cited a particular statutory provision he believes requires the WVDEP to consider the economic impact of the proposed interpretive rule. The requirement is that all rules include a fiscal note "and a statement of the economic impact of the rule on the state or its residents." Notwithstanding whatever interpretation is given the cited language, the WVDEP does not have the ultimate authority to decide what information must be included in a fiscal note for rules. Rather, the Secretary of State's office and the Legislative Rulemaking Review Committee are responsible for designing the fiscal note form and specifying its contents. The Secretary of State and the legislative committee are using the same form as is used by the Legislature for the passage of Act. The WVDEP has used the appropriate form and it does not include any requirement for assessing economic impact upon the regulated public or citizens of the State. It only requires the agency to provide an assessment of potential impacts upon State government.

Comment #188 Commenter stated the oil and gas industry has demonstrated that oil and gas operations, including the use of AST's, is safe and does not pose a significant risk of adversely impacting public water supplies or valuable water resources. The commenter urges the WVDEP to carefully consider minimizing and eliminating to the extent possible, the regulatory burdens on AST's containing oil or brine water having a capacity of 400 barrels or less.

Response: Tanks associated with oil and gas exploration and production have the potential to impact public health and the environment. Based upon AST registration information there are a number of oil and gas tanks within zones of critical concern and source water protection areas. Consistent with the AST Act, WVDEP believes it is important to regulate these tanks in order to protect public health and the environment.

Comment #189 A commenter believes that there is very little difference between the requirements for Level 1 and Level 2 tanks other than time to implementation and frequency of inspections. The commenter requests that WVDEP reassess the requirements for a Level 2 tank.

Response: WVDEP disagrees with the commenter and believes the requirements are appropriate, achievable, protective to human health and the environment, and complies with the intent of the Act.

Comment #190 A commenter noted that Cathodic Protection requirements for tanks should be left to a NACE expert. It is prohibitively expensive to remodel existing tanks with double bottoms or raised supports. This requirement is reasonable for new tanks.

Response: The AST rule does not require that existing tanks be remodeled to include double bottoms or raised supports. WVDEP agrees and indicates clearly in the rule that a NACE certified corrosion expert should design and install corrosion protection systems.

Comment #191 Commenter states many ASTs at mining sites are on "skids" or "saddles" but should be treated as mobile tanks.

Response: WVDEP has made clarification to the definition of mobile tanks.

Comment #192 Commenter states that water treatment tanks at mine sites should be considered as "process vessels" and that the definition of process vessel be clarified to show this.

Response: WVDEP disagrees with the commenter. Process vessel has the meaning given to it in the AST Act.

Comment #193 Commenter states the rule presents an unreasonable level of prescriptive mandates and the agency should eliminate many approval/notification requirements.

Response: WVDEP disagrees with the commenter. WVDEP believes that the AST rule requirements are appropriate, achievable, protective to human health and the environment, and complies with the intent of the Act.

Comment #194 Commenter states WVDEP definition of "tank" has caused tanks excluded by the legislature to now be subject to regulation. Commenter states WVDEP has expanded the number of ASTs to be regulated contrary to the intent of the legislation.

Response: WVDEP disagrees with the commenter. If a tank is not subject to regulation under the AST Act, it is not subject to the Rule.

Comment #195 Commenter states WVDEP will unfairly wield control over virtually every aspect of a facility's operation, maintenance and ownership if there is an AST on site.

Response: WVDEP disagrees with the commenter and believes the AST rule requirements are appropriate, achievable, protective to human health and the environment, and complies with the intent of the Act.

Comment #196 Commenter states WVDEP has overcomplicated the requirements for demonstrating "adequate financial resources".

Response: Financial responsibility for taking corrective action is very complicated as is evidenced in other regulatory programs. WVDEP attempted to simplify the process as much as possible as well as offer flexibility to the regulated community.

Comment #197 Commenter states that WVDEP ignored existing programs and requirements creating duplicative and conflicting requirements. Commenter states mining sites are already extensively regulated and requests that the agency be mindful of this when implementing the new rule.

Response: WVDEP disagrees with the commenter that they ignored other existing programs. While a facility may be regulated by other sections of WVDEP and/or the Federal Government, the regulation of AST, especially the integrity inspections of ASTs, is lacking in many of the programs.

Comment #198 Commenter states WVDEP needs to revise the rule to properly reflect the statutory definition of "release". The commenter states WVDEP has expanded the meaning of "reportable release" beyond that contained in the AST Act.

Response: WVDEP disagrees with the commenter that "release" needs to be defined in the Rule nor does WVDEP believe they have expanded the meaning given in the AST Act. Reportable release is not defined within the AST Act, "release" is defined. WVDEP's approach in the Rule is to be proactive but not overly prescriptive in requirements for reporting of "suspected or threatened releases" which may be what the commenter is alluding to when they indicate that DEP has expanded the meaning of "reportable release". WVDEP believes that reporting of Level 1 and Level 2 ASTs that pose a threat to public health and the environment complies with the intent of the ACT.

Comment #199 Commenter states the rule creates an endless cycle of submission and approval of paperwork which is impractical and untenable. The Commenter urges WVDEP to consider eliminating some of the administrative and paperwork requirements. Commenter states AST program appears more focused on bureaucratic process than environmental protection.

Response: WVDEP disagrees with the commenter, but would note that the recordkeeping requirements of the Rule had been reduced from previous draft versions of the Rule. The program is focused on protection of public health and the environment and proper documentation is one means by which the Agency is able to ensure these protections.

Comment #200 Commenter states a standalone AST regulation is consistent with legislative intent and should be developed independently of the UST regulations. The commenter further stated transplanting the UST program into the AST rule is a mistake.

Response: WVDEP did develop the AST Rules separately from the UST rules; however, WVDEP recognizes that there is overlap between USTs and ASTs and used some of that knowledge in developing the AST program. WVDEP would note that EPA reports frequently address how well the UST program in WV works; therefore DEP chose not to ignore the successes in the UST program that could translate into the AST program. Many of the requirements found in the AST Rule are from AST Industry Standards (such as API, STI, NFPA, NACE, PEI, and UL) and AST regulations from other States (most notably Pennsylvania and Delaware).

Comment #201 Commenter states the rule should not treat all ASTs as if they are metal or steel.

Response: The AST Rule does not treat all ASTs if they are metal or steel.

Comment #202 Commenter states sign size is arbitrary and should not matter if all of the informational requirements are met.

Response: WVDEP disagrees with the commenter that signage requirements are arbitrary. The signage requirements come from the AST Act and the signage requirements of the NPDES permit program were used in the development of the Rule. WVDEP did make a change in the rule to allow signage of 18" x 24" instead on 24" x 24".

Comment #203 A commenter suggested that definitions used within the act be added to the rule to provide easier understanding without the reader going back and forth between two documents.

Response: Upon advice of Legal Counsel, WVDEP did not restate the AST Act's definitions within the AST Rule.

Comment #204 A commenter stated that they still believe that the best method of leak detection and prevention is the rigorous application of the API Publication 653 inspection protocols.

Response: WVDEP disagrees with the commenter and believes the AST rule requirements are appropriate, achievable, protective to human health and the environment, and complies with the intent of the Act.

Comment #205 A commenter stated that all AST's used at oil and gas well sites are subject to oversight by WVDEP's Office of Oil and Gas as well as subject to the regulatory requirements of 35 C.S.R 1, 35 C.S.R 4, and 35 C.S.R. 8. Thus the commenter urges the WVDEP to also accept spill prevention plans developed in accordance with 35 C.S.R. 1 in lieu of SPR Plan and modify the Proposed Rule accordingly.

