

47CSR63
ABOVEGROUND STORAGE TANKS
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 47CSR63 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 47CSR63.

Written comments were received during the public comment period, and during the public hearing comments were received.

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

Commenter 1: WV Rivers Coalition

Comment 1:

Section 2.2 The AST system definition is removed and replaced with the definition of an AST as stated in 22-30-3(1), which still includes “all ancillary pipes and dispensing systems up to the first point of isolation” as stated in the code. One main concern in the definition change is that the AST system included the secondary containment, and the new definition does not include it. This change in language basically removes secondary containment from the definition of AST allowing DEP to modify the regulations around secondary containment. WV Rivers is adamantly opposed to removing secondary containment from the definition of ASTs. Secondary containment systems are a part.

Response:

While Section 2.2 has been modified in the proposed rule, DEP has inserted uses of terms sufficient to make reference to secondary containment features as necessary. Furthermore, there are regulatory provisions within the rule that remain in place for secondary containment such that the proposed modifications preserve the safeguards in place to ensure the continued proactive monitoring for and reporting of secondary containment inadequacies. DEP appreciates your comment.

Comment 2:

Section 2.9 The “temporarily out of service” was added to the definition of "Change in service", and a definition of a “temporarily out of service”, (2.66), was added to the rule. We do not see a problem with this revision.

Response:

DEP appreciates your comment.

Comment 3:

Section 2.17 The definition of “discharge” added to the rule is “the addition of any pollutant or combination of pollutant into the waters of the state.” This definition is very similar to the definition of "Release" in 22-30-3(16), which states, “Release means any spilling, leaking, emitting, discharging, escaping, or leaching of fluids from an aboveground storage tank into the waters of the state or escaping from secondary containment.” The definitions from the code are incorporated into the rule, so we do not understand the purpose of including this new definition, and it should be removed.

Response:

DEP feels that the addition of the definition of Discharge in Section 2.17 will streamline review of the rule.

Comment 4:

Section 2.36 A new definition of leak was added, “Leak means any spilling, emitting, discharging, escaping or leaching of fluids from an aboveground storage tank into secondary containment.” The leak definition was added in all sections where the rule refers to reporting a release, so it appears that they would still need to report a leak into secondary containment. While this may not be a real problem from a practical environmental perspective, this similar definition was in the introduced version of SB641 last year and was amended out of the legislation by committee before it was passed, which indicates that the legislature was not in favor of the change. Based on the legislature’s removal of this provision, these changes should not be included in the rule, and all changes in the rule that refer to the new leak definition should be removed.

Response:

Operators would still be required to report leaks into secondary containment pursuant to Section 6.2.2. and 6.3.1. Also, DEP is seeking amendment to the rule due to the changes made during the 2026 Regular Legislative Session. The nature of legislative rule making involves supplemental details that expand on the letter of the statute from which the legislative rule receives the authority

to exist. This rule will go to the Legislative Rule Making Review Committee for review, and then if it makes it out of the Committee, the rule will go before the entire Legislature for approval. Thus, legislative authority is being expressly sought through the proposed rule change.

Comment 5:

Section 2.46 “Operational status” means the working condition of the AST, such as currently in use, nonoperational, empty and being held for a future use, temporarily out of service, or permanently out of service. The section below Operational status definition was added, "empty and being held for a future use, temporarily out of service." A new definition in Section 2.66, Temporarily Out of Service, was added to the rule as well. We are not concerned with these changes, as they do not appear to weaken the regulations of tanks containing any materials.

Response:

DEP recognizes the concerns raised in your comment and will be revising the final agency submitted rule.

Comment 6:

Section 2.55 Release detection now refers to the detection of a release outside of secondary containment; where previously it was a release into secondary containment. WV Rivers is concerned with this revision. If a release is detected into secondary containment, it can be dealt with prior to it being released into the environment. We request clarification from DEP whether leaks are still required to be reported. If leaks must still be reported, then we are not concerned with this change.

Response:

Leaks must still be reported under the proposed rule.

Comment 7:

Section 2.65 “Suspected or threatened leak or release”, the examples were removed from the definition. They should remain for clarity of what type of information or observations may constitute a suspected or threatened leak or release. We request that DEP restore the examples to this section.

Response:

DEP proposes to retain the changes removing the examples because the examples are not exhaustive and are spelled out through a further reading of the rule, as applicable to the respective incidents described within the definition.

Comment 8:

Section 3.1.6 This section has a proposed modification that requires written notification to the DEP when there are any changes in the business structure of the owner of the AST but does not require a registration modification. This is a problem because the registration information will not be accurate in the system should the information be FOIAed or requested to identify the corporate structure. WV Rivers recommends that DEP require a registration modification for any changes in the business structure of the AST owner.

Response:

The proposed change only applies to name changes by the entity owning the tank that do not result in a new entity owning the tank. The proviso mentioned in Section 3.1.6. refer the reader to Section 3.6 of the rule, which requires transfer of the registration. DEP does not anticipate that this will cause the system to retain inaccurate information because owners are obligated to provide a written notice to the Secretary within 30 days to inform DEP of the change in corporate or business structure. Practically speaking it is likely that most changes involving the proposed contents of Section 3.1.6 will involve a transfer as discussed in Section 3.6, but in the instance where there is purely a change in the name of the tank owning entity, the provisions of Section 3.1.6. will apply without triggering Section 3.6.

Comment 8:

Section 3.7 This section adds a statement that matches the new language added in SB641 about the 9 months window to come into compliance with a new established ZCC or ZPC. Additionally, it adds the following language “Provided that, the nine-month period for compliance with the requirements for regulated ASTs may be extended by the Secretary upon written request by the owner or operator with an explanation of the reasons therefor and the deadline by which the owner or operator of the AST will achieve compliance with the requirements for the regulated AST.” WV Rivers strongly objects to this change. This new statement allows the Secretary to extend the 9-month period upon request. This discretion is not afforded to the Secretary in SB641 and needs to be removed from the proposed rule. There is no allowance for such discretion to be afforded to the Secretary, and the regulations must become effective 9 months after notification.

