

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/25/2017 2:00 PM

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

AGENCY: Waste Management Division Of Water And Waste Management TITLE-SERIES: 33-30
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 33-30 Underground Storage Tanks

PRIMARY CONTACT

NAME: Joseph Sizemore
ADDRESS: 601 57th Street Se
Charleston, WV 25304
EMAIL: joe.m.sizemore@wv.gov
PHONE NUMBER: 304-926-0499 1314

CITE STATUTORY AUTHORITY: 22-17-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§22-17-6 authorizes the promulgation of rules and standards by director that will be applicable to owners or operators of underground storage tanks or other affected persons, as appropriate, to include among other things: A requirement that an owner or operator register with the director each underground storage tank after the effective date of the rules and that an owner or operator report annually on changes in status of any underground storage tank;
Such release detection, prevention and correction rules applicable to underground storage tanks as may be necessary to protect human health and the environment;
Requirements for maintaining a leak detection system, inventory control systems together with tank testing, or a comparable system or method designed to identify releases from underground storage tanks in a manner consistent with the protection of human health and the environment;
Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;
Acceptable methods by which an owner or operator may demonstrate financial responsibility;
Requirements for reporting of releases and corrective action taken in response to a release;
Requirements for taking corrective action in response to a release from an underground storage tank;
Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;
Requirements for certification of installation, removal, retrofit, testing and inspection of underground storage tanks and leak detection systems by a registered professional engineer or other qualified person;
Procedures establishing when and how the director determines if information obtained by any agency under this article is confidential;
Standards of performance for new underground storage tanks;
Any other rules or standards necessary and appropriate for the effective implementation and administration of this article.
These requirements are satisfied largely by incorporating federal underground storage tank regulations by

reference.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/5/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/6/2017

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

A legal advertisement was placed in the Charleston Gazette, emails were sent to individuals on the WVDEP Public Notice Mailing list and relevant information was posted on the WVDEP Website.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The Environmental Protection Agency (EPA) revised the 1988 underground storage tank (UST) regulation and the 1988 state program approval (SPA) regulation. The current Federal Rule became effective on October 13, 2015 and requires state program approval by October 13, 2018. To maintain primacy of the UST program and maintain federal grant funding, the WVDEP has made the following revisions to the State UST Rule:

Incorporate the federal regulations by reference (40 CFR 280)

Remove sections of the State Rule associated with the Energy Policy Act of 2005 as these are now included in the current federal regulations

Update the Worker Certification section to add a new category of certified worker (repair technician), extend the period of a Workers Certification license from two (2) to three (3) years, and adjust the cost of application/testing to account for the inflation index and the longer certification period. The current fee structure was established in 1994 and is inadequate to offset current costs of administering the program.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The current Federal Rule became effective on October 13, 2015 and requires state program approval by October 13, 2018. This rule update, among other things, will ensure WVDEP maintains primacy of the UST program in the state of WV and will continue to be eligible for federal grant funding.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The fee increase associated with certified UST workers will allow the program to collect sufficient fees to pay for the administration of the worker certification program.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

Certified tank workers and those wishing to become a certified tank worker will experience an increase in the fee associated with initial testing as well as an increase in the fee for recertification. The fee increase will allow the program to collect sufficient fees to pay for the administration of the program. Also, the certification period has been extended from two to three years. There are currently 296 valid UST worker certifications. It should be noted that some individuals hold multiple certifications.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	14,587.00	0.00	14,587.00
Personal Services	10,587.00	0.00	10,587.00
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Repairs and Alterations			
Assets			
Other			

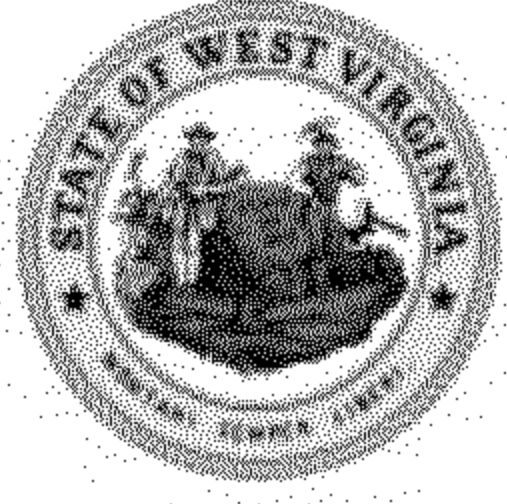
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D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Worker Certification Program fees have been adjusted for inflation and an additional 50% due to moving from 2 year renewals to 3 year renewals. The Worker Certification Program has in recent years cost more to operate than the revenue generated by the program. This increase in fees will allow the program to cover costs for administering the program which is critical to public safety and protection of the environment. The program ensures that persons installing, removing, and working on underground storage tanks have the knowledge and experience to do so in a safe and environmentally sound manner. The long range effect of the proposed fee increase will allow the program to continue operate affording services to the regulated community and protecting public health and the environment.