Response: The Rule allows for Plans that have previously been submitted subject to the Interpretive rule to be allowed; therefore, WVDEP does not believe it necessary to make additional changes in the section to acknowledge this.

Comment #206 A commenter believes that owners and operators of AST's should be afforded the right to evaluate and comment on any changes to a ZCC before such changes are implemented by WVDEP because having an AST in the ZCC has significant regulatory requirements. Thus the WVDEP should provide public notice and opportunity for comment on or after June 12, 2015. A commenter requests confirmation that the zone of critical concern encompasses any public surface water influenced groundwater supply source areas and that there are public surface water influenced groundwater supply source areas separate from, or not included within, the areas of critical concern. Additionally the commenter suggested that the comment period remain open until the zones of concern are entirely defined or allow for some process of amendment.

Response: WVDEP disagrees with the commenter. WVDEP has no control over the determination of the ZCC. The determinations of the ZCC are made by the Department of Health and our based on a mathematical model. Questions concerning these models and their calculations would need to be addressed with the Dept of Health. The comment period cannot be extended as it set by WV Statue.

Comment #207 A commenter especially liked strengthening the rules on the SPRP plans under 47-63-5.

Response: WVDEP thanks you for your comment.

Comment #208 A commenter stated that under 47-63-6 it is absolutely necessary for water utilities to know immediately of any confirmed releases.

Response: The Section does not require notice to public water utilities but does require notification to county emergency management officials who can relay information to the potentially affected water utilities.

Comment #209 Two commenter's asserts that non-operational tanks should be excluded from all rules as opposed to only sections 5, 8, 9 and 10 of 47 CSR 63.

Response: WVDEP agrees in part with this comment. It should be noted that non-operational tanks are not specifically part of the Civil Administrative Penalty Rule (47 CSR 65) or the Fee Assessment Rule (47 CSR 64). WVDEP believes that non-operational tanks must remain subject to the registration requirements of Section 3 of the draft AST Rule in that it is mandated by Section 4 of the AST Act that requires an inventory be compiled of all ASTs in WV. WVDEP will amend 47 CSR 63 to reflect the change to show that nonoperational tanks are subject to registration and signage requirements.

Comment #210 A commenter stated that DEP has not provided criteria for raising or lowering the level of a tank. DEP should only be allowed to change a level 2 AST to level 1 AST.

Response: WVDEP disagrees with the commenter that the DEP should only be allowed to change a Level 2 AST to a Level 1 AST. It should be noted that Section 1.5.b states that the Secretary may designate a change in level "If necessary to protect public health or the environment."

Comment #211 A commenter suggested that 1.5.c be amended by adding "Section 6 (Reporting and Recordkeeping) and Section 13 (Financial Assurance)" to the first sentence. The commenter also suggested

adding "AST's which are temporarily out of service are not subject to sections 5,6,8,9,10 and 13 unless and until they are certified as fit for service and the owner or operator places them in service for the storage of fluids."

Response: WVDEP has made change to section 1.5.c to indicate that only registration and labeling applies to nonoperational tank; however, WVDEP disagrees with the commenter that a nonoperational tank can ever be placed back into service after it has been declared nonoperational.

Comment #212 Commenters requested that "unless the Secretary otherwise approves" be added to the end of section §1.6.m..

Response: WVDEP agrees with the commenters and has made the suggested change.

Comment #213 Commenter states that professional standards should be the focus of the AST rule and not merely referenced and displaced by the AST rule.

Response: WVDEP disagrees with the commenter that the AST Rule merely references standards. In many instances the requirements of the AST Rule are taken directly from industry standards.

Comment #214 The commenter is unsure how this will be applied in practice since the proposed rules regularly require compliance with both the rule and manufacturer's recommendations and industry standards. This makes it difficult to know which standard to apply at which time. He states that this is particularly true in section 4.2 which allows modification to match industry standards, but then 1.6.m requires them to meet the proposed rules as well.

Response: WVDEP disagrees with the commenter that there is a conflict between section 1.6.m and the ability for a tank owner to have tank conditions placed within their permit. The commenter seems to make the assumption that the AST rule isn't derived from industry standards which is inaccurate. The tank owner going the permit route as outlined in Section 4.2 will have to specify exactly what standards and those will have to be approved by DEP and incorporated into their permit/plan.

Comment #215 A commenter requests that the definition in section §2.2.3. remove the phrase, "or that has contained" from the definition so that it reads as such, "a location that currently contains or that has contained an AST system, including any that is located on the same or geographically contiguous property as the AST system that is under the same ownership or control, and that may be divided by a public or private right of way or an easement. The commenter goes on to request that the same concept be applied to financial responsibility such that the second sentence be revised to read, "However, oil or gas entities with multiple tanks at various locations may consider their or their operator's company office or laydown yard as their facility location for purposes of AST registration in Section 3, and may consider their aggregate Level 1 and Level 2 tankage as their facility for purposes of the financial responsibility requirements in section 13.

Response: WVDEP has made a change in the definition of Location to provide clarity to the definition.

Comment #216 Commenters requested that "buried or submerged" be deleted from the definition of cathodic protection tester and corrosion expert.

Response: WVDEP agrees with the commenter and removed the text.

Comment #217 The commenter requests that the language at the end of the first sentence in section §2.4 be changed to "as applied to buried or submerged metal piping and tank systems in direct contact with soil or other electrolytes" for consistency with sections 9.2.b and 9.3.b.1

Response: WVDEP agrees with the commenter and removed the text.

Comment #218 Commenter states definition of "change in service" is too broad and causes undue paperwork resulting from normal operations of an AST at a mining site.

Response: WVDEP disagrees that the definition is too broad. Furthermore, WVDEP has created modification module for the electronic registration system which eases the burden of reporting changes in service.

Comment #219 A commenter stated that the definition should not state that dispenser systems be part of an AST if found after the first point of isolation.

Response: WVDEP does not believe that is necessary to state this in the rule because the AST Act specifies that the Act only applies up to the first point of isolation.

Comment #220 Commenters suggested that the definition for facility requires changes because it describes a facility as a location and the definition of a location refers back to a facility; it was stated that "Facility" should be redefined to a "location at which there was, is, or will be an AST". Otherwise the part that refers to the movement of an AST to a "facility" in which there never has been an AST makes no sense. A "facility" is a location in 2.23 and a "location" is a facility in 2.34.

Response: WVDEP agrees with the commenters and has made changes to the definition.

Comment #221 A commenter stated that the definition of "facility" In relation to oil and gas facilities needs to be stated more clearly. Recommend to describe oil and gas facilities as "containing ASTs, very often oil and gas wells, and the piping between them". When it comes to the separation of parcels at an oil production facility and the individual nature of lease agreements, each tank battery could be considered a separate facility and be required to keep a separate SPCC.

Response: WVDEP disagrees with the commenter that the definition of "facility" needs to be change in relation to oil and gas facilities. WVDEP did make some minor changes to the definition of "facility" in order to provide clarification on the definition.

Comment #222 A commenter stated that the definition of "impermeable or impervious" in sections 2.26 and 2.27 are inconsistent with the definition of "sufficiently impervious." The commenter suggested deleting or modifying the terms to conform to the definition of sufficiently impervious.

Response: WVDEP disagrees with the commenter. Impermeably or impervious is defined within the Rule and would be applied to secondary containment for new Level 1 tanks. Sufficiently impervious is defined within the Rule and applies to existing regulated tanks and to new level 2 tanks.