Response:

Insofar as the comment speaks to the Secretary's discretion to extend the nine month period, DEP is seeking amendment to the rule due to the changes made during the 2026 Regular Legislative Session. The nature of legislative rule making involves supplemental details that expand on the letter of the statute from which the legislative rule receives the authority to exist. This rule will go to the Legislative Rule Making Review Committee for review, and then if it makes it out of the Committee, the rule will go before the entire Legislature for approval. Thus, legislative authority is being expressly sought through the proposed rule change.

Comment 9:

Section 5.1.1. Secondary Containment Structure Inspections. This section proposes to change the inspection frequency to once every month for level 1 ASTs from the current 14 days. Level 1 ASTs are a greater threat to drinking water sources and should be inspected at a greater frequency than level 2 ASTs. Additionally, 22-30-5(a) states "(a) The secretary shall develop a regulatory program for new and existing regulated aboveground storage tanks and secondary containment that takes into account the size, location and contents of the tanks and sets out tiered requirements for regulated tanks. Level 1 tanks shall be regulated to a higher standard of tank and secondary containment integrity based upon their proximity to a public surface water supply source or public surface water influenced groundwater supply source." This section of code indicated that level 1 AST secondary containment shall be regulated at a higher standard than level 2 AST. This change was in the original SB641 page 9 lines 16-32, and was amended out by the legislature, therefore DEP should not include this change to the rule. WV Rivers requests that DEP keep the inspection frequency of 14 days to protect drinking water sources.

Response:

The agency proposes retaining this change because in cases where tank owners demonstrate compliance with the standards of API 653 and STI SP-001 the monthly frequency is appropriate. Also, Level 1 tanks will still be regulated to a higher standard than Level 2 tanks. DEP appreciates your comment.

Comment 10:

Section 5.3.1 and 5.3.2 Changes are made to reflect the changes in code to allow remote non-destructive examination technologies to be used to inspect the interior of the tanks. WV Rivers accepts these changes.

Response:

DEP appreciates your comment.

Comment 11:

Section 5.2.4.a. This proposed change would reduce the timeframe for a level 2 AST to be evaluated by a Professional Engineer or API or STI certified inspector to certify the tank as Fit for Service or Not Fit for Service, after damage has occurred. The timeframe changes from 30 days to 10 days. WV Rivers supports this change.

Response:

DEP appreciates your comment.

Comment 12:

Section 6.3 Changes made to this section deal with leak vs release. This change was in the introduced version of SB641 last year and was amended out of the legislation by committee before it was passed, which indicates that the legislature was not in favor of the change. Based on that, these changes should not be included in the rule and all changes in the rule that refer to the new leak definition should be removed. WV Rivers objects to these changes.

Response:

DEP is seeking amendment to the rule due to the changes made during the 2026 Regular Legislative Session. The nature of legislative rule making involves supplemental details that expand on the letter of the statute from which the legislative rule receives the authority to exist. This rule will go to the Legislative Rule Making Review Committee for review, and then if it makes it out of the Committee, the rule will go before the entire Legislature for approval. Thus, legislative authority is being expressly sought through the proposed rule change.

Comment 13:

Section 6.3.1. The proposed modifications shorten the timeframe for a Release or Leak Investigation and Confirmation to occur for level 2 AST from 14 days to 7 days. We are in support of this change.

Response:

DEP appreciates your comment.

Comment 14:

Section 8.2.9 The proposed modification changes the requirement from all new Level 1 regulated ASTs, installed after the effective date of this rule, to be doubled walled, to all new regulated ASTs installed to be double walled. WV Rivers support this change.

Response:

DEP appreciates your comment.

Comment 15:

Section 10.2.3 The proposed modifications adds a waste water treatment facility with adequate volume as a method of secondary containment. This may be ok, but the introduced version of SB 641, on Page 7 lines 141-143 had this condition, and it was amended out by the legislature which indicates that the legislature was not in favor of the change. Based on that fact, these changes should not be included in the rule. WV Rivers recommends that DEP remove this modification.

Response:

DEP is seeking amendment to the rule due to the changes made during the 2026 Regular Legislative Session. The nature of legislative rule making involves supplemental details that expand on the letter of the statute from which the legislative rule receives the authority to exist. This rule will go to the Legislative Rule Making Review Committee for review, and then if it makes it out of the Committee, the rule will go before the entire Legislature for approval. Thus, legislative authority is being expressly sought through the proposed rule change.

Comment 16:

Section 10.2.4 The proposed revision changes inspection frequency for secondary containment from 14 days to 30. This was in the original version of SB641 and amended out by legislature which indicates that the legislature was not in favor of the change. Based on that, these changes should not be included in the rule. WV Rivers is strongly opposed to changing the inspection frequency for secondary containment from 14 to 30 days.

Response:

DEP recognizes the concerns raised in your comment and will be revising the final agency submitted rule.

Comment 17:

Section 10.2.8 “Double walled ASTs serve as secondary containment so long as substance transfer and the interstitial space are continuously appropriately monitored. Therefore, a A separate secondary containment basin is not required for the AST, but single walled piping, dispenser, and ancillary equipment up to the first point of isolation would require secondary containment, unless waived at the Secretary’s discretion” Changes proposed to Section 10.2.8 conflict with Section 10.2.1 of the rule which states, “The owner or operator shall ensure that all regulated ASTs have a secondary containment system that collects and contains an unintentional release from an AST and its ancillary equipment up to the first point of isolation.” There is no discretion of the Secretary in this subsection, and the secondary containment is required up to the first point of isolation by the word shall. Secondary containment needs to be required for all areas up to the first point of isolation in the event of a failure outside of the double walled tank but prior to the first point of isolation. The Secretary does not have discretion to wave that. WV Rivers is adamantly opposed to this revision, and this sentence should be removed from the proposal.

Response:

Double walled tanks are widely used and some designs include short spans of pipe that may not have additional containment. The intent of this change was to account for the fact that some smaller runs of pipe associated with double walled ASTs may not require additional secondary containment.

