

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE:

33CSR30
UNDERGROUND STORAGE TANKS RULE

ORIGINAL

HELD JULY 6, 2017
DEP
601 - 57TH STREET
CHARLESTON, WEST VIRGINIA

6:05 P.M.

Donna H. Miller
Court Reporter

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A P P E A R A N C E S

ON BEHALF OF THE DEP:

JACOB P. GLANCE
Public Information Specialist
601 - 57th Street
Charleston, WV 25304

JOE SIZEMORE
RUTH PORTER
JULIE WANDLING

P R O C E E D I N G S

1 MR. GLANCE: Good evening. I'm Jacob
2 Glance from the Department of Environmental
3 Protection's Public Information Office. Welcome to
4 tonight's public hearing on 33CSR30, the underground
5 storage tanks rule.

6 Also here this evening are Joe
7 Sizemore, Ruth Porter and Julia Wandling with the
8 West Virginia DEP.

9 The purpose of tonight's hearing is to
10 give you the opportunity to share your comments with
11 the DEP about 33CSR30.

12 Tonight's hearing is being recorded by
13 a court reporter so that the comments shared can be
14 part of the rulemaking record.

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

21 For those wishing to speak, when I call
22 you up to provide your comments, please state your
23 name and say if you are representing any groups or

1 organizations.

2 If you have written comments that you
3 would like to submit in addition to your spoken
4 comments, hand them to me after you speak or at the
5 conclusion of this hearing.

6 If no one has any questions about the
7 format, we will begin the hearing with our first
8 speaker.

9 All right, first up is Angie Rosser.

10 MS. ANGIE ROSSER: Angie Rosser,
11 representing the West Virginia Rivers Coalition.
12 Thank you for the opportunity to weigh in on the
13 underground storage tank rule.

14 Of course, USTs pose a serious threat
15 to groundwater resources, and we still have a lot to
16 learn about what's going on with groundwater quality
17 and the interactions between groundwater and surface
18 water in West Virginia, particularly in karst
19 regions.

20 In terms of the proposed rule and the
21 worker certification program updates, we support
22 updated certification requirements, especially those
23 that address the increasing problems posed by aging
24 USTs and their associated systems.

1 Obviously, these requirements, in order
2 to be effective, need to be enforceable. The
3 question we have under this section was the agency's
4 rationale for removing Section 3.8 of the proposed
5 rule dealing with enforcement action.

6 In terms of the fees, the increase in
7 fees to cover costs associated with the
8 administration of the UST program seemed prudent and
9 very reasonable, although we wonder if it's enough.

10 As USTs throughout the state continue
11 to age, increased oversight and administration to
12 adequately protect public health and the environment
13 is a likely necessity. So we would request that the
14 agency track closely if the fees are adequate, in
15 fact, to match the needs of the program and to do
16 this on an annual basis.

17 The tracking of the fees and the
18 adequacy to meet the needs of the program we feel
19 are even more important as the agency as a whole
20 seems likely to bear the brunt of federal funding
21 cutbacks in the immediate years to come.

22 So overall, as the agency is adjusting
23 to funding changes to make sure that programs as
24 important as these are adequately funded to protect

1 public health and the environment.

2 We were very pleased to see that the
3 delivery prohibition section is maintained in the
4 proposed rule. We think that's an effective and
5 important accountability measure that could be
6 replicated in other programs, similar programs.

7 Finally, the secondary containment
8 section. We are a little confused by this and are
9 seeking more clarification from the agency of why
10 the rule completely strikes that section.

11 We saw in the certification program
12 classifications that modifications were made and
13 updates were made to mirror federal law, but in this
14 section it was just totally stricken.

15 So we have three questions we would
16 like the agency to respond to is, why was this
17 section completely eliminated instead of updated to
18 mirror federal law like the certification
19 classification sections of the proposed rule.

20 Secondly, we are curious how the
21 proposed rule change in eliminating this section
22 will change the way that this state agency enforces
23 secondary containment requirements.