Comment #223 One commenter believes that the definition of Impermeable or Impervious be revised to remove the numerical standard of 1×10^{-7} . Others stated that an impermeable or impervious material with a permeability of less than 1×10^{-7} cm/sec, as defined in section 2.27, would be very difficult standard to meet. It was further stated that there is nothing in the Act that requires or suggests that the WVDEP establishes a precise, numeric permeability standard and that the rule should adopt the language in the Act as "sufficiently impervious to contain fluids."

Response: WVDEP disagrees with the commenters that a change is needed in the definition. The numerical value for permeability was added as an alternative way to measure acceptable secondary containment as callers to DEP had requested guidance on how to determine the integrity of their secondary containment. By having a numerical value, a number of different test methods could be used to determine if the secondary containment was acceptable.

Comment #224 The commenter believes that the definition should be changed to reflect that some casings or wrappings may be waterproof and feels the definition should read as, "...is separated from the soil or electrolyte only by a casing, wrapping or other material that is not waterproof."

Response: WVDEP disagrees with the commenter. There is no need to change the definition. If a casing or wrapping is waterproof and prevents the protected material from coming into contact with an electrolyte then corrosion protection would be present for the system.

Comment #225 A commenter said that the definition of "location" should mention the need for accurate lat/long coordinates.

Response: WVDEP agrees that accurate lat/long coordinates are needed for a location; however, WVDEP disagrees that the definition of location needs to reflect this information.

Comment #226 The commenter suggests eliminating this definition of location and simply using the term facility throughout the Rule.

Response: WVDEP has made a change in the definition of Location and facility to provide clarity to the definitions.

Comment #227 A commenter suggested that the definition of manifolded tanks needed to be changed by adding that the "tanks are operated in such a manner that the multiple tanks as a unit. Another commenter indicated that if there exists a point of isolation between the two tanks that the DEP cannot regulate the piping. Another similar suggestion was made that the definition of "manifolded tanks" in section 2.37 be changed by adding the following after "substance": " and are operated in such a manner that the multiple tanks function as on storage unit."

Response: WVDEP agrees to modify the definition of a manifolded tank. WVDEP agrees that the piping can only be regulated up to the first point of contact. WVDEP's concern with manifolded tanks is the potential that a leak in one tank may be capable of emptying all manifolded tanks, depending upon the manifold design.

Comment #228 Commenters indicated that mobile tanks should not be considered as stationary ASTs simply because they are placed on saddles, legs, stilts, rack or in a cradle. A commenter stated that the definition of "mobile tank" included in the proposed rule 2.39 conflicts with the use of "mobile device" in the AST Act; suggested deleting the second sentence of the definition as it unreasonably restricts the definition of mobile tank. The commenter also explained that having a tank placed on saddles and the like does not determine if a tank is designed to move to different service location. Additionally some field erected tanks are designed and intended to be mobile by assembly, disassembly and reassembly.

Response: WVDEP agrees with the commenter and has changed the definition.

Comment #229 A commenter stated that the WVDEP has no authority under the AST Act to regulate piping as a separate component and they requested that DEP revise section 2.46, 2.47, and 8.7 to state it is not regulated where it is not part of an AST.

Response: The agency maintains that certain sections of piping will be found before the first point of isolation in some AST systems and these are subject to regulation under the AST Act; therefore, the AST rules must address piping. Section 8.7 of the rules specifically discusses "regulated" piping and indicates that is the piping on the AST up to the first point of isolation.

Comment #230 Commenters requested clarification between the difference of Permanent Closure and Permanently out of services. Commenters also suggested removing the term "associated piping" from 2.46.

Response: WVDEP agrees and has provided clarification on the difference between permanently out of service and permanent closure. WVDEP has removed "associated piping" from Section 2.46.

Comment #231 The commenter states that the term "Petroleum" is not used in the rule and should be removed from the definitions.

Response: WVDEP disagrees with the commenter. Petroleum is used in the AST Act and is not defined in the Act; therefore, WVDEP defined petroleum within the Rule.

Comment #232 A commenter stated that the "qualified" definition assumes broad knowledge by those who work with tanks and secondary containment that will be impossible to achieve in practice. Someone knowledgeable in AST construction may not be able to opine on corrosion control. Should change definition to those with experience, training and education on the subject matter in which they work. Another commenter stated that to be qualified someone would have to have expertise in all aspects of ASTs rather than be knowledgeable about one or more of areas. The commenter suggested changing the definition to require expertise "in one or more of the following areas...." and then list areas of special knowledge.

Response: The definition of qualified does not require "expertise" in all of the areas, but requires the person to be knowledgeable of the various areas. There is nothing in the definition or in the Rule that prevents two or more people to inspect in an area of their knowledge or expertise and sign an inspection certification. No documentation is required by the AST Act, and the WVDEP suggests that the employer use various things, including but not limited to, education, training as a certified inspector from nationally recognized organizations, work history, etc. to evaluate the qualifications of the inspectors they are hiring.

Comment #233 A commenter stated that "Releases" are spills that reach the waters of the State or leave secondary containment. WV Code 22-30-3(16) states that movement from a tank into secondary containment or an interstitial area may be worthy of monitoring as an indicator of tank integrity but it is not "release detection". The nature of a release is misrepresented.

Response: The commenter is mixing words and definitions. A release has the meaning given to it in the AST Act and is not reportable unless it leaves the Secondary containment or reaches the waters of the State. Release detection is what the commenter is referring to when they indicate that the "nature of a release is misrepresented". WVDEP disagrees with the commenter, release detection or "leak detection" is the means by which to monitor an AST to determine if material is releasing from the AST.

Comment #234 The commenter notes that the term "interstitial space" should be replaced with interstice to be consistent with 2.32.

Response: WVDEP disagrees with the commenter. The words can be utilized interchangeably.

Comment #235 The commenter suggests that the definition be revised to read, "...which has the function of preventing the escape into the environment of released material and channeling the released material for leak detection.

Response: WVDEP disagrees with the commenter. The definition provided in the rule is consistent with industry standards.

Comment #236 The commenter stated that nothing in the AST Act requires or suggests a quantitative standard for Sufficiently Impervious and therefore suggests the following rewrite of the definition, "...that it will prevent the discharge of fluids to the lands or waters of the State or to soil outside of containment for a period of time sufficient to allow removal and disposal of the discharged material, but in no case would that time be less than seventy-two (72) hours or a material or structure that has a permeability of less than 1×10^{-6} cm/sec." Another commenter stated that the act does not require the WVDEP to adopt a numeric permeability standard and thus "less than 1×10^{-6} cm/sec" should be removed from the language in section 2.62.

Response: WVDEP disagrees with the commenter that a change is needed in the definition of sufficiently impervious. The numerical value for permeability was added as an alternative way to measure acceptable secondary containment as callers to DEP had requested guidance on how to determine the integrity of their secondary containment. By having a numerical value, a number of different test methods could be used to determine if the secondary containment was acceptable.

Comment #237 A commenter suggested deleting subsection 2.63 as the DEP has confused the presence of questionable operating conditions with the existence of an actual discharge. The commenter stated that a suspected release may be investigated but should not be reported until information is available to confirm a release.

Response: WVDEP disagrees with the commenter and has not confused the presence of questionable operating conditions with an actual discharge. There is only a reporting requirement if the tank owner/operator cannot determine if a release has occurred or not. WVDEP is concerned about questionable operating conditions that could result in a release to the environment. The AST program requirements are designed as to create a "preventive program" to prevent releases that may impact public health and the environment. WVDEP believes that the creation of a preventive program was the intent of the AST Act.

Comment #238 Commenters suggested that 180 days was an inappropriate time frame for TOS tanks and that requirements for bringing a TOS tank back to service was too prescriptive.