Comment 18:

Section 10.3.3 The proposed change states; “that in no event shall the owner or operator of an existing AST be required to lift, move, elevate or otherwise physically alter an AST for purposes of visual leak detection program in accordance with this Rule. Further, the Secretary may, at the Secretary’s discretion, approve an alternative inspection schedule submitted by the permittee.” The first section of this change has been testified to many times in legislative committee hearings by the DEP. It was stated that the DEP has never required and does not require tank owners to lift tanks for inspection purposes. The last sentence gives the Secretary discretion to approve an alternative inspection schedule. This conflicts with section 10.3 of the rule which states; “10.3. Leak Detection Requirements. – The owner or operator shall ensure that regulated ASTs are monitored for leak detection at least once per calendar month, using a method or combination of methods that are capable of detecting a release from any portion of the AST.”, which does not afford any discretion to the Secretary to approve an alternative plan. WV Rivers is adamantly opposed to this revision and recommends DEP remove that sentence from the proposed rule.

Response:

DEP does not require the lifting of tanks. The leak detection requirements of Section 10.3 are unaffected by this proposal and the insertion of this provision would not undermine Section 10.3.

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

Comment 19:

Finally, we would like to reiterate the point that the proposed changes to Sections 2.9., 2.36, 2.55, 2.65., 5.11, 6.3, 10.2.3, 10.2.4 and 10.3.3 all contain language that was included in the introduced version of SB641 during last year's legislative session. That language was removed in a committee substitute and amendments during the legislative session before it was passed, which indicates that the legislature was not in favor of these changes. Based on that, these changes should not be included in the rule and all changes in the rule that refer to these changes should be removed.

Response:

DEP has addressed the sum of this comment throughout its previous responses.

Commenter 2: WV Manufacturer's Association and GO West Virginia

Comment 1:

Section 2.37 "Leak" definition. For the first time, there will be clarification of leaks from tanks into secondary containment, which may trigger investigation of the AST, and releases from secondary containment, which may result in environmental remediation. Differentiating between these two situations is crucial, as leaks represent less of a threat to the environment.

Response:

DEP appreciates your comment.

Comment 2:

Section 2.41 Definition of "Mobile tank". Under the proposed amendments, field-erected tanks qualify as mobile tanks, as long as they do not remain operational for more than a year. As such, they are not "aboveground storage tanks", as that term is defined in W. Va. Code 22-30-3(1) and are not subject to regulation under this rule, including registration. Accordingly, the Section 2.25 definition of a "field-erected storage tank", which refers to its "registered location" is inconsistent with it being exempt. That additional clause in Section 2.25 should be removed.

Response:

Field erected tanks that meet the definition of "Mobile" and are in place for more than a year are ASTs. As such, the reference to registered location in Section 2.25 is appropriate. While DEP

acknowledges that some modular field erected tanks meet the statutory definition of mobile tanks, DEP appreciates the commenter's commitment to appropriately regulating these tanks going forward. While not ASTs, field-erected tanks that are in place for more than a year, might still be regulated in accordance with another program, such as the groundwater protection program. GO-WV remains committed to working with the DEP on sensible regulation of field-erected tanks that recognizes their special attributes.

Comment 3:

Section 2.46 "Operational Status" definitional change. The category "empty and being held for a future use" is not defined, and it is not clear how it differs from "temporarily out of service". We suggest a definition be developed for "empty and being held for future use" if the DEP intends that it reflect another category of tanks, or that the phrase be eliminated.

Response:

A further definition of temporarily out of service will be provided that should provide clarity to this comment, in addition to the removal of "empty and being held for future use."

Comment 4:

Section 2.66 "Temporarily Out of Service" definition. Previously, a tank could only be in active service or nonoperational/closed. This will allow limited regulation for inactive tanks, without triggering closure. The associations appreciate the DEP's willingness to add this category to improve the functioning of the AST program.

Response:

DEP appreciates your comment.

Comment 5:

Section 3.4 Regulation of mobile tanks. Mobile tanks are, by definition, not ASTs and therefore are not subject to registration. We urge the DEP to rewrite or delete this section.

Response:

Mobile tanks that remain in one location for 365 days are ASTs.

Comment 6:

Section 3.5 Closure notification. This section mandates compliance with DEP guidance. That is conceptually incompatible with rulemaking, as the guidance hasn't been through public and legislative review. The phrase "and as provided in permanent closure guidance documents developed by the Secretary" should be deleted.

Response:

This is inaccurate.

Comment 7:

Section 5.1.1 Secondary containment inspections. Level 1 secondary containment must be inspected once every 14 days in accordance with Section 5.1.1, but every 30 days in accordance with Section 10.2.4. We urge standardization of the 30-day time period for both sections.

Response:

DEP proposes to retain the 14 day secondary containment inspection frequency in an effort to ensure that Level 1 tanks are held to a higher standard than Level 2 tanks due to their proximity to public surface water supply sources.

Comment 8:

Section 5.2.1, 5.2.2.d, and others Effective date references. The "effective date" in the current rule refers to when the rule was last filed in 2016, but the new rule will have an effective date of sometime in June or July 2027. Specific dates are needed to clarify compliance deadlines, and it appears that the DEP has worked to make those changes where appropriate. There are a few places where the deadline should be clarified. For example, we do not believe that the DEP intends for all ASTs and secondary containment to be evaluated as required by Section 5.2.1, within 180 days of the 2027 effective date.

Response:

We agree with your comment and have made changes to the proposed rule.

Comment 9:

Section 6.2 Reporting of Suspected Leaks and Releases. We appreciate the DEP's willingness to clarify in this rule that the AST Act is directed toward avoiding releases to the environment, meaning fluids that escape secondary containment. Tank leaks, while operational events that require correction, do not present the same danger to public water supplies or the environment, since they are contained within secondary containment. Furthermore, it is our experience that tank

leaks seldom involve any failure of the tank structure itself and are almost always the result of a small fitting, valve or pump leak that is easily corrected and cleaned up. Releases are reportable to the Spill Hotline; there is no requirement that leaks be reported there, and it doesn't seem warranted, since leaks wouldn't be considered a threat to the environment if they are cleaned up upon discovery or prior to the next rainfall event. Consequently, we suggest that leaks, or evidence of threatened or suspected leaks, be recorded by the operator in a facility log, or in operational records, and the manner of repair and remediation noted. That would involve modifying 6.2.2 to differentiate releases from leaks, making the latter recordable but not reportable. We would also like to note our understanding that overfills and other escapes of fluids that are not related to failure of tanks or secondary containment are not leaks or releases. They do not emanate from tanks or secondary containment; they are errors that occur during tank operations. Overfills may be reportable events if they occur outside secondary containment, under other spill reporting rules, but they would not be leaks or releases as defined under this rule.