The Workers Certification Program is linked to federal grant funding as well as state program authorization. Program authorization allows WVDEP to be the lead agency in administering the UST regulatory framework within the state of WV.

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



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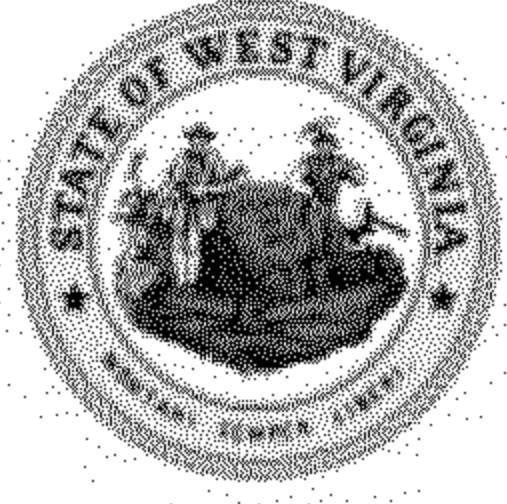
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TITLE 33
LEGISLATIVE RULES
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WASTE MANAGEMENT

SERIES 30
UNDERGROUND STORAGE TANKS

§33-30-1. General.

1.1. Scope. – This legislative rule governs the construction, installation, upgrading, use, maintenance, testing, and closure of underground storage tanks in this State.

1.2. Authority. – W. Va. Code § 22-17-6.

1.3. Filing Date. -- ~~April 24, 2008.~~

1.4. Effective Date. -- ~~July 1, 2008.~~

§33-30-2. Adoption of Federal Regulations.

2.1. Incorporation by Reference. – The Secretary hereby adopts and incorporates by reference the provisions contained in 40 C.F.R. Part 280 as published in the Code of Federal Regulations on ~~May 1, 2007~~ July 15, 2016, with the following exceptions:

2.1.a. The definition of “implementing agency” that appears in 40 C.F.R. § 280.12 shall not apply and shall be replaced by “the West Virginia Department of Environmental Protection.”

2.1.b. The provisions contained in 40 C.F.R. § 280.20(e) shall not apply, and section 3 of this rule shall apply in lieu thereof.

2.1.c. The provisions contained in 40 C.F.R. § 280.22 shall not apply, and section 4 of this rule shall apply in lieu thereof.

2.1.d. The ~~phrase~~ citation “section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended” that appears in 40 C.F.R. § 280.34 shall not apply and shall be replaced by the phrase “W. Va. Code § 22-17-13.”

2.1.e. The provisions contained in 40 C.F.R. §§ 280.34(a)(1) and 280.251 (b) shall not apply and shall be replaced by the “(1) notification requirements in accordance with the provisions of section 4 of this rule”.

2.1.f. The provisions contained in appendices I, II, and III of 40 C.F.R. Part 280 shall not apply.

§33-30.3. Certification Requirements for Individuals Who Install, Repair, Retrofit, Upgrade, Perform Change-in-Service, Close or Tightness Test Underground Storage Tank Systems or Install, Repair, Upgrade or Test Corrosion Protection on Underground Storage Tank Systems.

3.1. Application of Requirements. – The requirements of this section apply to individuals engaged in

underground storage tank system installation, repair, retrofitting, upgrading, change-in-service, closure, tightness testing or corrosion protection installation, repair, upgrade or testing.

3.2. Certified Individual Required. – No individual shall conduct an underground storage tank system installation, repair, retrofit, upgrade, change-in-service, closure, conduct a tightness test or a corrosion protection installation, repair, upgrade or test unless an individual present at the underground storage tank system site and exercising responsible supervisory control over the installation, repair, retrofit, upgrade, change-in-service, closure, tightness test or corrosion protection installation, repair, upgrade or test is currently certified by the Secretary in accordance with this section. The underground storage tank system owner ~~and~~ or operator must ensure that the individual supervising the installation, repair, retrofitting, upgrade, change-in-service, closure, tightness testing or corrosion protection installation, repair, upgrade or testing is certified by the Secretary in the applicable class for the activity performed. The certified individual is required to ensure that the underground storage tank system installation, repair, retrofit, upgrade, change-in-service, closure, tightness testing or corrosion protection installation, repair, upgrade or testing is conducted in accordance with all applicable rules, regulations, and policies established by the Secretary.