Response: WVDEP agrees with the commenters and changed one hundred eighty (180) days to one year and removed the requirements in Section 11.2 for tightness testing of ASTs brought back into service.

Comment #239 Commenter states Section 3.1.f needs further clarification.

Response: "It is unclear what further clarification that the commenter is seeking. Section 3.1.f requires notification of a change in the corporate or business structure of the aboveground storage tank owner which affects the legal name of the tank owner which constitutes a transfer of ownership. The AST Act and AST Rule indicate that the tank owner and operator are responsible for an AST; therefore, it is imperative that the WVDEP knows who legally owns the tank."

Comment #240 A commenter stated that the definition of manifolded tank in section 3.1.b constitutes an expansion of the statutory definition of aboveground storage tank. The commenter stated that manifolded AST's should only be regulated as a single "AST" if no point of isolation exists between them. The commenter requested that the definition of "manifolded tank" be revised as follows: means two or more tanks connected by piping which are designed to operate as one container and collectively contain the same fluids, but does not include multiple connected tanks equipped with manual or electronic valves, check valves, or shut-off devices that are designed to prevent the flow of fluids between the tanks."

Response: WVDEP disagrees with the commenter that the definition of a manifolded tank constitutes an expansion of the statutory definition of an AST. The definition and treatment of manifolded tanks within the Rule is an attempt by WVDEP to ensure protection of public health and the environment. Section 3.1.b. indicates that if the tanks are connected in a manner that prevents fluids flowing from one tank to another under any conditions (i.e. isolated) then they would not be subject to combining capacities to determine applicability of the rule. Therefore WVDEP will not modify the definition.

Comment #241 The commenter believes, in regards to AST transfers, that not allowing fluids to be placed in a tank and the tank being operated before registration and fees have been processed will provide the potential for operational disruptions. He also notes that Certificates to operate are not required for every AST, but only regulated ASTs under 22-30-5(b)(8). Another commenter noted that a transfer of registration should be allowed upon transfer of ownership or one of the parties is going to be in violation of this requirement.

Response: WVDEP disagrees with the commenters. The tank is owned by one party until it is officially sold or transferred to another party. Although a sale or transfer may be pending, the tank still belongs to the seller until the transaction is concluded. Once the tank is transferred the new owner must properly register the tank prior to its use in accordance with the Section 22-30-4 (g) of the AST Act. However WVDEP has modified language in the rule to provide clarification.

Comment #242 Commenter questions the need to register tanks that are merely sitting in a warehouse awaiting delivery to the end customer because the rule requires all ASTs be registered "regardless of its operational status"

Response: Section 3.1 does not require the registration of ASTs sitting in a warehouse awaiting delivery. This type of tank does not need to be registered pursuant to the AST Act because they are AST held in inventory or for sale.

Comment #243 Commenters requested that WVDEP needs to provide clarification that issuance of a certificate to operate is only applicable to regulated tanks.

Response: WVDEP agrees that issuance of a certificate to operate only applies to regulated tanks. WVDEP has removed reference to Certificate to operate from Section 3.1.c.2 and clarifies in Section 4.0 that certificates to operate only apply to regulated tanks.

Comment #244 Commenters requested that "timely" be removed from section 3.1.c.1.

Response: WVDEP agrees with comment and has made the suggested change.

Comment #245 Commenters requested changes to Section 3.1.c2 and 3.6 to allow tanks to be transferred and still be operated as long as the ownership was updated within 30 days.

Response: WVDEP agrees with the comment and has changed the Sections to clarify that a tank owner has 30 days from acquiring an AST to properly register it.

Comment #246 Commenters requested that section 3.1.d.3 be revised to delete "nonregulated AST" to read "statutory definition of an AST".

Response: WVDEP agrees with the commenter and has changed the rule to reflect concurrence with the comment.

Comment #247 Commenter states 3.1 appears to conflict with 3.1.c which requires registration "prior to being placed into active service.

Response: WVDEP disagrees. Section 3.1.c is consistent with the AST Act.

Comment #248 A commenter stated that there is no reason to have a separate notification 30 days before an AST install as there is already a required registration before use and a re-registration within 3 days if an AST has been moved therefore a 30 day notice is not needed. Another commenter felt that section 3.4 is redundant with the requirements to register the AST which must be performed prior to filling or operating the AST. Another commenter felt that notification of installation is not necessary because the rule established construction requirements and the Agency can enforce those after the fact if they are not followed.

Response: WVDEP believes that the notification process is not onerous, and allows for WVDEP to perform a regulatory review of the proposal prior to a company spending money on an installation that may not meet the regulatory requirements of the AST Rule. It should be noted that the thirty (30) day time period may be waived when the action is in response to a release from an existing aboveground storage tank or AST system on the site or at the discretion of the Secretary for good cause shown.

WVDEP also notes that patching and painting does not meet the definition of a major modification.

Review time will depend to some degree on the size and complexity of the notification as well as if the notification was administratively complete. Reviews of these notifications will be completed in a timely manner. The agency anticipates no delays in the installation or upgrade of tanks provided the notification is complete and meets all regulatory requirements. WVDEP will provide a notification waiver when the action is in response to a tank that has been determined to not be fit for service.

Comment #249 A commenter suggests that the 30 day notification prior to permanent closure of a tank be removed. Another commenter asserted that the 30-day requirement prior to the permanent closure of a tank is unnecessary and could interfere with operations. The commenter urged the WVDEP to remove the requirement or require that notice be delivered to the WVDEP 90 day after permanent closure.

Response: WVDEP disagrees with this comment. It is the experience of the agency that having a field inspector present during certain processes at industrial sites, such as a tank closure, is of great value. This is a requirement applicable to USTs in the state of WV and the same benefits will be realized at closures of ASTs. There are provisions in the proposed rule that this requirement may be waived with good cause shown.

Comment #250 A commenter stated that according to section 3.6 a transfer of ownership would require a new owner to possibly halt all production and empty tanks until it is properly registered, the appropriate fees have been paid, and a certificate to operate has been issued. The commenter states that because a transfer may occur while tanks are still in service, these provisions are simply unworkable. The commenter requested clarification that the new owner may continue to use and operate the AST following the transfer of ownership, subject only to updating the registration and paying the AST transfer fee. Another commenter stated the rule should allow continued operation of ASTs that change ownership, allowing 30 days to change the registration, but mandating that the new owner must comply with the AST rule immediately upon transfer of ownership.

Response: WVDEP disagrees with this interpretation. The tank is owned by one party until it is officially sold or transferred to another party. Although a sale or transfer may be pending, the

tank still belongs to the seller until the transaction is concluded. Once the tank is transferred the new owner must properly register the tank prior to its use in accordance with the Section 22-30-4 (g) of the AST Act. However, WVDEP has revised Section 3.6 for clarity.

Comment #251 Commenters objected to a transfer of ownership and requirement for current owners to notify new owners of registration requirements. A commenter noted that when a tank is sold to a new owner it must be reregistered prior to use. This negates the need for the redundant "change of ownership" form. Nothing in the AST act obligates a seller to apprise a tank purchaser of his or her obligation to register.

Response: WVDEP agrees with the commenters and has removed Section 3.6.a and changed Section 3.6 to note that owners must register the ASTs.

Comment #252 A commenter stated that section 4 provides no timeframe as to when a certificate to operate will be issued by the WVDEP and it is unreasonable to require owners to suspend production, when it is critical to the businesses operation, until a certificate is issued. The commenter suggested that a certificate to operate be automatically issued upon registration and payment of fees for regulated AST's, unless otherwise instructed by the WVDEP. Furthermore, since the certificate to operate only applies to regulated AST's, 3.1.c.2 must not be applied to "registration-only" AST's. Two other commenters stated that Certificates to operate should be immediately issued upon completion of registration or re-registration, or amended registration but subject to withdrawal in the event of noncompliance issues.