The associations urge the DEP to go a step further and create a de minimis leak quantity of 10 gallons or less that is not reportable if removed upon discovery. Such trivial amounts within secondary containment do not merit reporting and represent a reporting burden that provides no equivalent environmental benefit.

Response:

DEP appreciates your comment. DEP proposes to retain the current requirement that leaks still be reported to maintain safety precautions. Also, DEP proposes to retain the current standard rather than creating a de minimis leak quantity of ten gallons or less because while a quantity of ten gallons or less may seem unimportant, it could in theory be indicative of tank damage.

Comment 10:

Section 6.3 Leak and release

Response:

There is no comment attached to this heading.

Comment 11:

Section 10.2.4 Inspection schedules for secondary containment. The 30-day inspection period for Level 1 tanks in Section 10.2.4 should be harmonized with the inspection frequency for such tanks in Section 5.1.1, which requires inspections every 14 days. We believe the appropriate inspection frequency is every 30 days.

Response:

In addressing other stakeholder comments we have returned 10.2.4 to 14 days, however, the alternate schedule available for ASTs complying with the standards provided are available in both cases.

Comment 12:

Section 11.3.7 Post closure sampling. The presence of contamination response time. The time for investigating and reporting on leaks and releases from Level 2 tanks has decreased from 14 to 7 days. We note that the section still allows for additional time to complete an investigation, for good cause shown to the DEP, which may be needed on occasion. outside of secondary containment is assumed to be a release and must be reported as such. While we agree that sampling around tanks that are being closed may be a reasonable requirement, we object to reporting the presence of contamination as a release. Contaminants may be present outside secondary containment for reasons unrelated to failure of the containment. Spills that do not originate from fluids stored in tanks, such as overfills and other events that have nothing to do with the integrity of the tank or secondary containment, should not be reported as releases. In our experience, the levels of contaminants that are discovered post-closure generally are so low that they do not require remediation, yet they are reported as releases and may be the subject of a notice of violation (NOV). Those release designations and NOVs give the false impression that secondary containment is failing, when that is not the case. We suggest that the rule simply require a closure plan, as it presently does, and that the results be reported to the DEP, with an action plan where remediation is necessary. The DEP could still issue NOVs where the facts warranted, but there would not be the automatic assumption that a release, or a violation, has occurred. Accordingly, we urge the DEP to amend Section 11.3.7 to read as follows: “If contaminated soil, sediment, surface water or groundwater or free product is discovered outside of secondary containment or confirmed by either direct observation or indicated by the analytical results of the closure sampling, the owner or operator shall report the [begin underline] sampling results within 7 days of receipt and, for those areas of contamination above de minimis levels established under the Voluntary Remediation and Redevelopment Act, shall provide a response plan to the Secretary within 7 days thereafter, unless additional time is allowed by the Secretary. [end underline] [begin strike through] release immediately and comply with section 7 of this Rule.” [end strike through]

Response:

The requirements of 11.3.7 are appropriate as written.

Comment 13:

The Gas & Oil Association of West Virginia (“GOWV”) and the West Virginia Manufacturers Association (“WVMA”) (collectively “we” or “the associations”) appreciate the Department of

Environmental Protection's willingness to revise the Aboveground Storage Tank Rule, 47 CSR 63. This is the first update since the rule was initially drafted approximately 10 years ago and represents an opportunity to simplify and improve that initial effort. We appreciate the elimination of the term "AST systems" as confusing and vague, and the clarification of "leaks" from tanks into secondary containment versus "releases" from secondary containment to the environment. We note that there are very few changes to the technical portions of the rule, pertaining to how tanks and secondary containment are determined to be safe. This is consistent with industry's position that its members are committed to complying with the technical aspects of the rule but believe there is a need to reform and clarify certain aspects of the procedures that implement those standards.

Response:

DEP appreciates your comment.

Commenter 3: Common Concern in Public Comments Espoused by Various Parties

Comment 1:

There were comments that generally expressed approved aspects of the proposed rule, generally.

Response:

DEP appreciates your comment.

Comment 2:

Reducing inspection requirements for secondary containment systems at tanks within the zone of critical concern from every 14 days to once a month. These tanks are located closest to drinking water sources and should receive the highest level of oversight.

Response:

DEP recognizes the concerns raised in your comment and will be revising the final agency submitted rule.

Comment 3:

Removing secondary containment from key definitions in the rule. Secondary containment is designed to catch spills before they reach rivers and streams and should continue to be treated as a critical part of the tank system.

Response:

While the proposed rule modifies the definition found in Section 2.2, it preserves secondary containment requirements including inspections, response requirements, and maintenance

obligations. DEP agrees that secondary containment is important, but believes that the proposed rule changes will still ensure protective standards for aboveground storage tanks remain in place.

Comment 4:

Giving the DEP Secretary authority to waive or extend certain requirements that are not authorized in state law. These protections should be applied consistently and not be subject to discretionary exemptions.

Response:

DEP is seeking amendment to the rule due to the changes made during the 2026 Regular Legislative Session. The nature of legislative rule making involves supplemental details that expand on the letter of the statute from which the legislative rule receives the authority to exist. This rule will go to the Legislative Rule Making Review Committee for review, and then if it makes it out of the Committee, the rule will go before the entire Legislature for approval. Thus, legislative authority is being expressly sought through the proposed rule change. Additionally, in practice DEP has recognized some instances where the extension of certain timelines is appropriate.

Comment 5:

Changing leak and release definitions in ways that could create confusion and make it harder to identify and address problems before contamination reaches the environment. It is also concerning that several of these proposed changes mirror provisions previously considered by the Legislature this past session that were ultimately removed before the bill became law. DEP should not use rulemaking to add requirements that lawmakers chose not to adopt. West Virginians know the importance of strong tank safety standards. The 2014 Elk River chemical spill showed what can happen when drinking water protections fail. We urge DEP to remove provisions that weaken safeguards and strengthen protections for our rivers, streams, and public water supplies.

