

47CSR32
ENVIRONMENTAL LABORATORIES CERTIFICATION AND
STANDARDS OF PERFORMANCE
Response to Comments

The WV Department of Environmental Protection (DEP), Division of Water and Waste Management (DWWM) commenced the public comment period for proposed legislative rule 47CSR32 on June 25, 2026. The public comment period concluded July 27, 2026, after satisfying the 30-day period. A public hearing was held virtually on July 27, 2026. The purpose of the public comment period and hearing was to accept oral and written comments on the proposed revisions to 47CSR32.

No written comments were received during the public comment period, but during the public hearing one comment was received from Scott Mandirola of the West Virginia Rivers Coalition.

The public hearing transcript is provided as part of the formal rulemaking record.

Commenter 1: Scott Mandirola, WV Rivers Coalition

Comment 1: On behalf of its members, we would like to voice our support for the increase in fees to this program. The LabCert program is somewhat unique in West Virginia in that it's crucial to help support the quality of data that's submitted to West Virginia DEP in the NPDES program and in other programs throughout the DEP, not just the water program but the mining program and other programs as well. So, we are very much in support of making sure that there is adequate fees to support that program, particularly in reference to the expansion to PFAS testing and other emerging pollutants. Thank you and thank you for the opportunity to comment.

Response 1: DEP appreciates the input of WV Rivers Coalition and thanks them for their comment.

July 30, 2026

Isaac L. Tinch, General Counsel

West Virginia Department of Environmental Protection

601 57th Street SE

Charleston, WV 25304

In the Matter Of:

WV DEPT OF ENVIRON. PROTECTION PUBLIC HEARING

WVDEP DWWM PUBLIC HEARING

July 27, 2026



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WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
2027 LEGISLATIVE RULES
VIRTUAL PUBLIC HEARING

Taken On
July 27, 2026

at
6:00 p.m.

on behalf of
West Virginia
Department of Environmental Protection
Division of Water and Waste Management

via
Google Meet Videoconference

* * * * *

Transcript of the public hearing in the
above matter, held pursuant to notice via Google
Meet Videoconference, on the 27th day of July,
2026.

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APPEARANCES:

FROM THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL
PROTECTION:

Isaac Tinchler
Johnsely Cyrus
Henry Jason Harmon
Gary Rogers
Justin Carpenter
Terry Fletcher

PARTICIPANTS:

Scott Mandidrola, West Virginia Rivers
Coalition
Than Hitt, West Virginia Rivers Coalition

P R O C E E D I N G S

(Hearing commenced at 6:00 p.m.)

MR. TINCHER: All right. Good evening. My name is Isaac Tincher. I'm general counsel for the West Virginia Department of Environmental Protection and I want to welcome everybody and thank everybody for their attendance to this public hearing.

We'll be discussing the four proposed legislative rules that the DEP has prepared. We have: 35 CSR 4, 35 CSR 8, 60 CSR 13, 47 CSR 63, and 47 CSR 32, and those aren't necessarily in the order that we're going to proceed with them this evening, but those are the rules that DEP has submitted for public notice and hopefully you've had time to look at those and review those.

So the purpose for this public hearing is for the DEP to accept official comments on the record related to those proposed rules. To ensure that we have an accurate --

Oh, excuse me. Somebody is attempting to join.

MS. CYRUS: Hey, Isaac, I will let them in.

1 MR. TINCHER: Okay. As I was saying
2 to ensure we have an accurate record of everyone
3 attending this evening, we ask that you please
4 provide your name and contact information in the
5 meeting chat. You can do that by clicking the
6 small bubble text down there at the bottom of your
7 screen in the right corner of your screen there.

8 This hearing is being recorded and a
9 court reporter is present, I believe, so that the
10 comments you share can be taken into consideration
11 and entered into the administrative record for
12 these rules.

13 All comments submitted before the end
14 of the comment period and that includes those
15 provided here tonight will be made part of the
16 official record. The DEP will respond to all
17 comments that are submitted. The comment period
18 for these proposed rules ends at the conclusion of
19 tonight's hearing.