Response: WVDEP disagrees with the commenter. WVDEP does not believe it is in the best interest of the regulated community, the environment, or the state's citizens to issue a certificate to operate without adequate time for review.

Comment #253 Commenters requested that the rule specify that Certificates to Operate only apply to Regulated ASTs.

Response: WVDEP agrees with the commenter and as clarified in Section 4.1 that Certificates to Operate apply only to regulated ASTs.

Comment #254 Numerous commenters requested that Section 4.2 be amended to specify that public notice and comment on amendments to permits and plans is required prior to an AST being excluded from the AST Act Requirements.

Response: DEP notes that the AST Act provides no instruction on whether or not public noticing is required before a permit is modified to include conditions pertaining to the management and control of regulated tanks. Absent this specific instruction, DEP will rely on the public notice requirements in existing law relative to modifications of each site-specific permit or plan.

Comment #255 Commenters requested that statement be added to indicate that API 653 was not the only industry standard that could be utilized.

Response: WVDEP agrees with the commenter and has indicated that API 653 is but one of the possible standards that may be utilized in management of their ASTs.

Comment #256 A commenter stated that the requirement of a professional engineer's construction design criteria and engineering specifications for a location "with karst topography" is vague and unreasonable. The commenter stated that karst topography is not a defined term and cannot be readily identified.

Response: WVDEP does not concur with the commenter. Karst and Karst Topography are well defined terms in the scientific community. Karst is a landscape formed from the dissolution of soluble rocks including limestone, dolomite and gypsum. It is characterized by sinkholes, caves, and underground drainage systems. Exclusion from a karst area will be on a case-by-case basis."

Comment #257 Commenters requested removal of PE certification for new tank locations.

Response: WVDEP agrees in part with the commenter and has modified the language.

Comment #258 Commenter requested that we specify that an unobstructed view to determine leakage is acceptable to the 3 foot distance specified in the rule.

Response: WVDEP agrees with the commenter and has made the suggested change.

Comment #259 A commenter requested that WVDEP replace "siting" with Location.

Response: WVDEP disagrees with the commenter. The terms mean essentially the same thing.

Comment #260 The commenter suggests that the term Karst topography be defined in the definitions section.

Response: Karst and Karst Topography are well defined terms in the scientific community. Karst is a landscape formed from the dissolution of soluble rocks including limestone, dolomite and gypsum. It is characterized by sinkholes, caves, and underground drainage systems.

Comment #261 A commenter stated that operators should be able to decide which equipment can be safely accessed and how often the various exterior parts of an AST should be inspected. For example, emergency relief valves do not need inspected once a month and winter conditions can cause safety issues.

Response: WVDEP agrees to remove the requirement for monthly inspection of emergency and normal vents to an annual inspection requirement but disagrees with the commenter that the tank owner/operator should determine when and what to inspect. Industry Standards (STI SP001 and API 653) both indicate that monthly external tank inspections should be performed. WVDEP believes this requirement is appropriate, protective and complies with the intent of the Act.

Comment #262 A commenter suggested that WVDEP should explain how to check the overfill equipment monthly.

Response: WVDEP disagrees with the commenter. Describing a method for performing an overfill check in the Rule would be overly prescriptive and would be more appropriately addressed in a guidance document.

Comment #263 A commenter recommended changing the Level 1 visual inspections from once every 7 day to once every 30 days in Sections 5.1.a and 10.2.d of the Rule.

Response: WVDEP disagrees with the commenter. Section 4.8 of the Groundwater Protection Rule (§47CSR58) requires secondary containment to hold a released substance for a minimum of 72 hours; therefore, WVDEP initially proposed this time frame for checking the visually secondary containment for releases from the AST system. This requirement for visual inspection every 72 hours is consistent with other states such as Pennsylvania (PA Section 245.513 (b) (1)). In response to comments, WVDEP agreed that visual inspections of secondary containment for Level 1 tanks could be expanded to 7 days.

Comment #264 A commenter suggested that the wording in Section 5.1.a.3 be changed to "Any water accumulation within the secondary containment results in the capacity of the containment being reduced. Any accumulated water in excess of 1 inch or more shall be removed and disposed of in accordance with applicable State and Federal requirements."

Response: WVDEP disagrees with the commenter. Section 5.1.a.3 specifies that if water accumulation should be removed and disposed of in accordance with applicable State and Federal requirements when it reduces the capacity of the secondary containment by 10% or more. The requirement to remove the water is consistent with industry standards such as STI SP001 and the 10% level is consistent with requirements in State AST regulations from Pennsylvania and Delaware.

Comment #265 A commenter stated that inspection frequencies are not consistent with respected industry standards, or those used by other States with AST programs. The commenter recommends using inspection frequencies based on sound engineering principals and allow for flexible best engineering judgment.

Response: WVDEP disagrees with the commenters. The requirement for annual inspections is consistent with §22-30-6 of the AST Act. Furthermore, both STI SP001 and API 653 require annual tank inspections. WVDEP believes this requirement is appropriate, protective and complies with the intent of the Act.

Comment #266 Commenters requested the requirement for certifications "on January 1" be changed to "on or before January 1"

Response: WVDEP agrees and has made the suggested change.

Comment #267 A commenter recommended adding "Add ultrasonic test" to the section §5.2.c.4..

Response: WVDEP agrees with commenter and will add "ultrasonic test" to the section.

Comment #268 Commenters requested that the word "certify" be removed from these sections as those people listed must perform the inspection but the tank owner/operators may designate others to certify the tanks.

Response: WVDEP agrees with the commenter and made the suggested change.

Comment #269 A commenter recommended that "the certification form shall be kept on-site" should be added to section §5.2.b.4.

Response: WVDEP disagrees with the commenter because a number of tank sites are remote tank locations and it would be impractical for the owner/operator to keep forms on-site.

Comment #270 A commenter suggested that the requirement in section 5.2.a for submittal of an inspection certification to be changed from "180 days" to "1 year" after the effective date of the Rule.

Response: WVDEP disagrees with the commenter. The AST Act specifies that inspection certifications are to be submitted to the Agency within 180 days of the effective date of the Rule.

Comment #271 A commenter requests clarification that the fit for service conducted in accordance with the 2014 Interpretive Rule will satisfy the requirements of Section 5.2.a.

Response: WVDEP agrees with the comment in part. The previous inspection conducted in accordance with the 2014 Interpretive Rule will satisfy the annual inspection requirement of this rule if the inspection was performed by a Registered PE, an STI or API certified inspector. ASTs (this would apply most broadly to Level 2 ASTs) that were not inspected by a PE, certified API or STI inspector would require inspection by such within 180 days of the effective date of the Rule.

Comment #272 Commenters were concerned that a tank with minor deficiencies would be expected to be removed from service.

Response: WVDEP has made clarification that the Not Fit For Service determination is related to tank integrity determinations and not to minor deficiencies.

Comment #273 A commenter stated "there is no P.E. discipline for inspecting aboveground storage tanks." Simply having a P.E. is not a qualification to inspect aboveground storage tanks." The commenter further suggested adding to the section that the PE must document his qualifications to inspect aboveground storage tanks by job experience, training, education or other means approved by the Secretary.

Response: WVDEP understands the commenter's concern but does not believe a change in the section is required. WVDEP addresses this issue by requiring a "qualified" person perform the inspection. Qualified is defined in Section 2.51 as "someone who, by training or education, is knowledgeable and experienced in AST design, construction and installation, maintenance of corrosion detection equipment, and release prevention and detection equipment, including secondary containment structures. "

Comment #274 Commenter noted that 'or' should be added at the end of 5.3.b.1.C.