Response:

DEP appreciates the concern that the proposed changes to the definitions of “leak” and “release” could cause confusion, but remains confident that the change can provide clarity. With nearly any legislative rule changes, the risk of creating confusion is an important consideration and something to be avoided if possible. Without additional explanation as to how the amendment could cause confusion, it is difficult for DEP to address perceived risks of confusion. Also, DEP is seeking amendment to the rule due to the changes made during the 2026 Regular Legislative Session. The nature of legislative rule making involves supplemental details that expand on the letter of the statute from which the legislative rule receives the authority to exist. This rule will go to the

Legislative Rule Making Review Committee for review, and then if it makes it out of the Committee, the rule will go before the entire Legislature for approval. Thus, legislative authority is being expressly sought through the proposed rule change.

Comment 6:

How dare you! How many people had their water poisoned just a few years ago? Do you think people will want to move to Charleston (or anywhere in West Virginia) knowing that their water could be poisoned because the state government doesn't care about people who live here? The population of the state has declined over the last decade, including in Kanawha County. This is not going to help build our state. Don't loosen these regulations! Thank you for your consideration.

Response:

The proposed changes will not jeopardize water safety.

Comment 7:

Please do not make any changes to the Above Ground Tank Rules. It is too risky to relax oversight of chemicals.

Response:

DEP appreciates your comment.

Comment 8:

When you have to make a competing decision, err on the side of the public rather than the industry.

Response:

DEP appreciates your comment. DEP notes that this proposed rule change will benefit the public and other stakeholders by preserving regulatory authority.

Comment 9:

As we see the devastation from flood waters in Upshur and Lewis Counties, we continue to be reminded of how vulnerable West Virginians are and how important it is for our state offices to heed warning signs of nature. Along with concerns about flooding, there is grave concern about strong tank safety standards. Faster inspections after tank damage as well as investigations of potential leaks. I join thousands of West Virginians in having concern that proposed changes going

on could weaken safeguards that protect our drinking water. Please do not reduce inspection requirements for secondary containment systems at tanks within the zone of critical concern--tanks closest to drinking water sources should receive priority of oversight. Along with maintaining critical inspections is the importance of secondary containment. Catching spills before they reach rivers and streams stands out as a measure so important to the safety of our waterways. We urge DEP to remove provisions that weaken safeguards and strengthen protections for our rivers, streams, and public water supplies. We all want the same thing---providing for the health of our natural resources. Strong tank safety standards is a major goal.

Response:

DEP has addressed the concerns espoused by this comment in previous responses, but appreciates your comment. DEP takes environmental safety very seriously.

Comment 10:

DEP received comments requesting requirements be added to ponds or other structures that are not tanks.

Response:

This rule relates to aboveground storage tanks, which is defined in statute and the proposed rule. DEP appreciates your comment.

July 31, 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 Tinchler. 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 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

	15			8:6 10:22
(	13:8	3	5	11:13, 14
	16			8.2.9
(17)	23:9	3.1.6	5.1.1	29:24
17:21	28:12	25:4	27:6, 12	
	17	3.7	5.11	9
1	29:22	25:13	33:7	
		30	5.2.4(a)	9
1	2	29:5	28:24	28:12
20:8, 18		30:22	5.3.1	
22:13	2	31:6	28:18	A
27:16	20:9	32	5.3.2	
28:2, 9	21:22	3:12 5:21	28:18	aboveground
30:2	27:19	12:4, 10		5:22
10	28:10	17:1		17:3, 15
29:5	29:1, 22	28:12	6	21:21
10.2.3	2.17	35	6.3	23:12
30:7 33:7	23:5	3:11	29:7 33:7	27:22
10.2.4	2.2	5:18, 19		absolutely
30:20	22:9, 11	8:6, 20	6.3.1	9:4
33:7	2.36	10:1, 16,	29:19	accept
10.2.8	23:18	22 11:13	60	3:18
31:22, 24	33:6	36	3:11 5:17	acceptable
10.3	2.46	9:13 11:5	6:2, 5	30:11
32:17	24:7		63	accepts
10.3.3	2.55	4	3:11 5:22	28:23
32:1 33:7	24:13		17:2, 6	accordance
13	33:6	4	34:2	32:5
3:11 5:17	2.65	3:11 5:19	641	account
6:3, 5	24:24	8:6, 20	17:8	20:1 21:2
14	33:7	10:1, 17	23:23	27:24
27:16	2.66	11:13	25:15	accumulated
28:16	23:1	47	26:13	6:18
29:22	2.9	3:11, 12	28:12	accuracy
30:22	22:22, 24	5:21, 22	29:9	9:20 11:8
31:6	33:6	12:4, 10	30:12, 23	accurate
141	20	17:1, 2, 5	33:9	3:20 4:2
30:13	11:18	21:22	8	25:12
143	2026	34:2		achieve
30:13	17:8		8	4:22
			3:11 5:19	

26:1, 8	administrat	amendment	18 25:7,	basically
act	ive	17:5	24 26:2,	22:16
20:20	4:11	19:18	7, 9 28:9,	basin
adamantly	advisor	amendments	10 29:1	20:22
22:20	6:10 7:3,	19:14	32:3, 4, 19	bear
add	5, 7	33:12	ASTS	26:18
7:9 13:7,	advisory	ancillary	20:18, 20	bearing
9, 11, 13	13:12	17:17	21:3	5:24
14:5	22:5	22:14	25:21	begin
21:24	affidavit	and/or	26:4	7:21
added	9:21 11:9	33:12	27:16, 19	15:14
18:16, 24	afforded	annual	29:22	behalf
22:24	26:13	14:7	30:2, 4	16:4
23:3, 6, 19	agency	API	attempting	21:20
25:3, 15	6:10, 11	9:15 11:7	3:21 5:2	27:10
31:23	ahead	29:2	attend	below-
adding	8:11	append	34:14	8:23
25:14	15:14	14:23	attendance	Bill
30:8	21:13, 17	applicable	3:7	17:8
addition	air	11:14	attending	23:23
5:11 23:6	13:8	applies	4:3	25:15
additional	alignment	10:17	attention	26:13
5:8	17:11	11:17	12:7 31:8	28:11
Additional	allowing	apply	authorize	30:12, 23
y	22:18	10:4	19:22	bit
25:18	alter	approve	B	10:13
27:20	32:4	32:7, 16	back	body
additions	alternate	areas	5:8 23:3	20:21
13:5, 15	5:20	10:2, 3, 5	25:3	bottom
address	alternative	11:15, 16	26:19	4:6
11:23	32:7, 16	asbestos	barebone	briefly
adds	ambient	13:13	14:1	31:20
25:18	13:8	assist	based	bring
adequate	amend	6:11	13:18	10:20
16:14	6:8	assurance	24:3 28:4	17:10
30:9	amended	18:19	29:13	21:2
adjustments	23:24	AST	30:15	bubble
17:9	28:12	18:12	31:1	4:6
administer	29:10	20:9	33:16	Build
12:15	30:14, 24	22:11, 12,		5:18 6:3,