20 To ensure that we have -- that we
21 successfully -- excuse me. To ensure that we
22 successfully achieve the purpose of this hearing,
23 we ask that everyone be respectful and considerate
24 of each other by refraining from using foul

1 language, name calling, and interrupting others
2 whenever they're attempting to speak. We also ask
3 that you keep your comments on the topic of these
4 proposed rules so that our time together is used
5 efficiently.

6 Each commenter will be given five
7 minutes to speak and if time allows, we will circle
8 back to previous commenters to allow for additional
9 testimony.

10 If you have written comments, in
11 addition to your oral comments, please e-mail them
12 to me at Isaac.L.Tincher@WV.gov and there's a dot.
13 Isaac.L.Tincher@WV.gov.

14 We will provide a brief description of
15 each rule and then we will open the floor for
16 comments, one at a time.

17 We'll start with 60 CSR 13, the rule
18 entitled the Design Build Program, followed by 35
19 CSR 4 and 35 CSR 8, which will relate to the
20 installation of alternate monuments upon a plugging
21 well. And lastly, 47 CSR 32, our lab certification
22 rule, and 47 CSR 63, the aboveground storage tank
23 rule.

24 So thank you for bearing with me

1 through these opening remarks and instructions.

2 We'll now start with our first rule, that's 60 CSR
3 13, that's the Design Build Program, and I'll
4 explain that one.

5 So 60 CSR 13 does have to do with
6 DEP's Design Build Program, which is something
7 we've been navigating for the last couple of years.
8 And we do propose to amend the rule by changing the
9 language to -- well, currently the language allows
10 the agency to use a third-party owner's advisor or
11 a consultant, if you will, to assist the agency in
12 implementation and execution of the design-build
13 best practices.

14 We're proposing the language be
15 changed to say that we may - that DEP may - utilize
16 the services of a third-party owner-advisor. And
17 the reason for that is because as time has passed,
18 we have learned more and accumulated more knowledge
19 about how that process works, how the design-build
20 process works. Because at first when this was
21 first initiated, it was very novel to everybody at
22 DEP. But as time has passed along, we have
23 developed a pretty steady and sturdy understanding
24 of the program, of the rule itself, and also of how

1 design-build contracts work in general.

2 And currently, like I say, the
3 language requires us to have that owner's advisor.
4 We would make it to where we wouldn't be obligated
5 to have that owner's advisor, but nevertheless
6 still have the opportunity to retain an owner's
7 advisor if necessary.

8 And we will -- Gary, I don't know if
9 you have anything else to add to that or not.

10 MR. ROGERS: No, I think you've
11 covered it pretty well.

12 MR. TINCHER: Okay. Well, with that,
13 we'll now open the floor for commenters on this
14 particular rule. If you'd like to provide
15 comments, please use the raise hand feature and we
16 will call upon you.

17 Johnseely, I don't know if you can see
18 that better than I can.

19 But when called upon, please state
20 your name, any organizations you represent, if any,
21 and begin your comments.

22 Anybody have any comments on this
23 rule?

24 Okay. I'm not seeing any hands

1 raised. If there's no questions or anything like
2 that, then I guess that concludes our public
3 comment period for this particular rule for the
4 Design Build Program.

5 Next, we'll be moving on to our two
6 oil and gas rules, 35 CSR 4 and 35 CSR 8.

7 Jason Harmon is the Chief of DEP's
8 Office of Oil and Gas. He'll provide a brief
9 description of those proposed rules and then we'll
10 open the floor up to comments after that.

11 So Jason, if you'd like to go ahead,
12 sir.

13 MR. HARMON: Thank you, Isaac. Would
14 you like me to do both rules together or do one and
15 then the next?

16 MR. TINCHER: Well, if I was taking
17 notes, I would probably prefer them to be kind of
18 separate, but it's really up to you.

19 MR. HARMON: No problem. First, I'll
20 talk about the rule 35 CSR 4, which is entitled Oil
21 and Gas Wells and Other Wells.

22 The purpose of this rule change is to
23 introduce the notion of installing buried or below-
24 ground monuments after a well is plugged.

1 One of the largest issues that we face
2 after well plugging has been completed that
3 monuments are vandalized or otherwise removed and
4 we have absolutely no jurisdiction over, say, a
5 landowner, for instance - not that I'm picking on a
6 landowner - but there's nothing to prevent
7 landowners or other parties from removing monuments
8 after wells have been plugged, thereby negating any
9 value that they would provide.

