

**In the Matter Of:**

**WV DEPT OF ENVIRON. PROTECTION PUBLIC HEARING**

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**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](mailto:Isaac.L.Tincher@WV.gov) and there's a dot.  
13 [Isaac.L.Tincher@WV.gov](mailto: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                   Johnsely, 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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**§22-6-1(e)**

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