3.2.a. An individual who holds a current certificate issued by the Secretary shall be present at all times during:

3.2.a.1. The installation process involving the preparation of the excavation immediately prior to receiving backfill and the tank; the setting of the tank; and the piping (including placement of any anchoring devices), backfilling to the level of the tank or strapping anytime during the installation in which piping components are connected; the installation of corrosion protection, either galvanic or impressed current, when anodes are installed; making electrical connections ~~are made~~ to the tank and anodes and when the system is energized; all testing of the underground storage tank and piping performed during the installation, completion of the backfill, and filling of the excavation; and installation of release detection devices within the excavation zone; or

3.2.a.2. The repair, retrofitting or upgrading process involving the excavation of existing tanks or piping; the actual performance of repairs to the tank or piping anytime during the process when components of the piping are connected; anytime during repair or upgrade of corrosion protection, either galvanic or impressed current, when anodes are installed making electrical connections ~~are made~~ to the tank and anodes and when the system is energized; anytime during the repair process when the tank or associated piping are tested; and at anytime during the process when equipment is connected to the tank or piping.

3.2.a.3. The tightness testing of tanks or piping;

3.2.a.4. The change-in-service or closure process involving the process of vapor removal, purging, inerting, cleaning, and all subsurface sample collection events; and

3.2.a.5. The installation or testing of a corrosion protection system, either galvanic or impressed current.

3.2.b. All class A, B, C, D, E, and F certified workers are required to use testing forms approved by the Secretary.

3.3. Certification Categories. – The underground storage tank system certificates issued by the Secretary will address the following categories:

3.3.a. A class A certificate will allow the individual certified to install, repair, retrofit or upgrade an underground storage tank system, ~~to tightness test Under Dispenser Containment (UDC) basins, tightness test all sumps and spill buckets during installation or replacements, excluding activities associated with corrosion protection or linings (e.g. internal lining, external coating, installation of or maintenance on galvanic or impressed current systems), which must be performed by a Class D or E certified worker as appropriate;~~

3.3.b. A Class B certificate will allow the individual certified to perform a change-in-service or close an underground storage tank system;

3.3.c. A Class C certificate will allow the individual certified to perform tank or piping tightness testing, tank integrity testing, tightness testing of spill buckets, tightness testing of Under Dispenser Containment basins, tightness testing of Submersible Turbine Pump (STP) basins, function testing of line leak detectors ~~to perform minor repairs~~, and to disconnect and reconnect piping and equipment to an underground storage tank system as is necessary to perform the tightness test;

3.3.d. A Class D certificate will allow the individual certified to install, repair, test or upgrade corrosion protection systems, either galvanic ~~or~~ impressed current, internal liners, and/or external coatings on an underground storage tank system; and

3.3.e. A Class E certificate will allow the individual certified to conduct routine tests, system maintenance, and routine inspections on corrosion protection systems, either galvanic or impressed current, on an underground storage tank system.

3.3.f. A Class F certificate will allow the individual certified to verify ball floats or overflow, replace vapor recovery adapters, replace fill shut offs, replace STP motors, check and replace probes and sensors, fix unions under dispensers, replace fuel adapters, replace line leak detectors, replace flex connectors, check and replace valves, replace pipe fittings accessible without excavating, and perform hydrostatic testing of all sumps, under dispenser containers, and spill buckets.

3.4. Certification Requirements. – An individual applying for a ~~Class A, Class B, Class C, Class D or Class E, or Class F~~ certificate certification under any Class listed above must file a written application on a form supplied by the Secretary showing the Secretary that he or she meets the following requirements:

3.4.a. The applicant must be an individual. Businesses or corporations may not be certified;

3.4.b. The applicant need not be a resident of West Virginia;

3.4.c. The applicant shall demonstrate ethical practice. The demonstration shall consist of providing to the Secretary written statements from two (2) personal references and two (2) business references attesting to the applicant's ethical practices. In addition, the Secretary may ~~conduct a police check and~~ checks with other certification or licensing boards with which the applicant is registered to determine the nature of violations of federal, State or local laws and regulations relating to the applicant's performance in an ethical and competent manner. The Secretary may deny the applicant's certification application based upon the documentary evidence obtained pursuant to this subdivision;