10 So the State is proposing to change
11 the rules to allow, in certain cases, monuments to
12 be subterranean. And in doing so, the monuments
13 must be at least 36 inches below the surface grade,
14 so which is plow depth, constructed of a greater
15 than one-quarter-inch steel plate and have the API
16 number welded there, too, so that metal detectors
17 can find them.

18 As part of this, if a company were to
19 bury the monument, a GPS reading of the -- of that
20 monument with a specified accuracy must be recorded
21 on the plugging affidavit and then stored with the
22 well record so that it could be found in the
23 future. DEP can require traditional markers in
24 cases where it feels necessary.

1 In 35 CSR 4 there is a distinction
2 between wells that are located in areas having coal
3 and areas not having coal. So, to be clear, this
4 change would currently only apply to wells that are
5 in areas that do not have workable coal.

6 The definition of workable coal from
7 West Virginia Code §22-6-1(e) is as follows:
8 Workable coal is "any seam of coal twenty inches or
9 more in thickness, unless a seam of less thickness
10 is currently being commercially worked, or can in
11 the judgment of the department, foreseeably be
12 commercially worked."

13 So that provides a little bit of
14 framework around which wells may be eligible for
15 this rule.

16 And just to be perfectly clear, 35 CSR
17 4 applies to conventional wells only.

18 And those are the only changes right
19 now for this rule. If anybody has comments, this
20 would be the time to bring them forward.

21 Okay. Hearing none, I will move on to
22 Rule 35 CSR 8 entitled Rules Governing Horizontal
23 Well Development.

24 The changes to this rule are very

1 similar from those presented in the previous rule,
2 the idea being that an operator can optionally bury
3 a monument after plugging, provided that the
4 following criteria have been met: That the well is
5 at least 36 inches below surface for plow depth; is
6 covered with a steel plate of at least one-quarter-
7 inch thickness; and has the API number welded to
8 it. The location of that to a specified accuracy
9 must be recorded on the plugging affidavit. And
10 DEP has the option to require a traditional
11 monument where where it desires.

12 There is one major difference between
13 35 CSR 8 and 35 CSR 4, in that in the case of 35
14 CSR 8 these changes would be applicable to both
15 wells that are located in areas having coal and
16 areas not having coal. And the same definition of
17 workable coal applies in in this statute as the
18 other one. So that is any coal seam at least 20
19 inches of thickness or of any thickness, where it
20 is currently being worked or can be worked in the
21 view of the of the department.

22 If anybody has comments, now would be
23 the time to address them. Thank you.

24 MR. TINCHER: Okay. Yeah. Seeing no

1 more comments, that will close the comment period
2 for both of those rules.

3 We'll move on then to our next rule,
4 which is 47 CSR 32, that's the Lab Certification
5 rule. And we happen to have Mr. Justin Carpenter
6 with us to explain that, and if you would please
7 give him your attention.

8 MR. CARPENTER: All right. Hello. So
9 the lab -- we're seeking to update the Laboratory
10 Certification rule, 47 32, Environmental
11 Laboratories Certification and Standards of
12 Performance.

13 The primary goal with the update is to
14 increase certification fees collected to ensure
15 that these are sufficient to administer program
16 functions as required by law. The certification
17 fees are set forth by the rule, so we do not have
18 the option to update them without going through
19 rulemaking, and current fees are insufficient to
20 cover program expenditures. So we need to get
21 those fees updated.

22 It's been some number of years since
23 the rule has been opened up for rulemaking and in
24 so doing, there are other updates that are

1 necessary to keep the certification rule for
2 laboratories current with modern laboratory
3 operations. So we're seeking to do a number of
4 other updates.

5 Notable updates are additions of
6 categories of testing to support other DEP
7 programs. We're seeking to add volatile toxic
8 organics in the ambient air by TO 15 to support
9 ground fields. We're seeking to add PFAS to the
10 HRMS category to support other program needs. We're
11 looking to add fish tissue to support consumptive
12 advisory in support of DEP and DNR interagency
13 collaboration. We're looking to add asbestos in
14 support of groundwater permits.