24 And thirdly and finally, are there any

1 standards that have changed by eliminating the state
2 regulations, and we presume deferring to the federal
3 regs, how have any standards changed? So that's
4 something that we would like some more explanation
5 about as secondary containment obviously is
6 important to preventing contamination of groundwater
7 resources.

8 And that's all I have. Thank you.

9 MR. GLANCE: Thank you. Is there anyone
10 else wishing to speak tonight? Okay. This
11 concludes the public hearing on 33CSR30, the
12 underground storage tanks rule. This also concludes
13 the public comment period for this proposed rule.

14 Thank you all for your participation
15 and have a nice evening and a safe trip home.

16 * * * *

17 CONCLUDED AT 6:12 P.M.

18 * * * *

REPORTER'S CERTIFICATE

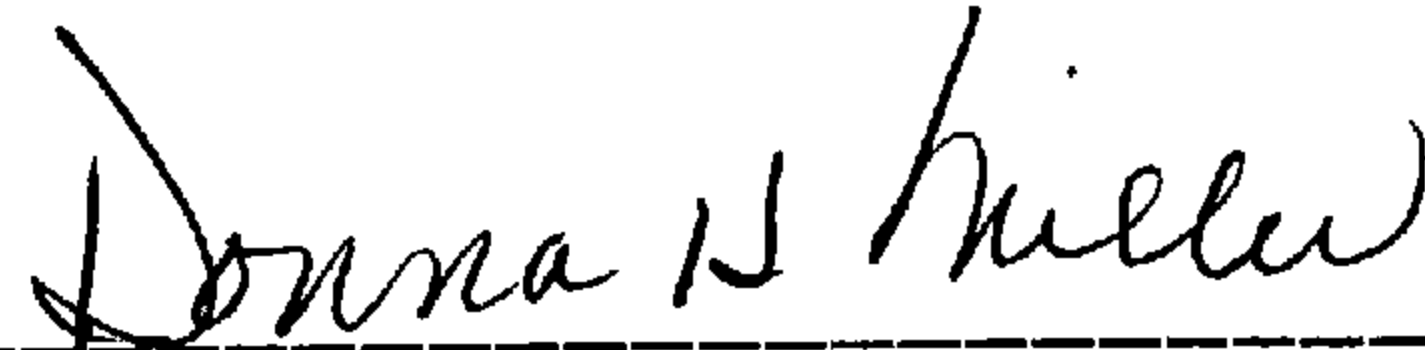
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

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

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

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

Given under my hand this 8th day of
July, 2017.



Donna H. Miller
Notary Public

My commission expires October 1, 2023.





WEST VIRGINIA RIVERS

July 6, 2017

WVDEP

UST Rule Comments; Attn: Joe Sizemore

Summary of comments presented and hand-delivered at public hearing

UST Worker Certification Program Updates

As leaks and spills from USTs pose serious threats to groundwater resources, we support updated certification requirements, especially those that address the increasing problems posed by aging USTs and their associated systems. These requirements need to be enforceable. We question the WVDEP's rationale for removing section 3.8 of the proposed rule dealing with enforcement action.

We support the fee increase to cover costs associated with the administration of the UST program. As USTs throughout the state continue to age, increased oversight and administration to adequately protect public health and the environment is a likely necessity. WVDEP should track closely if the fees are adequate to match the needs of the program on an annual basis. This tracking becomes more important as the agency as a whole may face federal funding cutbacks.

Delivery Prohibition

We are pleased that the rule maintains a delivery prohibition on non-compliant USTs as an effective and important accountability measure.

Secondary Containment

We are concerned proposed rule completely strikes the section related to secondary containment requirements. Questions we would like the WVDEP to address include:

- Why is this section completely eliminated, instead of updated to mirror federal law like the certification classifications sections of the proposed rule?
- How would this proposed rule change the way WVDEP enforces secondary containment requirements?
- Are any standards related to secondary containment for USTs in West Virginia changed by the proposed rule?