3.4.d. The applicant for class A, B, ~~or C or F~~ certification must demonstrate active participation in a minimum of ten (10) regulated underground storage tank system installations, repairs, retrofits, upgrades, performances of a change-in-service, closures or tightness testing conducted after December 22, 1988, as is applicable to the class A, B, ~~or C or F~~ certificate. The applicant shall submit documentation of a minimum

of ten (10) active job participations ~~must be submitted~~ for each individual certificate classification for which the applicant has applied. An applicant who is a ~~registered~~ professional civil or mechanical engineer duly licensed by the State Board of Registration for Professional Engineers of West Virginia may substitute this license for the required experience for class A or class B certification;

3.4.d.1. Applicants shall provide the Secretary a listing of the work performed, site locations, and the names of the companies or employers for whom the work was performed;

3.4.d.2. Applicants for Class C certification must submit proof of a current certification by the manufacturer of each tank or piping tightness test method that ~~they~~ the applicant will be using and must assure by a signed written statement filed with the Secretary that ~~they~~ the applicant will follow the current test protocol established by the manufacturer and policies established by the Secretary;

3.4.e. Applicants for Class D certification must submit, at a minimum, proof of a current certification level as ~~at a minimum~~ a corrosion technician by the National Association of Corrosion Engineers (NACE) or an equivalent certification from another organization if they the applicant will be installing, upgrading, repairing or testing galvanic and impressed current systems. Applicants for Class D certification must have, at a minimum, proof of current certification level as ~~at a minimum~~, as a protective coating technician by NACE or an equivalent certification from another organization if they the applicant will be installing, upgrading or repairing internal and external coatings and certification from the coating manufacturer, ~~and must assure by a signed written statement that they will follow the West Virginia public service commission rule 150C.S.R.4 regarding corrosion protection;~~

~~3.4.e.1.~~ The applicant must prove that certification by an organization other than the National Association of Corrosion Engineers is equivalent to the National Association of Corrosion Engineers by submitting copies of the course of study for review; by the Secretary.

3.4.f. Applicants for Class E certification must submit, at a minimum, proof of a current certification level as ~~at a minimum~~ a corrosion tester by the National Association of Corrosion Engineers or an equivalent certification from another organization for testing of galvanic and impressed current systems, ~~and must assure by a signed written statement that they will follow the West Virginia public service commission rule 150C.S.R.4 regarding corrosion protection;~~

~~3.4.f.1.~~ The applicant must prove that certification by an organization other than the National Association of Corrosion Engineers is equivalent to the National Association of Corrosion Engineers by submitting copies of the course of study for review; by the Secretary.

3.4.g. No applicant for Class A, B, ~~or C~~ or F certification shall be issued a certificate unless he or she has successfully passed a written examination administered by the Secretary;

3.4.g.1. Examinations administered to applicants for certification shall be written, multiple choice examinations. The Secretary shall derive the questions used in the examination from standards, instructions, industry recommended practices, and State and federal laws and regulations pertaining to underground storage tank system installation, repair, retrofitting, upgrading, change-in-service, closure, and tightness testing. The Secretary ~~can~~ may, at his or her discretion, make available to applicants alternative testing procedures;

3.4.g.2. The Secretary or persons designated by the Secretary shall conduct written examinations at such times and locations within the State as the Secretary may consider necessary and appropriate;

3.4.g.3. Applicants for certification must correctly answer not less than eighty percent (80%) of the questions in a category of certification to qualify for that category of certification; and

3.4.g.4. No applicant may take an examination more than three times within a 12-month period. Applications are considered current for a period of one year from the date they are received by the Secretary. After one year, the applicant must file a new application ~~must be filed~~ and pay the examination fee ~~paid~~;

3.4.h. At the time of the examination the applicant for Class A, B, ~~or C~~ or F certification shall remit a nonrefundable ~~\$75~~ \$185 fee by check or money order made payable to the Department of Environmental Protection for each certification for which the applicant has applied. This fee shall be deposited in the Underground Storage Tank Administrative Fund. A fee of ~~\$35~~ \$60 shall be assessed for each retesting of each individual certification within the same year; ~~and~~.

3.4.i. Applicants for Class D or E certification shall submit a nonrefundable application fee of ~~\$75~~ \$185 by check or money order made payable to Department of Environmental Protection for each certification for which the applicant has applied. This fee shall be deposited in the Underground Storage Tank Administrative Fund.