15 Essentially, all these additions would
16 allow us to certify parameters that have been
17 requested to be certified that aren't included in
18 certifiable categories currently based on the way
19 the rule is set up.

20 Let's see. We also are looking to
21 more clearly outline reciprocity requirements to
22 enable us to set up a framework to determine
23 whether another out-of-state laboratory's primary
24 state of certification requirements are equivalent

1 to our own. There was some barebone language in
2 the current rule, but it's not very well-defined.
3 This seeks to better flesh that out so that we have
4 that capability.

5 It also looks to add some flexibility
6 for inspection types for renewals. The current
7 rule requires annual on-site inspections for
8 renewals. We look to clarify that to also enable,
9 in some instances, remote inspections where needed,
10 when needed, and looks to remove field requirements
11 for things for which laboratory certification does
12 not have oversight. We certify laboratories and
13 there are, in some cases, some field requirements
14 that don't fall within our purview. So we're
15 looking to remove those.

16 And lastly, we're looking to modernize
17 some requirements with respect to data reporting.
18 Currently, we have laboratory networks that exist
19 now that didn't exist in the current fashion years
20 ago that are sharing data amongst multiple
21 certified laboratories within the same network, and
22 the current requirements would make them report
23 individual reports from each laboratory and append
24 those to one giant document, essentially.

1 We're looking to allow multiple
2 certified, DEP-certified laboratories in the same
3 network that have a shared information system to
4 use a singular report, provided that the
5 information provided in that report is discernible
6 as to who did what, when, where, and how.

7 That is the majority of the updates,
8 if anyone has any questions.

9 MR. TINCHER: Okay. Likewise, we will
10 open the floor to any comments that you all may
11 have. Just raise your hand and we will call on
12 you. So whenever you're called on, please state
13 your name, any organization you represent, if any,
14 right, and just go ahead and begin your comment.
15 We'll also be limiting comments to five minutes as
16 well.

17 I think, Mr. Mandirola, you have your
18 hand raised.

19 Johnseely, are we having maybe
20 technical difficulties?

21 MR. HARMON: Scott, you may be muted.

22 MR. MANDIROLA: Sorry. Can you hear
23 me now?

24 MR. TINCHER: Yes, sir.

1 MR. MANDIROLA: Okay. Sorry about
2 that.

3 Scott Mandirola with West Virginia
4 Rivers Coalition. On behalf of its members, we
5 would like to voice our support for the increase in
6 fees to Justin's program. The LabCert program is
7 somewhat unique in West Virginia in that it's
8 crucial to help support the quality of data that's
9 submitted to West Virginia DEP in the NPDES program
10 and in other programs throughout the DEP, not just
11 the water program but the mining program and other
12 programs as well.

13 So we are very much in support of
14 making sure that there is adequate fees to support
15 that program, particularly in reference to the
16 expansion to PFAS testing and other emerging
17 pollutants. Thank you, and thank you for the
18 opportunity to comment.

19 MR. TINCHER: Thank you for your
20 comment.

21 Are there any other comments?

22 Okay. Last call for anybody having
23 comments they may wish to raise at this time.

24 Okay. Then I believe that will close

1 the comment period for 47 CSR 32.

2 And then our last rule is 47 CSR 63,
3 which is the Aboveground Storage Tank rule. I will
4 be speaking to this rule.

5 DEP is proposing an amendment to 47
6 CSR 63 for submission of this year's Legislative
7 Rulemaking Review Committee.

8 After the 2026 Senate Bill 641 was
9 signed into law, DEP sought to make adjustments to
10 the rule to bring regulatory requirements into
11 alignment with the updated statute.

12 So some of the changes that are made
13 are some new definitions and updated definitions,
14 you will see in there. During the regular session
15 this year, the Legislature defined aboveground
16 storage tank within the code as well, as the
17 primary storage vessel and its ancillary piping
18 dispensing equipment up to the first point of
19 isolation.

20 It defined secondary containment
21 separately in §22-30-3 in (17) as a distinct
22 safeguard designed to catch escaping fluid. That
23 separation is what enables the proposed rule's core
24 operational changes like distinguishing between

1 internal leak incidents that don't get outside of
2 the tank. It separates those from external
3 environmental leaks -- or excuse me, releases.