Response: WVDEP agrees and added "or" in.

Comment #275 A commenter pointed out that owner's may not always have the manufacturer's information for a tank and that in those cases they should perform internal inspection in accordance with the American Petroleum Institute standards.

Response: WVDEP agrees to change to the language to allow for internal inspections to be performed in accordance with the American Petroleum Institute or Steel Tank Institute requirements.

Comment #276 A commenter suggested that section 5.4.b.1 be revised from "shall" to "should be conducted within 10 days or as soon as possible" as a natural disaster may make it impossible to achieve a 10 day inspection goal.

Response: WVDEP understands the commenter concern and would certainly take into consideration natural disasters. However, WVDEP maintains that a damaged tank should be looked at as immediately as possible to prevent a possible catastrophic release.

Comment #277 A commenter requests clarification as to the process and procedure for certifying an AST is subject to a Groundwater Protection Plan (GPP) and the factors, timing and form of an Agency approval or denial of the GPP certification.

Response: Currently, this type of certification is completed on-line through the Electronic Submission System. Factors that will be considered will include a determination if the GPP meets the requirements of a Spill Prevention and Response Plan as set forth in §22-30-9(a) of the Act. Timing of the review and approval or denial is not determined at this time. The method of the agency approval or denial has not been determined at this time, however it is anticipated that this will be either a written or an electronic correspondence.

Comment #278 A commenter requested to know who was qualified to prepare a Spill Plan?

Response: There are no requirements on who may prepare a Spill Plan, but there are requirements on the contents of the Spill Plan and Spill Plans for all Level 1 and Level 2 Regulated ASTs must be reviewed by the WVDEP pursuant to §22-30-9 (c).

Comment #279 A commenter requested that "reportable" be changed to "confirmed" in Section 5.5.e.

Response: WVDEP agrees and has made the suggested change.

Comment #280 A commenter stated that the AST Act requires all spill plans to be updated every five years, section §5.5.a.1.

Response: WVDEP agrees with the commenter and has changed the section to reflect the requirement.

Comment #281 Commenters requested clarification that Spill plans submitted previously do not have to be resubmitted to the Agency.

Response: WVDEP has changed Section 5.5a to indicate that Spill Plans are required to be submitted by December 9, 2015, unless the plan has already been submitted pursuant to the Interpretive Rule (47CSR62).

Comment #282 Commenters indicated that Section 5.5.a should be amended to indicate that plans submitted pursuant to the Interpretive rule would not have to be resubmitted pursuant to this rule.

Response: WVDEP has added clarification in the Rule that indicates that a plan is required to be submitted unless the plan has already been submitted pursuant to the Interpretive Rule.

Comment #283 A commenter requested that the signage size be changed to 18 inches by 24 inches.

Response: WVDEP agrees with the commenter and made the suggested change.

Comment #284 A commenter request for an explanation of what "weakening equipment" was?

Response: Section 6.2.b.3 offers examples (such as, but not limited to, swelling of piping, thinning of AST structural material below the minimum design standard or cracks in welds or steel plates) of what WVDEP would consider weakening equipment. WVDEP does not believe that further explanation or definition is necessary.

Comment #285 A commenter asked which county the tank owner must contact when a confirmed release occurred.

Response: WVDEP changed the rule to specify that the tank owner should contact the "county" emergency management officials in the county where the leaking AST is located.

Comment #286 A commenter requested that the 7 day time limit in section 6.3.a be extended to 14 days in order to provide sufficient time for a thorough investigation of a suspected or threatened release.

Response: WVDEP disagrees with the commenter that a change is needed. WVDEP previously changed the requirement for all regulated ASTs to provide 14 days for Level 2 ASTs. WVDEP maintained the requirement at 7 days for Level 1 ASTs due to the risk associated with the tanks. However, it should be noted that Section 6.3.a of the rules allows for "an extension of the seven (7) day reporting may be allowed by the Secretary for good cause shown."

Comment #287 A commenter suggested adding the following in Section 8.2.c, ""If testing is done with a vacuum on the interstice of a double wall or double bottom aboveground tank, the vacuum must remain on the tank until it is set in place where it is to be permanently installed . The vacuum must remain above the minimum level set by the tank manufacturer.""

Response: WVDEP agrees with the commenter and will add the suggestion to Section 8.2 (c).

Comment #288 A commenter suggested that WVDEP add "Double wall and double bottom tanks may be tested using a vacuum method" be added to Section 8.2.d.1

Response: WVDEP agrees with the commenter and will add this to Section 8.2.d.

Comment #289 A commenter suggested adding "such testing must be documented by the tester and retained by the owner" to Section 8.2 (c).

Response: WVDEP agrees with the commenter and will specify that test data must be retained by the owner.

Comment #290 A commenter suggesting adding that "an owner must have documentation in the form of a label on the tank, certificate from the manufacturer, documentation on or attached to an invoice describing the tank's construction or any other method accepted by the Secretary."

Response: WVDEP agrees with the commenter that this is a reasonable requirement for new ASTs.

Comment #291 A commenter asked what were the time frames for performing upgrades required in Section 8.3.

Response: Time frames for upgrades are provided in sections 9, 10, and 11 of the Rule.

Comment #292 Commenters requested that "piping" be deleted from Sections 8.3.b and 8.3.c because an AST includes piping up to the first point of isolation thus making the use of piping in the section redundant.

Response: WVDEP agrees and has made the suggested change.

Comment #293 A commenter suggested changing the language in Section 8.6.e.5 to indicate that "Weak roof-to-shell tank designs are not allowed for new shop fabricated ASTs because they are prohibited under UL 142 and NFPA 30."

Response: While UL142 does ban weak roof to shell designs, NFPA allows for them. The agency made rule modifications consistent with NFPA.

Comment #294 A commenter said that weak roof to shell design are allowed under NFPA 30.

Response: WVDEP agrees with commenter and made the suggested change.

Comment #295 A commenter suggested that "fire codes" be added to the last sentence in Section 8.6.

Response: WVDEP agrees with the commenter and will add fire codes into Section 8.6.

Comment #296 A commenter stated that " a manuall operated valve" should be inserted into the text of the Section.

Response: WVDEP disagrees with the commenter and does not believe the change is necessary.

Comment #297 A commenter noted that Section 8.7.i should be deleted because any leak in aboveground piping can be visibly observed.

Response: WVDEP disagrees with the commenter that the section should be deleted. However, WVDEP agrees that clarification should be noted that testing of aboveground piping in accordance with the requirements of API 570 are not required if the leaks from the piping are readily visible.

Comment #298 Commenter suggested that DEP specify that only those corrosion prevention method that are necessary in order to prevent releases.

Response: WVDEP agrees with the commenter and made the suggested change.

Comment #299 Commenters suggested adding to 9.2, "To the extent that a cathodic protection system is used as corrosion prevention" in the first sentence of the paragraph.

Response: WVDEP agrees with the commenter and made the suggested change.

Comment #300 A commenter suggested that clarification should be made to this section on the criteria for determining the effectiveness of the CP systems. The criteria for determining the effectiveness of cathodic protection for galvanic systems shall be a negative potential of at least minus 850 millivolts with the cathodic protection current applied. Alternatively, a negative potential of at least (minus) 850 millivolts from the instant off reading or a 100 millivolt shift from the instant off reading is acceptable for impressed current systems.

Response: WVDEP agrees that clarification to Section 9.3g will be added so that it is clear that a negative potential of at least 850 millivolts is the criteria for both galvanic and impressed current systems and that the 100 millivolt shift only applies to impressed current systems.