6 8:4	categories	20:17	collaborati	23:24
buried	13:6, 18	Chief	on	29:10
8:23	category	8:7	13:13	32:11
bury	13:10	circle	collected	33:12
9:19 11:2	certifiable	5:7 26:19	12:14	company
business	13:18	clarificati	combination	9:18
25:7	certificati	on	23:7	completed
	on	19:19	32:22	9:2
C	5:21	24:22	comment	compliance
	12:4, 10,	25:2	4:14, 17	19:13
	11, 14, 16	clarifies	8:3 12:1	25:16, 20
calendar	13:1, 24	19:15, 16	15:14	26:1, 3, 8
32:21	14:11	20:20	16:18, 20	concern
call	certified	clarify	17:1 21:6	19:4, 10,
7:16	13:17	14:8	26:21	11 24:9
15:11	14:21	clear	31:9, 14	29:5
16:22	15:2	10:3, 16	33:20	concerned
33:24	certify	20:14	34:2, 6	23:3
called	13:16	clicking	commenter	24:18
7:19	14:12	4:5	5:6 26:20	Concerns
15:12	29:3	clock	5:8 7:13	19:5
21:8	change	31:19	33:23	conclude
calling	8:22 9:10	close	comments	34:4
5:1	10:4 18:8	12:1	3:18	concludes
capability	22:16	16:24	4:10, 13,	8:2 34:1
14:4	24:2 25:8	closed	17 5:3,	conclusion
capable	26:10	34:7	10, 11, 16	4:18
32:22	27:14	coal	7:15, 21,	condition
capped	28:11, 14,	10:2, 3, 5,	22 8:10	30:13
18:19	24 29:6,	6, 8	10:19	conducted
Carpenter	8, 12, 23	11:15, 16,	11:22	20:1
12:5, 8	30:5, 15	17, 18	12:1	confirmatio
carry	31:1	Coalition	15:10, 15	n
18:19	32:1, 9	16:4	16:21, 23	29:21
case	33:1	21:19	21:10, 21	conflict
11:13	changed	27:9, 11	27:9 33:5	31:24
cases	6:15	code	34:11	conflicts
9:11, 24	changing	10:7	commerciall	32:17
14:13	6:8 31:5	17:16	y	33:1
catch	chat	23:14	committee	considerate
17:22	4:5 34:10	28:8, 20	17:7 22:6	
	check			

4:23	3:5		9, 17, 18,	17:22
considerati	couple	D	22 25:2	desires
on	6:7		29:15	11:11
4:10	court	damage	definitions	detected
constructed	4:9	29:4	17:13	24:19
9:14	cover	dangerous	23:14	detecting
consultant	12:20	20:4	DEP	32:22
6:11	covered	data	3:10, 14,	detection
consumptive	7:11 11:6	14:17, 20	18 4:16	24:14, 15
13:11	creation	16:8	6:15, 22	32:5, 18,
contact	19:9	date	9:23	20
4:4 34:9	criteria	30:3	11:10	detectors
containment	11:4	days	13:6, 12	9:16
17:20	Critical	20:18	16:9, 10	determine
18:5, 12	19:4, 10	27:16	17:5, 9	13:22
20:19, 21,	crucial	28:16	21:24	develop
22 22:17,	16:8	29:5, 22	22:3, 18	27:21
19 23:13,	CSR	30:22	24:22	developed
22 24:16,	3:11, 12	31:6	25:6	6:23
17, 20	5:17, 19,	deadline	28:13, 15	Development
27:7, 13,	21, 22	25:24	30:18	10:23
23 28:4, 9	6:2, 5	26:7	32:11, 12	difference
30:10, 22	8:6, 20	deadlines	DEP's	11:12
31:6	10:1, 16,	20:14	6:6 8:7	differs
contents	22 11:13,	deal	DEP -	24:14
27:24	14 12:4	29:8	CERTIFIED	difficultie
contracts	17:1, 2, 6	dealt	15:2	s
7:1	21:22	24:20	department	15:20
conventiona	34:2	dedication	3:5 10:11	discernible
l	current	18:16	11:21	15:5
10:17	12:19	defined	depth	discharge
core	13:2	17:15, 20	9:14 11:5	18:11, 23
17:23	14:2, 6,	definition	description	23:5, 11
corner	19, 22	10:6	5:14 8:9	discharging
4:7	27:16	11:16	Design	18:24
correct	31:23	18:5, 8,	5:18 6:3,	23:20
26:24	33:1	16, 23	6 8:4	discretion
corrections	cut	19:3	design-	26:12
22:4, 6	31:17	22:11, 12,	build	32:7, 16
counsel	CYRUS	17, 24	6:12, 19	
	3:23	23:1, 5, 8,	7:1	
			designed	

discussing 3:9	elevate 32:3	environment 26:15	30:16
dispensing 17:18 22:14	eligible 10:14	s 21:3	execution 6:12
distinct 17:21	emerging 16:16	equipment 17:18	exist 14:18, 19
distinction 10:1 18:9	emitting 23:11, 19	equivalent 13:24	existing 27:22
distinguish ing 17:24	empty 24:8	escape 18:11 23:11	expansion 16:16
DNR 13:12	enable 13:22 14:8	escapes 18:13	expenditure s 12:20
document 14:24	enables 17:23	escaping 17:22 23:13, 20	expire 26:17
dot 5:12	end 4:13	essence 19:24 21:4	explain 6:4 12:6
double 30:3, 4	ends 4:18	essentially 13:15 14:24 21:1	explanation 25:23 26:6
double- walled 20:20	engineer 29:2	establishes 18:17	explicit 18:6
drinking 27:17 28:17	ensure 3:19 4:2, 20, 21 12:14 32:19	evaluated 29:2	explicitly 19:22
due 19:8	entered 4:11	evening 3:4, 14 4:3	extend 26:11
	entering 20:5	event 20:12 32:2	extended 25:21 26:4
E	entitled 5:18 8:20 10:22	examination 19:23 28:21	external 18:2
e-mail 5:11	environment 24:21	examples 25:1	
effect 21:1	environment al 3:6 12:10 18:3 22:5	excuse 3:21 4:21 18:3, 16	F
effective 30:3			face 9:1
efficiently 5:5			facility 30:9
			fact
			fall 14:14
			fashion 14:19
			favor 24:2 29:12 30:15 31:1 33:14
			feature 7:15
			feels 9:24
			fees 12:14, 17, 19, 21 16:6, 14
			field 14:10, 13
			fields 13:9
			finally 33:3
			financial 18:18
			find 9:17
			findings 20:17
			fish 13:11
			fit 18:21 29:3, 4
			flesh 14:3
			flexibility 14:5