4 So instead of being regulated just by
5 definition, secondary containment is regulated
6 through explicit measures that are within the
7 proposed rule.

8 So a key definition change we see is
9 the leak versus release distinction that's made a
10 leak is specifically laid out in the rule as any
11 discharge or escape or leaching of fluids from an
12 AST into its secondary containment structure,
13 whereas a release escapes out into the waters of
14 the state.

15 Temporarily out of service, there's an
16 added dedication -- excuse me, definition that
17 establishes that temporarily out-of-service tanks
18 have to be registered, maintain financial
19 assurance, carry proper signage, be capped at five
20 years and temporarily out of service status, and
21 undergo a fit for service inspection before they
22 can return into service again.

23 Discharge is also another definition
24 that's been added which involves discharging

1 pollutants into the waters of the state. And
2 that's, like I say, all of those changes are within
3 the definition section can be seen as well. As for
4 Zones of Critical Concern and Zones of Peripheral
5 Concerns, there's a provision that grants a nine-
6 month grace period between having to meet the full
7 regulated requirements associated with that tank
8 and and if a tank becomes newly regulated due to
9 the creation of new ZCC or ZPC - and those are the
10 shortened versions of Zone of Critical Concern,
11 Zone of Peripheral Concern - or if they are
12 modified in that way, it gives them nine-month
13 grace period to come into compliance fully.

14 Registration amendments as well. So
15 there's phrasing within the rule that clarifies
16 relocation, ownership -- it clarifies that
17 relocation, ownership transfers, or status changes
18 require an amendment to the registration, rather
19 than modifying it. It's just a clarification on
20 that point.

21 There's also, let's see -- the
22 proposed changes also explicitly authorize the use
23 of remote non-destructive examination technologies
24 which, in essence, means they're updating the way

1 that the inspection can be conducted to account for
2 new technologies that can prevent people from
3 potentially having to go in the tank, which could
4 be a dangerous thing, potentially. And it
5 minimizes minimizes the risks of entering the tank.

6 Oh, the spill prevention and response
7 plan schedule is updated as well. It updates it
8 from every year to every five years for Level 1,
9 Level 2 AST systems.

10 Release investigation. So the
11 timelines have kind of been updated with that and
12 how things are handled in the event of a release or
13 suspected release, threatened release.

14 There are more clear deadlines
15 following a suspected leak notification. So
16 operators will have to submit investigation
17 findings whenever they go out to check within seven
18 days for Level 1 ASTs.

19 For secondary containment, the rule
20 update also clarifies that double-walled ASTs act
21 as their own secondary containment for a tank body
22 without needing a separate containment basin,
23 provided interstitial spaces and transfers are
24 monitored by the operator. There are some other

1 updates to that effect to essentially modernize the
2 rule and bring it more into to account for new
3 newer environments surrounding the ASTs and that's
4 the essence of it.

5 So at this point, we'll open it for
6 public comment. If you do have any questions,
7 please raise your hand. And whenever you are
8 called on, I'll remind you to state your name, the
9 organization that you're with, and we will keep the
10 comments, again, on this one to five minutes.

11 I am seeing that Mr. Mandirola does
12 have his hand raised for this as well. So if you
13 would like to go ahead and speak, Mr. Mandirola,
14 you can. I will, if you'll give me one second to
15 share my screen, though, so that I can get the
16 timer up so you can see it.

17 Go right ahead.

18 MR. MANDIROLA: Thank you, Isaac.
19 Scott Mandirola, West Virginia Rivers Coalition, on
20 behalf of its members, submits the following
21 comments on the proposed changes to the Aboveground
22 Storage Tank rule 47 CSR 2.

23 While some of the proposed changes do
24 not weaken the rule, we question why DEP would add

1 language that the Legislature purposely removed
2 from the introduced version last session.

3 First, I want to thank you and the DEP
4 for listening to many of the corrections pointed
5 out during the Environmental Protection Advisory
6 Committee meeting and making those corrections.
7 Thank you for that.