3.5. Certificate Expiration and Renewal. – All certificates and certificate renewals expire December 31 of every ~~second~~ third year after issuance. Applications for certificate renewal and payment of a nonrefundable renewal fee of ~~\$50~~ \$125 must be submitted to the Secretary by November 1 of the year in which the certificate expires., which fee shall be deposited into the Underground Storage Tank Administrative Fund. An individual whose certificate has expired prior to his or her submission of an application for renewal is considered a new applicant for each certification.

3.5.a. An individual may renew each of his or her certificates for another ~~two (2)~~ three-year period by:

3.5.a.1. Paying the renewal fee for each certification for which the applicant has applied; and

3.5.a.2. Submitting on a form supplied by the Secretary a certificate renewal application demonstrating that he or she has completed 16 hours of continuing education training courses approved by the Secretary for each class of certification and has participated in at least one job annually applicable to the class of certification within the prior certification period.

3.5.a.2.A. The continuing education training course must be relevant to the subject area of installation, repair, retrofitting, upgrading, corrosion protection, change-in-service, closure, tightness testing or the regulation of underground storage tank systems as it relates to the category of certification and offer instruction on the most current generally acceptable technology or methods for these subjects. ~~and~~

3.5.a.2.B. The training provider shall provide to the Secretary in writing applications for approval of specific training programs ~~shall be submitted by the training provider to the secretary in writing~~. The submissions shall contain a complete course outline, training material, sample certificates, the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods that will be presented in the training program will satisfy State and federal laws governing underground storage tank system installation, repair, retrofitting, upgrading, corrosion protection, change-in-service, closure or tightness testing; or

3.5.a.3. Submitting on a form supplied by the Secretary a certificate renewal application, demonstrating that he or she has participated in at least one job annually applicable to the class of certification within the prior certification period and successfully passing the written examination described in subdivision 3.4.g. of this rule. At the time of the examination, the applicant applying for renewal must remit a nonrefundable ~~\$50~~ \$125 fee by check or money order made payable to the Department of Environmental Protection for each certification for which the applicant has applied, which fee shall be deposited into the Underground Storage Tank Administrative Fund; and

3.5.b. Individuals certified in Class C must submit a copy of their current certification by the manufacturer of each test method that they are and will be using. Individuals certified in Class D or Class E must submit a copy of their current certification by the National Association of Corrosion Engineers or another previously approved equivalent organization.

3.6. Identification Card. – Upon issuance of the certification, the Secretary shall issue an identification card to the successful applicant that shows the individual's name, certificate issuance date, certificate expiration date, certification number, and the class(es) of certification.

~~3.6.a.~~ An individual who holds a current certificate shall present his or her identification card upon request by a representative of the Secretary or the owner or operator of the underground storage tank system for which an installation, repair, retrofit, upgrade, change-in-service, closure, tightness test or corrosion protection installation, repair, upgrade or test is to be conducted.

3.7. Denial or Revocation of Certification. – ~~Should an applicant be denied the Secretary deny~~ Should the Secretary deny issuance or renewal of certification or should the Secretary revoke the individual's certificate ~~be revoked, the Secretary shall set forth in writing to the applicant~~ the reason or reasons for the denial or revocation shall be set forth in writing to the individual by the secretary.

3.7.a. Possible reasons for denial of issuance of certification, renewal of certification or revocation of certification may include, but are not limited to, failure to achieve a passing score on the written examination described in subdivision 3.4.g. of this rule; failure to submit required documentation; failure to follow the tank or piping tightness testing manufacturer's protocol or policies established by the secretary; failure to be on site performing or providing direct oversight of work required to be performed by the certified worker; ~~failure to follow West Virginia public service commission rules 150C.S.R.4 regarding~~ industry standards for corrosion protection or policies established by the Secretary; previous revocation of certification held by the applicant; evidence of fraud or deceit with respect to the certification application, notification form or testing documents; failure to present the identification card upon request of a Secretary's representative; violations of the laws or rules of West Virginia for ethical considerations enumerated in subdivision 3.4.c. of this rule; or any other cause that, in the opinion of the Secretary, constitutes adequate grounds for denial or revocation of a certificate.

3.7.b. An individual who has been denied issuance or renewal of certification or who has had a certificate revoked may appeal the action to the Environmental Quality Board pursuant to the provisions of W. Va. Code § 22-17-18.