Respectfully submitted,

Angie Rosser, Executive Director

Environmental Protection Agency (EPA) comments on the proposed West Virginia Underground Storage Tank Rule

- In Section 2.1 the correct date should be July 1, 2016.
- Did WV intend to cite a provision different than 280.51 (b) in Section 2.1.e?
- Change “ball bloats” to ball floats in section 3.3.f.
- Change “owner or operator” to “owner and operator” in Section 4 in order to comply with 40 CFR 281.30 (c).
- It is noted that language was struck through in Section 4.4.b concerning tank installations which seems to cause a gap in which certification of installations are needed. What about systems installed between January 1, 1995 and the effective date of the rule?
- It is suggested that the language in 4.3 be broadened to read “At least 30 days prior to commencement of activity, all owners and operators of underground storage tank systems 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” in order to clarify applicable notification requirements.

§33CSR30 – Underground Storage Tanks Response to Comments

Comment #1 A commenter questioned West Virginia Department of Environmental Protection's (WVDEP) rationale for removing Section 3.8 of the rule which dealt with enforcement action. The commenter noted that the worker certification requirements need to be enforceable.

Response WVDEP removed the language from the rule as part of clean-up of the Rule's language. The removal of the language from the Rule has no effect on the Agency's ability to enforce all aspects of the UST Rule. The UST Rule's enforcement authority continues to be provided by Chapter 22, Article 17, The Underground Storage Tank Act.

Comment #2 A commenter noted their support for the worker certification fee increase, but questioned whether the fee increase was adequate to support the program.

Response WVDEP appreciates the commenter's support. The WVDEP analyzed the cost of the Worker Certification program over several years and determined that the requested fee increase in this rule change will be sufficient to cover the cost of the Worker Certification program. It should be noted that fees are collected through Legislative Rule Title 30, Series 31 to defray the costs of administering the Underground Storage Tank Act.

Comment #3 A commenter noted their support for Delivery Prohibition requirements remaining in the Rule.

Response Other than some minor clean-up language, the Delivery Prohibition section was unchanged because this section of the Rule is necessary for West Virginia to receive State Program Approval (SPA) from the Environmental Protection Agency (EPA). Without SPA, administration of the UST program would revert to EPA.

Comment #4 A commenter noted their concern that Section 5 on Secondary Containment was removed from the Rule. The commenter questioned why the section was eliminated instead of updated to mirror the federal law.

Response The section on Secondary Containment was removed from the Rule because the federal law which now includes Secondary Containment is incorporated by reference.

Comment #5 A commenter noted their concern that Section 5 on Secondary Containment was removed from the Rule. The commenter questioned how the proposed rule would change how the WVDEP enforces secondary containment requirements.

Response The proposed rule does not change how WVDEP performs enforcement on secondary containment requirements or any other provisions of the UST regulations.

Comment #6 A commenter noted their concern that Section 5 on Secondary Containment was removed from the Rule. The commenter asked if any standards related to secondary containment for USTs in West Virginia are changed by the proposed rule.

Response Standards related to secondary containment are not changed by the proposed rule.

Comment #7 One commenter stated that the date in Section 2.1 should be July 1, 2016.

Response WVDEP agrees and the change has been made.

Comment #8 One commenter questioned if 280.51 (b) was the correct citation in 2.1.e.

Response The citation was incorrect and has been corrected to 280.251 (b).

Comment #9 One commenter stated change “ball bloats” in Section 3.3.f to “ball floats”.

Response WVDEP agrees and the change has been made.

Comment #10 One commenter noted that the language in Section 4 should be changed from “owner or operator” to “owner and operator” to be consistent with the federal rule, 40CFR281.31(c).

Response *WVDEP agrees and the change has been made.*

Comment #11 One commenter noted that language was removed in Section 4.4.b concerning tank installations which seems to cause a gap in which certification of installations are needed. Specifically, the commenter questioned certification requirements for systems installed between January 1, 1995 and the effective date of the rule?

Response *WVDEP agrees and added the language back into the Rule.*

Comment #12 One commenter suggested that the language in 4.3 be broadened to read “At least 30 days prior to commencement of activity, all owners and operators of underground storage tank systems 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” to clarify applicable notification requirements.

Response *WVDEP agrees and the change has been made.*