8 I'll go right into the section,
9 Section 2.2. And so you know all these have been
10 submitted to you in writing.

11 Section 2.2, the AST system definition
12 is removed and replaced with the definition of AST
13 as stated in §22-30-3, Section 1, which still
14 includes all ancillary piping and dispensing
15 systems up to the first point of isolation.

16 This change in language basically
17 removed secondary containment from the definition
18 of AST, allowing DEP to modify the regulation
19 around secondary containment.

20 West Virginia Rivers adamantly opposes
21 the removal of this section.

22 Section 2.9, we don't necessarily have
23 a problem with the term "temporarily out of
24 service". This definition was added in 2.9 and as

1 a definition in 2.66, but that, again, was
2 something that was removed by the Legislature. So
3 I'm concerned over why it's being added back when
4 the Legislature clearly removed it.

5 Section 2.17, definition of discharge
6 added to the rule is the addition of any pollutant
7 or combination of pollutant into the waters of the
8 state. This definition is very similar to the
9 definition of release in §22-30-3, Section 16,
10 which states release means any spilling, leaking,
11 emitting, discharge, escape or leaching of fluids
12 from an aboveground storage tank into a water of
13 the state or escaping from secondary containment.

14 The definitions from the code are
15 incorporated in the rule, so we don't really
16 understand why this is being included as a separate
17 definition and should be removed.

18 Section 2.36, a new definition of leak
19 was added. Leak means any spilling, emitting,
20 discharging, escaping or leaching of fluid from an
21 above ground storage tank into a secondary
22 containment. This similar definition was in your
23 introduced version of Senate Bill 641 last year and
24 was amended out by the Legislature by committee

1 before it was passed, which indicates Legislature
2 was not in favor of the change.

3 Based on the Legislature's removal of
4 this provision. These changes should not be
5 included in the rule and all references to this
6 should be removed.

7 Section 2.46, Operational Status,
8 empty and being held for future use, temporarily
9 out of service. The only concern that I really
10 have with these is that they were removed by the
11 Legislature, so technically, they shouldn't be
12 included in the new rule.

13 There's a new section 2.55, Release
14 Detection, now differs -- or now refers to the
15 detection of release outside of secondary
16 containment, where previously it was released into
17 secondary containment.

18 West Virginia Rivers is concerned with
19 this revision. If a release is detected into
20 secondary containment, it can be dealt with prior
21 to being released into the environment. We request
22 clarification from DEP whether leaks are required,
23 still required to be reported.

24 Section 2.65, Suspected or threatened

1 leak or release. The examples were removed from
2 the definition. We think for clarification, they
3 should be added back.

4 Section 3.1.6, this section has a
5 proposed modification that requires written
6 notification to the DEP when there is any changes
7 in the business structure or owner of an AST but
8 does not require a change to the registration, a
9 modification to the registration.

10 This is a problem because the
11 registration information then for that point
12 forward will not be accurate in the system.

13 New section 3.7. Section has a
14 statement that matches the new language adding
15 added in Senate Bill 641 about a nine-month window
16 that can to come into compliance, whether you're in
17 a ZPC or ZPC.

18 Additionally, it adds the following
19 language: "Provided that, the nine-month period
20 for compliance with the requirements for regulated
21 ASTs may be extended by the Secretary upon written
22 request by the owner or operator with an
23 explanation of the reasons therefor and the
24 deadline by which the owner or operator of the AST

1 will achieve compliance with the requirements for
2 the regulated AST. Provided that, the nine-month
3 period for compliance with the requirements for
4 regulated ASTs may be extended by the Secretary
5 upon written request by the owner or operator with
6 an explanation of the reasons therefor and the
7 deadline by which the owner or operator of the AST
8 will achieve compliance with the requirements for
9 the regulated AST."

10 We strongly oppose this change. The
11 new statement allows the Secretary to extend the
12 nine months upon request. The discretion is not
13 afforded to the Secretary in Senate Bill 641 and
14 should be removed.

15 MR. TINCHER: Mr. Mandirola, excuse
16 me, sir. I'm very sorry to interrupt but that does
17 expire the time for right now.

18 But of course, bear in mind, we should
19 be able to circle back around insofar as time
20 remains. And we do have another commenter at this
21 time. But thank you for your comment.