Comment #301 A commenter states that there is no justification for testing cathodic protection systems on an annual basis. Furthermore the commenter adds that other states with effective AST programs require testing every 5 years and suggest that the frequency changes to every 3 years.

Response: WVDEP disagrees with the commenter. The proposed requirement for testing of ASTs whose bottom is in contact with the soil on an annual basis comes directly out of the Industry Standards (NACE RP01093-2001 Section 11.2.2). WVDEP believes this requirement is appropriate, protective and complies with the intent of the Act.

Comment #302 A commenter suggested that a conflict exists between section 9.4 and 9.4a in that section 9.4 allows the use of exterior coatings but 9.4a seems to mandate the usage.

Response: WVDEP has made clarification that the specific requirements outlined in the section are applicable "when exterior coatings are used as a means of corrosion protection" and is not required of all regulated tanks.

Comment #303 A commenter felt that Section 10.1.a requirement "did not allow for absentee deliveries. The owner or operator should only be required to monitor the deliveries if there is no mechanical means to prevent overfilling." A commenter said it was not clear what sort of constant monitoring is required. If the

transfer is remotely controlled through permanent piping, these occur too frequently to have someone present at each tank that is receiving or discharging fluids.

Response: WVDEP agrees with the commenter and will add in "if there are no mechanical means to prevent overfilling."

Comment #304 A commenter suggested deleting "prior to receiving deliveries" from section 10.1.f.

Response: WVDEP disagrees with the commenter and will not make the suggested change.

Comment #305 A commenter stated that " if the owner or operator is receiving an absentee delivery and is relying on mechanical means to prevent overfilling, the owner cannot take immediate action to stop the flow of the substance being transferred.'

Response: WVDEP expects all tank owners or operators to take immediate action to stop releases. It is the owner and/or operator's responsibility to have procedures in place to accomplish this.

Comment #306 Two commenters stated that the exclusion of all vegetation within the earthen diked area is inappropriate and counterproductive. The commenters also stated that light vegetation that does not have deep roots and is not woody minimize erosion and help stabilize the diked area without undermining the effectiveness of holding fluid for 72 hours.

Response: WVDEP acknowledges that a prohibition on vegetation in dike areas is consistent with industry standard, yet the Agency recognizes numerous oil and gas tanks secondary containment has shallow rooted vegetation present (e.g. grass) The Agency has modified the rule to allow shallow rooted vegetation to be present inside existing dike walls, but deeper rooted vegetation (e.g. woody plants, polk weed) is prohibited.

Comment #307 Commenters requested that Section 10.2.h provide clarification that ancillary equipment is only regulated up to the first point of isolation.

Response: WVDEP agrees to provide clarification that the section only applies to ancillary equipment up to the first point of isolation.

Comment #308 Commenters requested that Section 10.2.a provide clarification that ancillary equipment is only regulated up to the first point of isolation. Furthermore, they point out that AST systems as defined includes secondary containment and that the section requires AST systems to have secondary containment.

Response: WVDEP agrees to provide clarification that the section only applies to ancillary equipment up to the first point of isolation. Furthermore, WVDEP removed the term "system" in the section and stated "ASTs must have secondary containment."

Comment #309 Commenters suggested that flapper type drain valves should be utilize the discharge to a wastewater treatment system.

Response: WVDEP agrees with the commenter and made the suggested change.

Comment #310 Commenters requested that the requirement for a written log be removed from Section 10.2.k.

Response: WVDEP agrees with the commenter and made the suggested change.

Comment #311 A commenter stated that it may be impossible to detect leakage in the tank bottom of many currently installed AST's. Another commenter suggested that section 10.3.b be deleted.

Response: Related comment and response:

Comment # 25 Commenters state that it is unclear how an owner/operator would comply with section 10.3.b of the proposed rule, requiring that the owner or operator ensure that the area beneath the tank bottom is monitored for leakage by visual, mechanical or electronic leak detection methods, for existing ASTs that are not equipped with that capability.

Response : WVDEP believes the monitoring of this part of the tank can be completed by either upgrading the tank with the necessary equipment or structures to make this possible or using a method that can detect releases from the tank without the addition of extra equipment such as statistical inventory reconciliation, or other methods acceptable to the Secretary as set forth in section 10.3.e. of the proposed rule. (found on page 81)

Comment #312 Commenters requested a change to Section 10.3.c so that double walled tanks or tanks bottoms do not have to be visually observed as long as fluids leaking into them could be visually observed.

Response: WVDEP agrees with the commenter and has made suggested changes.

Comment #313 A commenter felt that WVDEP should clarify that the requirement to follow manufacturer specifications is only required if there are applicable specifications to be followed.

Response: WVDEP agrees with the commenter and has specified that the requirement to follow "applicable manufacturers specifications" into Section 10.3.a

Comment #314 A commenter recommends that it be noted that manually monitoring of the interstice once every calendar month was acceptable.

Response: WVDEP agrees with the commenter that manual monitoring is acceptable if properly documented and will add this clarification to section 10.3.g.

Comment #315 A commenter stated that "inventory control" and "tank testing" should be added to the list of leak detection methods as they are allowed by the AST Act.

Response: WVDEP disagrees with the commenter that "inventory control" and "tank testing" are listed as separate items in the AST Act. WVDEP agrees to add "inventory control with tank testing".

Comment #316 Commenters felt that is unnecessary for them to report a change from CIU to TOS and asked that DEP remove this requirement.

Response: WVDEP agrees and has made the suggested change.

Comment #317 Commenters noted that section 11.4.a states that all tanks must be dismantled and removed and that this should apply only to "permanently out of service tanks".

Response: WVDEP agrees with the commenters and has changed the text to specify that permanently out of service tanks should be dismantled and removed.

Comment #318 A commenter stated that "Closure activities must be certified by a professional engineer, a person certified by API or STI" instead of performed by these individuals."

Response: WVDEP disagrees with the commenter. WVDEP would be concerned that the closure would occur without proper oversight if an individual could certify the closure without performing the closure.

Comment #319 A commenter noted that there is a mistake in the subsection reference to 14.1. It should reference 12.1.

Response: WVDEP agrees and has made the suggested change.

Comment #320 Commenters stated that DEP does not have authority nor should not under any circumstance attach a locking device to an AST because it believes the tank should not be receiving product unless it has obtained an injunction or other court order to do so. Locking devices could present a significant danger to plant personnel if a chemical process cannot be controlled by shutting off or turning open a valve. A commenter requested that the WVDEP use the already established legal channels in pursuing emergency closure of tanks, and not act unilaterally and dangerously.

Response: WVDEP assures the commenters that a non-compliant tank owner / operator will be well aware of the agencies intention to lock out a tank. Prior notice will be provided via US certified mail or hand delivered to the responsible party by WVDEP personnel prior to the locking device being attached. This process is used to cease the operation of highly non-compliant USTs that present a high potential for harm and has proved to be effective. It is used sparingly and only when the agency has exhausted other methods to compel compliance. The agency anticipates the use of this method relative to ASTs will be analogous. The agency will not create dangerous situations with this method that is intended to avoid potentially dangerous situations.
(Found on page 84)"

Comment #321 Numerous commenters requested that bond amounts be increased in order to cover potential liability of a tank failure. One commenter further recommended significantly increasing bond amounts at least for Level 1 tanks, to commensurate with the potential liability incurred if a tank fails. Freedom Industry's bond under the current calculation would have come to only \$9600.