floor	7:8	7:15		information
5:15 7:13	gas	15:11, 18	I	4:4 15:3,
8:10	8:6, 8, 21	21:7, 12		5 25:11
15:10	general	handled	idea	34:10
fluid	3:4 7:1	20:12	11:2	initiated
17:22	giant	hands	implementat	6:21
23:20	14:24	7:24	ion	inspect
fluids	give	31:15	6:12	28:22
18:11	12:7	happen	important	inspected
23:11	21:14	12:5	27:14	27:18
foreseeably	goal	Harmon	31:9	inspection
10:11	12:13	8:7, 13, 19	inch	14:6
forward	good	15:21	11:7	18:21
10:20	3:3 27:3	He'll	inches	20:1
25:12	34:16	8:8	9:13 10:8	27:15
foul	Governing	hear	11:5, 19	28:16
4:24	10:22	15:22	incidents	30:21
found	GPS	hearing	18:1	31:5
9:22	9:19	3:8, 17	include	32:8, 13,
framework	grace	4:8, 19, 22	28:13	16
10:14	19:6, 13	10:21	included	inspections
13:22	grade	34:5, 14	13:17	14:7, 9
frequency	9:13	hearings	23:16	27:13
27:15, 18	grants	32:11	24:5, 12	inspector
28:16	19:5	held	29:14	29:3
30:21	greater	24:8	30:16	Inspectors
31:5	9:14	Hey	31:2	27:7
full	27:17, 18	3:23	33:8, 17	installatio
19:6	ground	higher	includes	n
26:23	8:24 13:9	28:3, 10	4:14	5:20
27:1	23:21	Hitt	22:14	installed
fully	groundwater	26:22, 24	incorporate	30:2
19:13	13:14	27:1, 4	d	installing
functions	28:6	Horizontal	23:15	8:23
12:16	guess	10:22	increase	instance
future	8:2 34:15	HRMS	12:14	9:5
9:23 24:8		13:10	16:5	instances
			individual	14:9
G	H		14:23	instruction
			influenced	s
Gary	hand		28:6	6:1

insufficient	3:4, 23	kind	largest	29:12
	8:13	8:17	9:1	30:14, 15,
12:19	21:18	20:11	lastly	24 31:1
integrity	Isaac.l.	33:4	5:21	33:14
28:4	tincher@wv.	knowledge	14:16	Legislature
interagency	gov	6:18	law	's
13:12	5:12		12:16	24:3
interest	Isaac.l.	L	17:9	Level
31:7	tincher@wv.		leaching	20:8, 9, 18
34:13	gov.	lab	18:11	27:15, 16,
interior	5:13	5:21	23:11, 20	19 28:2,
28:22	isolation	12:4, 9	leak	9, 10
internal	17:19	Labcert	18:1, 9, 10	29:1, 22
18:1	22:15	16:6	20:15	30:2
interrupt	issues	laboratorie	23:18, 19	lift
26:16	9:1	s	25:1	32:3, 13
interruptin		12:11	29:8, 15,	Likewise
g	J	13:2	21 32:5,	15:9
5:1		14:12, 21	18, 20	limiting
interstitia	Jason	15:2	leaking	15:15
l	8:7, 11	laboratory	23:10	lines
20:23	Johnsely	12:9 13:2	leaks	30:13
introduce	7:17	14:11, 18,	18:3	listening
8:23	15:19	23	24:22	22:4
introduced	join	laboratory'	learned	located
22:2	3:22	s	6:18	10:2
23:23	judgment	13:23	left	11:15
29:9	10:11	laid	27:5	location
30:12	jurisdiction	18:10	31:21	11:8
33:9	9:4	landowner	legislation	27:24
investigati		9:5, 6	29:10	
on	Justin	landowners	legislative	M
20:10, 16	12:5	9:7	3:10 17:6	
29:21	Justin's	language	32:10, 11	made
involves	16:6	5:1 6:9,	33:10, 13	4:15
18:24		14 7:3	34:5	17:12
30:7	K	14:1	Legislature	18:9
involving		22:1, 16	17:15	28:19, 20
27:6	key	25:14, 19	22:1	29:7
Isaac	18:8	31:22, 23	23:2, 4, 24	maintain
		33:8, 11	24:1, 11	18:18
			28:13	

major	11:4	month	network	13:3
11:12	metal	19:6	14:21	
majority	9:16	27:15	15:3	
15:7	method	32:21	networks	0
make	30:9	months	14:18	objects
7:4 14:22	32:21	26:12	newer	29:17
17:9	methods	monument	21:3	obligated
31:14	32:22	9:19, 20	newly	7:4
34:9	mind	11:3, 11	19:8	occur
making	26:18	monuments	nickname	29:21
16:14	34:9	5:20 8:24	27:2	Office
22:6	minimizes	9:3, 7, 11,	night	8:8
34:11	20:5	12	34:16	official
Mandirola	mining	move	nine-	3:18 4:16
15:17, 22	16:11	10:21	19:5	oil
16:1, 3	minutes	12:3 32:3	nine-month	8:6, 8, 20
21:11, 13,	5:7 15:15	moving	19:12	on-site
18, 19	21:10	8:5 28:18	25:15, 19	14:7
26:15	modern	29:24	26:2	one-
27:5	13:2	multiple	non-	quarter-
31:16, 20	modernize	14:20	destructive	11:6
markers	14:16	15:1	19:23	one-
9:23	21:1	muted	28:21	quarter-
matches	modificatio	15:21	Notable	inch
25:14	n		13:5	9:15
matter	25:5, 9		notes	open
31:10	30:1, 19	N	8:17	5:15 7:13
means	modificatio	Nathaniel	notice	8:10
19:24	ns	27:1	3:15	15:10
23:10, 19	29:20	navigating	notificatio	21:5
measures	30:8	6:7	n	opened
18:6	modified	necessarily	20:15	12:23
meet	19:12	3:12	25:6	opening
19:6	modify	22:22	notion	6:1
meeting	22:18	needed	8:23	operational
4:5 22:6	modifying	14:9, 10	NPDES	17:24
members	19:19	needing	16:9	24:7
16:4	monitored	20:22	number	operations
21:20	20:24	negating	9:16 11:7	13:3
27:10	32:20	9:8	12:22	
met				