~~3.8. Enforcement Action. — Any individual who violates the provisions of this section of this rule is subject to enforcement action under W. Va. Code § 22-17-1, et seq.~~

§33-30-4. Notification Requirements.

4.1. Notification. – Except as provided in subdivision 4.1.a., 4.1.b., or 4.1.c. of this rule, the owner ~~or~~ and operator of an underground storage tank system that was in the ground prior to May 1, 1990, must submit a notice of the existence of such tank system to the secretary by completing the form prescribed by the secretary.

4.1.a. The owner and ~~or~~ operator of an underground storage tank system that was in the ground prior to May 1, 1990, is exempt from the notification requirements of subsection 4.1 of this rule if notice was previously given to the secretary in accordance with the provisions of the federal Hazardous and Solid Waste Amendments of 1984 on the form published in the federal register on November 8, 1985 (50 F.R. 46602), unless such notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

4.1.b. The owner ~~or~~ and operator of an underground storage tank system that was removed from the ground on or before May 8, 1986, is exempt from the notification requirements of subsection 4.1 of this rule.

4.1.c. The owner ~~or~~ and operator of an underground storage tank that was installed before December 22, 1988, need only complete sections I through X of the form prescribed by the secretary. Tank systems installed on or after December 22, 1988 must comply with the provisions of subsection 4.2 of this rule.

4.2. Notification of Compliance. -- ~~In addition to the provisions of subdivision 4.1.c. of this rule, a~~ All owners and operators of underground storage tank systems installed on or after December 22, 1988 must provide the Secretary notification of compliance with the following requirements:

~~4.2.a. For underground storage tank systems installed on or after December 22, 1988, and before January 1, 1995, installation of tanks and piping as certified under section XI of the form prescribed by the Secretary in accordance with subsection 4.1, excluding item B (installer certified or licensed by the implementing agency) under section 1 (installation) of part XI (certification of compliance).~~

~~4.2.b~~ 4.2.a. For underground storage tank systems installed on or after January 1, 1995, installation of tanks and piping by an individual certified by the Secretary in accordance with section 3 of this rule.

~~4.2.e~~ 4.2.b. Cathodic protection of steel tanks and piping in accordance with the provisions of 40 C.F.R. § 280.20(a) and (b).

~~4.2.d~~ 4.2.c. Spill and overfill prevention equipment in accordance with the provisions of 40 C.F.R. § 280.20(c).

~~4.2.e~~ 4.2.d. Financial responsibility in accordance with the provisions of 40 C.F.R. Part 280, Subpart H.

~~4.2.f~~ 4.2.e. Release detection in accordance with the provisions of 40 C.F.R. § 280.41 and § 280.42.

4.3. Notification of Installation or Upgrade. – At least 30 days prior to commencement of the activity, all owners and operators of underground storage tank systems to be installed or upgraded, or repairing internal lining, corrosion protection systems, or tanks with structural integrity deficiencies must notify the secretary in writing at least 30 days prior to beginning the installation or upgrade shall notify the Secretary in writing of any new tank installation, any upgrade, or any repair of the tank's internal lining or corrosion protection systems. The owner or operator shall also notify the Secretary, in writing, within 30 days of

discovery of any deficiency in the structural integrity of the tank(s). The Secretary may waive the 30-day time period ~~may be waived~~ when such action is in response to a release from an existing UST system on the site.

4.4. Certification of Installation. – All owners and ~~or~~ operators of UST systems must ensure that:

4.4.a. When the system was installed on or after December 22, 1988, and before January 1, 1995, the installer certifies, in the notification form, that the methods used to install the tanks and piping comply with the requirements of 40 C.F.R. §280.20(d); and

4.4.b. When the system was installed on or after January 1, 1995, but prior to the effective date of this rule, the installation of tanks and piping was performed by an individual certified by the secretary in accordance with section 3 of this rule. The installer must certify in the notification form that the methods used to install the tanks and piping comply with the requirements of 40 C.F.R. 280.20(a) through (d). After the effective date of this Rule, the installer shall certify in the notification form that the methods used to install the tanks and piping comply with the requirements of Section 3 of this rule and the requirements of 40 C.F.R. § 280.20(a) through (d) and (f).

4.5. Notification Requirements. – An owner ~~or~~ and operator who is required to submit notices under section 4 of this rule may provide notice for several tanks by using one notification form, but an owner of tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

4.6. Notification to Purchaser. – After June 10, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's notification obligations under section 4 of this rule. The following notice may be used to comply with the requirement:

“NOTICE: Owners of certain underground storage tanks in West Virginia are required by law to notify the Secretary of the Department of Environmental Protection of the existence of their tanks. Notifications for tanks brought into use after May 8, 1986 must be made within 30 days of commencement of the use. Consult the Department's Underground Storage Tank Rule (33 C.S.R. 30) to determine if you must provide this notification.”