22 Next, I believe I see Than Hitt? I'm
23 sorry, I can't see your full name.

24 MR. HITT: That's correct. Yeah.

1 Nathaniel Hitt is the full name. Than Hitt is a
2 nickname. That's right.

3 MR. TINCHER: Okay, good.

4 MR. HITT: I can just pick up where
5 Mr. Mandirola left off.

6 New section 5.1.1 involving Secondary
7 Containment Structure Inspectors. I should say I
8 am a senior scientist with West Virginia Rivers
9 Coalition, and so comments tonight are provided in
10 writing and on behalf of the members of the West
11 Virginia Rivers Coalition.

12 So new section 5.1.1, Secondary
13 Containment Structure Inspections. This is
14 important. This section proposes to change
15 inspection frequency to once every month for Level
16 1 ASTs from the current 14 days. Level 1 ASTs are
17 a greater threat to drinking water sources and
18 should be inspected at a greater frequency than
19 Level 2 ASTs.

20 Additionally, §22-30-5(a) states that:
21 "The secretary shall develop a regulatory program
22 for new and existing regulated aboveground storage
23 tanks and secondary containment that takes into
24 account the size, location and contents of the

1 tanks and sets out tiered requirements for
2 regulated tanks. Level 1 tanks shall be regulated
3 to a higher standard of tank and secondary
4 containment integrity based upon their proximity to
5 a public surface water supply source or public
6 surface water influenced groundwater supply
7 source."

8 So this section of code indicated that
9 Level 1 AST secondary containment shall be
10 regulated at a higher standard than Level 2 AST.
11 And this change was in the original Senate Bill
12 641, page 9, line 16 to, 32 and was amended out by
13 the Legislature. Therefore, DEP should not include
14 this change to the rule.

15 West Virginia River requests that DEP
16 keep the inspection frequency of 14 days to protect
17 drinking water sources.

18 Moving on to sections 5.3.1 and 5.3.2.
19 Changes are made to reflect the changes -- changes
20 are made to reflect the changes in code to allow
21 remote non-destructive examination technology to be
22 used to inspect the interior of the tanks.

23 West Virginia River accepts these
24 changes. Section 5.2.4(a), this proposed change

1 will reduce the timeframe for Level 2 AST to be
2 evaluated by a professional engineer or API or
3 STI-certified inspector to certify the tank as fit
4 for service or not fit for service after damage to
5 concern timeframe from 30 to 10 days, and West
6 Virginia River supports that change as well.

7 Section 6.3. Changes made to this
8 section deal with leak versus release. This change
9 was introduced in the version of SB 641 last year
10 and was amended out of the legislation by committee
11 before it was passed, which indicates that the
12 Legislature was not in favor of this change.

13 Based on that, these changes should
14 not be included in the rule and all changes in the
15 rule that refer to the new leak definition should
16 be removed.

17 West Virginia Rivers objects to these
18 changes.

19 Section 6.3.1. This proposed section
20 modifications shorten the timeframe for a release
21 or leak investigation and confirmation to occur for
22 Level 2 ASTs from 14 to 17 days, and we are in
23 support of that change.

24 Moving on to section 8.2.9. This

1 proposed modification changes the requirement from
2 all new Level 1 regulated ASTs installed after the
3 effective date of this rule to be double walled to
4 be all new regulated ASTs to be double walled, and
5 West Virginia River supports this change as well.

6 Okay, section -- there's a new section
7 10.2.3, and this involves the proposed
8 modifications adding a wastewater treatment
9 facility with adequate volume as a method of
10 secondary containment.

11 This may be acceptable, but the
12 introduced version of Senate Bill 641 on page seven
13 lines 141 through 143 had this condition and it was
14 amended out of Legislature, which indicates the
15 Legislature was not in favor of this change. Based
16 on that fact, these changes should not be included
17 in the rule.

18 West Virginia River recommends the DEP
19 remove this modification.

20 There's also a new section 10.2.4.
21 This proposed revision changes inspection frequency
22 for secondary containment from 14 to 30 days. And
23 this was in the original version of Senate Bill 641
24 and amended out by Legislature, which indicates the

1 Legislature was not in favor of the change. Based
2 on that, these changes should not be included in
3 the rule.

4 West Virginia River strongly is
5 opposed to changing the inspection frequency for
6 secondary containment from 14 to 30 days.