Response: WVDEP acknowledges that remedial work related to environmental contamination combined with liability exposure from a major release to the environment can be substantial as related to a leaking aboveground storage tank. However, the agency believes that the proposed

financial responsibility offers an acceptable level of coverage to initiate remedial work at a leak site without excessive financial burden. The agency was forever mindful that, much like the UST universe, many entities would be providing financial assurance via environmental liability insurance. The agency was also mindful the majority of registered tanks are associated with producing wells and therefore covered under the Office of Oil and Gas's existing bonding mechanisms. The majority of AST cleanups are expected to be funded with a company's operational funds, with the reliance on financial assurance as a 2nd tier of protection. Use of Protect Our Water Fund monies would provide for a rarely used tertiary method of financing a cleanup, generally only in times of bankruptcy or where a responsible party cannot be located. The financial assurance dollar amounts, which admittedly could be insufficient to cover large cleanups, are believed sufficient to address the majority of non-catastrophic releases/cleanups. One must also bear in mind that the number of tank releases is expected to decrease as inspections on tanks are performed by DEP staff and other certified inspectors. Cleanups should be less and less necessary, but should they be required, they will be conducted more real-time, again relying more on a company's operating assets. With this overall prevention based approach, financial assurance costs can be kept more reasonable.

Comment #322 A commenter stated that "Financial Test of Self-Insurance should be listed as a mechanism to demonstrate financial responsibility because it is allowable under RCRA and state UST regulations. Another commenter stated that Proof of Assets should also be included because it is specified in the AST Act.

Response: WVDEP agrees with the commenter and added financial self-insurance and proof of assets as acceptable forms of financial responsibility for an AST.

Comment #323 A commenter stated to correct the numbering for 13.2.e, it is 3.2.e.

Response: WVDEP agrees that the section number is incorrect and needs corrected.

Comment #324 A commenter stated that rather than deal with the AST as defined in the Act, DEP continue to discuss broader concepts such as "AST System" and "ancillary equipment." The commenter suggested that two changes are necessary to make the Proposed Rule consistent with the Act. First the rule must clearly recognize that what is subject to regulation is limited to AST as defined in the Act. The second; where the DEP believes that its rule must reference other items it must definitively limit these items to the first point of isolation everywhere they are referenced or utilize a general reference which accomplished this. Another commenter stated that the use of the term "above ground storage tank system" appears to be an attempt to expand the universe of equipment subject to regulation. The commenter suggested that the proposed rule should be clarified further that "piping, and all ancillary equipment" is not part of the AST or AST system if such piping, equipment, device, or system is located beyond the "first point of isolation."

Response: An AST system was not specifically defined within the AST Act; however, the AST Act did state that an AST includes ancillary equipment such as piping and dispenser systems. For clarification purposes, the agency felt it necessary to draw distinction between an AST and an AST's ancillary equipment. Because ancillary equipment could be considered part of the AST, WVDEP had to develop rules to regulate the equipment. ASTs and ancillary equipment prior to the first point of isolation would be required to have secondary containment, cathodic protection, leak detection, and be required to be inspected. The importance of this concept is best

exemplified by a November 2014 event in which methyl methacrylate leaked from a pump over a period of almost six (6) hours before being discovered. A valve existed but did not isolate the AST from the leaking pump which was located outside of the secondary containment resulting in a release of ~4600 gallons. Fortunately, methyl methacrylate has low mobility in the soil and tends to solidify upon oxidation; therefore, it does not appear that the nearby stream was impacted. Site assessment and remediation are still on-going for the site.

Comment #325 A commenter stated that the proposed rule violates W.Va. Code 22-1-3a because it contains new or amended environmental provision which are more stringent than counterpart federal programs, specifically the EPA and Coast Guard.

Response: WVDEP disagrees with the commenter. Essentially, W.Va. Code §22-1-3a provides in pertinent part that a legislative rule promulgated on or after July 1, 1994, may be more stringent than its federal counterpart only if the rule is reasonably necessary to protect, preserve, or enhance the environment or public health or safety. Additionally, “in the absence of a federal rule, . . . a state rule [will] not be construed to be more stringent . . . , unless the absence . . . is the result of a specific federal exemption.” Here, there is no federal counterpart to the AST rule, nor is this absence the result of a specific federal exemption. Consequently, the proposed AST rule cannot be interpreted as being “more stringent” as provided in W.Va. Code §22-1-3a.

Comment #326 A commenter felt that the DEP should have addressed technologically enhanced naturally occurring radioactive materials (TENORM) in the AST Rule.

Response: The comment is out of the Scope of the Rule

Comment #327 A commenter stated that "Water Only storage tanks" for catching rain water need to be excluded from unnecessary regulation (for example water tanks associated with agricultural Hi tunnel greenhouses).

Response: Water only storage tanks for catching rain water are exempted from the AST Act pursuant to §22-30-3.

Comment #328 A commenter wanted to stress the importance of compliance with industry standards as the central tent of the AST program and noted they felt that WVDEP is mandating very stringent engineering constraints that may not be required under API or STI.

Response: WVDEP agrees that industry standards and note that many of the requirements in the rule come from industry standards and AST Rules from various other states (Delaware and Pennsylvania).

Comment #329 A commenter noted that if you have manifolded tanks, and their combined capacity is 50,000 gallons or more, they should be considered level 1 tanks.

Response: WVDEP agrees with the commenter and has changed the rule to reflect that manifolded tanks with a capacity of 50,000 gallons or more will be considered Level 1 tanks.

Comment #330 A commenter indicated that WVDEP expresses a strong preference for overseeing all aspects of an ASTs existence from install to closure. The commenter question whether WVDEP had sufficient certified/professional expertise in tank construction and modification to properly evaluate construction and modification of tanks.

Response: WVDEP believes that the notification process is not onerous, and allows for WVDEP to perform a regulatory review and not an engineering review prior to a company spending money on an installation that may not meet the regulatory requirements of the AST Rule.

Comment #331 A commenter stated that the Agency must consider the economic impact of the Draft Rule on the regulated community as required by W. Va Code §29A-3-4.

Response: WVDEP disagrees with the commenter. The commenter has cited a particular statutory provision he believes requires the WVDEP to consider the economic impact of the proposed interpretive rule. The requirement that all rules include a fiscal note and a “statement of the economic impact of the rule on the state or its residents.” Notwithstanding whatever interpretation is given the cited language, the WVDEP does not have the ultimate authority to decide what information must be included in a fiscal note for rules. Rather, the Secretary of State’s office and the Legislative Rulemaking Review Committee are responsible for designing the fiscal note form and specifying its contents. The Secretary of State and the legislative committee are using the same form as is used by the Legislature for the passage of Act. The WVDEP has used the appropriate form and it does not include any requirement for assessing economic impact upon the regulated public or citizens of the State. It only requires the agency to provide an assessment of potential impacts upon State government.

Comment #332 A commenter stated that the rule should include provisions that implement 22-30-25 of the Act to waive certain requirements for tanks that do not pose a risk to public health and the environment.

Response: WVDEP recognizes this provision does exist in the AST Act. However, based on the overall limited information currently available to the agency, it is not practical to consider waiving provisions for Level 1 tanks as the commenter suggests. While numerous tanks have been registered, very few regulatory inspections have been completed by the agency at this time. It is the goal of the WVDEP to focus its limited resources on tanks that pose the most threat to human health and the environment. It is also the goal of the WVDEP to have a robust regulatory framework applicable to all tanks currently defined as a Level 1 regulated AST as this is the intent of the AST Act.

Comment #333 Commenter says they will pray for us.

Response: WVDEP thanks you for your comment.

Comment #334 A commenter stated "Water is an absolute necessity...for all life. Please be mindful of what our natural resources mean to us!"

Response: WVDEP thanks you for your comment.