~~4.6.a.~~ After June 14, 1993, any person who sells an existing tank intended to be used as an underground storage tank must notify the Secretary in writing at least 30 days prior to the transfer of ownership.

4.7. Notification of Change in Status. – Except as provided in ~~sub-division 4.6.a.~~ subsection 4.6. of this rule, the owner ~~or~~ and operator must report changes in the status of any underground storage tank system by completing the form prescribed by the Secretary and submitting the form to the Secretary by December 31 of the year in which the change of status occurred.

~~4.7.a.~~ A new owner of an underground storage tank must provide notification of the transfer of ownership of that tank, a change in tank operator or a change of contact information and address for the tank owner and operator by completing the form prescribed by and submitting the form to the Secretary, along with proof of financial responsibility in accordance with the provisions of 40 C.F.R. Part 280, Subpart H. The new owner and operator must submit this information ~~must be submitted~~ to the Secretary within 30 days of the change of ownership, change of operator or change of address information. ~~transfer.~~

~~§33-30-5. Secondary Containment Requirements, Release Prevention, and Release Detection.~~

~~5.1. Secondary Containment Requirements for New or Replaced Underground Tanks or Piping. Each new or replaced tank or piping connected to any such new or replaced tank, including tanks or piping used for emergency power generation, must be secondarily contained and monitored for leaks.~~

~~5.1.a. The secondary containment shall apply only to the specific underground storage tank and piping being replaced and not to other underground storage tanks and connected pipes comprising such system.~~

~~5.1.b. The interstitial space shall be monitored in compliance with 40 C.F.R. §280.43(g).~~

~~5.1.c. The secondary containment system must be designed, constructed, and installed to:~~

~~5.1. c.1. Contain regulated substances released from the tank and piping system until they are detected and removed;~~

~~5.1. c.2. Prevent the release of regulated substances to the environment at any time during the operational life of the tank and piping system; and~~

~~5.1. c.3. Be checked for evidence of a release at least every 30 days.~~

~~5.1.d. The requirements of this subsection do not apply to suction piping that meets the requirements of 40 C.F.R. §280.41(b)(2)(I) or to piping that manifolds two or more tanks together.~~

~~5.2. Secondary Containment Requirements for New or Replaced Motor Fuel Dispenser Systems. New or replaced motor fuel dispensers must have under dispenser containment.~~

~~5.2.a. The motor fuel dispenser system shall include the equipment necessary to connect the system to the underground storage tank system such as check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.~~

~~5.2.b. The secondary containment must:~~

~~5.2.b.1. Be liquid tight on its sides, bottom, and at any penetration;~~

~~5.2.b.2. Be compatible with the substance conveyed by the piping;~~

~~5.2.b.3. Allow for visual inspection and access to the components in the containment system, be monitored or both; and~~

~~5.2.b.4. Be liquid tightness tested every three years.~~

~~5.3. Application of Secondary Containment Requirements. These requirements do not apply to repairs as defined in 40 C.F.R. §280.12 meant to restore an underground storage tank, piping, or dispenser to operating condition.~~

§33-30-65. Delivery Prohibition.

65.1. Proof of Compliance. – Product deliverers, including any person who approves a delivery order or delivers or deposits product into an underground storage tank, shall not deliver product into an

underground storage tank unless the Secretary has certified that the underground storage tank owner or operator is in compliance with the requirements of the Underground Storage Tank Fee Assessments (33 C.S.R. 31) and the notification requirements (33 C.S.R. 30 §4) under section 4 of this Rule, and capitalization fee requirements of 33 C.S.R. 32 §5) and the owner or operator presents proof of this certification along with proof of financial responsibility in compliance with 40 C.F.R. Part 280, Subpart H to the product deliverer.

65.2. Tank Eligibility for Delivery, Deposit or Acceptance. – An underground storage tank is eligible to receive product when in compliance with the requirements of 40 C.F.R. Part 280:

65.2.a. Required spill prevention equipment is installed and properly operated and maintained;

65.2.b. Required overfill protection equipment is installed and properly operated and maintained;

65.2.c. Required leak detection equipment is installed and properly operated and maintained;

65.2.d. Required corrosion protection equipment including a buried metal flexible connector is installed and properly operated and maintained; and

65.2.e. Required financial responsibility is maintained.