7 And in the interest of time, I will
8 wrap it up there. And thank you for your attention
9 and opportunity to comment on this important
10 matter.

11 MR. TINCHER: All right, thank you
12 very much.

13 So is there anyone else who would like
14 to make a comment at this time?

15 Okay, I'm not seeing any other hands.

16 Now, Mr. Mandirola, I know we did have
17 to cut you off. If you would like to resume, sir,
18 you are, you are able to do that at this time. If
19 you'll just let me reset this clock.

20 MR. MANDIROLA: I'll pick up briefly
21 where Than left off.

22 On the 10.2.8, there's language in the
23 -- in the current rule that the language added to
24 10.2.8 would conflict with. This is problematic.

1 10.3.3, the proposed change states
2 that: "In no event shall the owner or operator of
3 an existing AST be required to lift, move, elevate
4 or otherwise physically alter an AST for purposes
5 of visual leak detection program in accordance with
6 this Rule. Further, the Secretary may, at the
7 Secretary's discretion, approve an alternative
8 inspection schedule submitted by the permittee."

9 The first section of this change has
10 been testified to many times in legislative,
11 legislative committee hearings by the DEP. It was
12 stated that the DEP has never required and does not
13 require tank owners to lift tanks for inspection
14 purposes.

15 The last sentence gives the Secretary
16 discretion to approve alternative inspection
17 schedules. This conflicts with section 10.3 of the
18 rule, which states leak detection requirements, the
19 owner or operator shall ensure that regulated AST
20 are monitored or leak detection for leak detection
21 at least once per calendar month using a method or
22 combination of methods thereof capable of detecting
23 releases.

24 So West Virginia Rivers opposes this

1 change because it conflicts with current
2 regulations.

3 And finally, let me just reiterate the
4 one point that's kind of a thread through all these
5 comments. We'd like to reiterate the point that
6 the proposed changes in sections 2.9, 2.36, 2.55,
7 2.65, 5.11, 6.3, 10.2.3, 10.2.4, and 10.3.3 all
8 contain language. It was included in the
9 introduced version of 641 during the last
10 legislative session.

11 That language was removed in a
12 committee substitute and/or amendments during the
13 legislative session before it was passed, which
14 indicates the Legislature was not in favor of these
15 changes.

16 Based on that, we think these changes
17 should be removed and not included in the changes
18 to this rule.

19 And I really like to thank you for the
20 opportunity to comment. Thank you very much.

21 MR. TINCHER: Okay, I'll throw it out
22 again.

23 Are there any other commenters at this
24 time? Last call.

1 Okay. Well, with that, that concludes
2 the public comment period for 47 CSR 63 and all the
3 other rules as well.

4 This will conclude the virtual public
5 hearing for these four proposed legislative rules.
6 The comment period for these proposed rules is now
7 closed.

8 Again, please, at this time, if you
9 don't mind, make sure that your name and contact
10 information are in the chat to where we are sure to
11 know who's making these comments and everything,
12 which, yeah.

13 Thank you very much for your interest
14 and taking the time to attend this hearing, and I
15 guess we'll wrap it up right there. So, thank you.
16 Have a good night.

17 (Hearing concluded at 6:43 p.m.)

18 --oOo--

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1 STATE OF WEST VIRGINIA,
2 COUNTY OF RALEIGH, to wit:

3 I, Brad L. Cooper, a Notary Public within
4 and for the County and State aforesaid, duly
5 commissioned and qualified, do hereby certify that
6 the foregoing proceedings were duly taken by me and
7 before me at the time and place and for the purpose
8 specified in the caption hereof.

9 I do further certify that the said
10 proceedings were recorded by means of digital audio
11 and/or video recording, Stenomask, and/or correctly
12 taken by me in shorthand notes, and that the same
13 were accurately written out in full and reduced to
14 typewriting by means of computer-aided
15 transcription by me or under my supervision.

16 My commission expires May 14, 2028.

17 Given under my hand this 29th day of July,
18 2026.

19 *Brad L. Cooper*
20

21 BRAD L. COOPER, Notary Public
22
23
24

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