65.3. Delivery, Deposit or Acceptance of Product to Ineligible Tanks. – Product deliverers shall not deliver or deposit into an underground storage tank, nor shall an underground storage tank owner or operator accept or allow delivery or deposit to an underground storage tank, that the Secretary has identified as ineligible to receive product.

65.4. Notification of Ineligibility. – The Secretary shall notify the owner or operator in writing that an underground storage tank is ineligible to accept deposit or delivery and may affix a tag, notice or locking device to the underground storage tank until the owner or operator achieves compliance with the requirements ~~under subsection 6.2 is achieved~~ of subsection 5.2.

65.4.a. The Secretary may choose to classify an underground storage tank as ineligible to receive product but then authorize delivery in an emergency situation.

65.5. Enforcement. – Any product deliverer, owner or operator who violates the provisions of this section is subject to enforcement action under W. Va. Code § 22-17-1, et seq.

~~§33-30-76. Operator Training Requirements for Individuals Who Operate, Maintain, or Are Responsible for Addressing Emergencies Presented by Spills or Releases from an Underground Storage Tank System.~~

~~7.1. Applicability of Requirements. — The requirements of this section apply to:~~

~~7.1.a. Individuals who have primary responsibility for on site operation and maintenance of underground storage tank systems;~~

~~7.1.b. Individuals who have daily on site responsibility for the operation and maintenance of underground storage tank systems; and~~

~~7.1.c. Daily on site employees who have primary responsibility for addressing emergencies~~

~~presented by a spill or release from an underground storage tank system.~~

~~7.2. Effective Date of Training Requirements.~~

~~7.2.a. Beginning August 8, 2012, those individuals identified in subsection 7.1.a. or 7.1.b. must have received the required training within thirty days after assuming operation and maintenance responsibilities at the underground storage tank system;~~

~~7.2.b. Beginning August 8, 2012, those individuals identified in subsection 7.1.c. must have received the required training before assuming responsibility for responding to emergencies;~~

~~7.2.c. Beginning August 8, 2012, those individuals identified in subsection 7.1.a., 7.1.b., or 7.1.c. shall repeat the required training if their underground storage tank systems are determined by the department to be out of compliance.~~

7.3.6.1. Approval of Required Training.

~~7.3.a.6.1.a. Training for individuals identified in subsection 7.1.a., 7.1.b., or 7.1.c. 40 C.F.R. § 280.242 must receive prior approval by the Secretary. Upon approval, the training may be conducted multiple times at multiple locations.~~

~~7.3.a.1.6.1.a.1. Operator training courses must be renewed every five years or as otherwise specified by the Secretary. The training provider shall submit to the Secretary in writing applications for approval of specific training programs shall be submitted by the training provider to the Secretary in writing. The submissions shall meet the operator training course requirements set forth in 40 C.F.R. § 280.242, the requirements of this Rule, and guidance provided by the Secretary. contain a complete course outline, training material, sample certificates, the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods that will be presented in the training program will satisfy state and federal laws; and~~

~~7.3.a.2.6.1.a.2. The training provider shall submit to the Secretary, with the application for approval of a specific training program. Upon application for approval of a training program a nonrefundable application fee of \$280.00 by check or money order shall be submitted made payable to the Department of Environmental Protection for deposit into the Underground Storage Tank Administrative Fund. This fee shall be deposited in the Underground Storage Tank Administrative Fund.~~

~~7.3.b. The approved training may include in-class, on-line, or hands-on training.~~

~~7.3.c. The approved training must include an evaluation designed to measure all aspects of the individual's knowledge and skills to competently operate underground storage tank systems.~~

~~7.4. Proof of Required Training.~~

~~7.4.a. The training provider must provide the individual and the department with a certificate of training documenting the level of training received.~~

~~7.4.b. Individuals identified in subsection 7.1.a., 7.1.b., or 7.1.c. shall demonstrate that they have received the required training by providing a copy of the training certificate to the department upon request.~~

§33-30-7. Inflation or Deflation Based Fee Adjustments.

7.1. The certification fees set forth in this Rule are based on calendar year 2017 dollar values. These fees shall be indexed annually, up or down, based on the U.S. Department of Labor's Consumer Price Index (All items). Fees charged for the certification program assessed by the Secretary after July 1, 2018 shall reflect the cumulative inflation or deflation adjustment(s).