operator 11:2 20:24 25:22, 24 26:5, 7 32:2, 19	out-of- service 18:17 out-of- state 13:23	perfectly 10:16 Performance 12:12 period 4:14, 17 8:3 12:1 17:1 19:6, 13 25:19 26:3 34:2, 6	8:24 9:8 plugging 5:20 9:2, 21 11:3, 9 point 17:18 19:20 21:5 22:15 25:11 33:4, 5 pointed 22:4 pollutant 23:6, 7 pollutants 16:17 19:1 potentially 20:3, 4	primary 12:13 13:23 17:17 prior 24:20 problem 8:19 22:23 25:10 problematic 31:24 proceed 3:13 process 6:19, 20 professiona l 29:2
operators 20:16	outline 13:21	Peripheral 19:4, 11		
opportunity 7:6 16:18 31:9 33:20	oversight 14:12 owner 25:7, 22, 24 26:5, 7 32:2, 19	permits 13:14 permittee 32:8		
oppose 26:10	owner's 6:10 7:3, 5, 6	PFAS 13:9 16:16		
opposed 31:5	owner- advisor 6:16	phrasing 19:15		
opposes 22:20 32:24	owners 32:13	physically 32:4		
option 11:10 12:18	ownership 19:16, 17	pick 27:4 31:20		
optionally 11:2		picking 9:5		
oral 5:11	P	plan 20:7		
order 3:13	parameters 13:16	plate 9:15 11:6		
organics 13:8	part 4:15 9:18	plow 9:14 11:5		
organizatio n 15:13 21:9	parties 9:7	plugged		
organizatio ns 7:20	passed 6:17, 22 24:1 29:11 33:13			
original 28:11 30:23	people 20:2			
			present 4:9 presented 11:1 pretty 6:23 7:11 prevent 9:6 20:2 prevention 20:6 previous 5:8 11:1 previously 24:16	proper 18:19 propose 6:8 proposed 3:9, 19 4:18 5:4 8:9 17:23 18:7 19:22 21:21, 23

25:5	purview	11:9	33:3, 5	25:1
28:24	14:14	reduce	relate	26:14
29:19		29:1	5:19	29:16
30:1, 7, 21	Q	refer	related	33:11, 17
32:1 33:6		29:15	3:19	removing
34:5, 6	quality	reference	release	9:7
proposes	16:8	16:15	18:9, 13	renewals
27:14	question	references	20:10, 12,	14:6, 8
proposing	21:24	24:5	13 23:9,	replaced
6:14 9:10	questions	refers	10 24:13,	22:12
17:5	8:1 15:8	24:14	15, 19	report
protect	21:6	reflect	25:1	14:22
28:16		28:19, 20	29:8, 20	15:4, 5
Protection	R	refraining	released	reported
3:6 22:5		4:24	24:16, 21	24:23
provide	raise	registered	releases	reporter
4:4 5:14	7:15	18:18	18:3	4:9
7:14 8:8	15:11	registratio	32:23	reporting
9:9	16:23	n	relocation	14:17
provided	21:7	19:14, 18	19:16, 17	reports
4:15 11:3	raised	25:8, 9, 11	remains	14:23
15:4, 5	8:1 15:18	regular	26:20	represent
20:23	21:12	17:14	remarks	7:20
25:19	reading	regulated	6:1	15:13
26:2 27:9	9:19	18:4, 5	remind	request
provision	reason	19:7, 8	21:8	24:21
19:5 24:4	6:17	25:20	remote	25:22
proximity	reasons	26:2, 4, 9	14:9	26:5, 12
28:4	25:23	27:22	19:23	requested
public	26:6	28:2, 10	28:21	13:17
3:8, 15, 17	reciprocity	30:2, 4	removal	requests
8:2 21:6	13:21	32:19	22:21	28:15
28:5	recommends	regulation	24:3	require
34:2, 4	30:18	22:18	remove	9:23
purpose	record	regulations	14:10, 15	11:10
3:17 4:22	3:19 4:2,	33:2	30:19	19:18
8:22	11, 16	regulatory	removed	25:8
purposely	9:22	17:10	9:3 22:1,	32:13
22:1	recorded	27:21	12, 17	required
purposes	4:8 9:20	reiterate	23:2, 4, 17	12:16
32:4, 14			24:6, 10	

24:22, 23	20:5	rulemaking	12, 23	sentence
32:3, 12	River	12:19, 23	28:3, 9	32:15
requirement	28:15, 23	17:7	30:10, 22	separate
30:1	29:6	rules	31:6	8:18
requirement	30:5, 18	3:10, 14,	secretary	20:22
s	31:4	19 4:12,	25:21	23:16
13:21, 24	Rivers	18 5:4	26:4, 11,	separately
14:10, 13,	16:4	8:6, 9, 14	13 27:21	17:21
17, 22	21:19	9:11	32:6, 15	separates
17:10	22:20	10:22	Secretary's	18:2
19:7	24:18	12:2	32:7	separation
25:20	27:8, 11	34:3, 5, 6	section	17:23
26:1, 3, 8	29:17		19:3	service
28:1	32:24	S	22:8, 9,	18:15, 20,
32:18	ROGERS	safeguard	11, 13, 21,	21, 22
requires	7:10	17:22	22 23:5,	22:24
7:3 14:7	rule	SB	9, 18	24:9 29:4
25:5	5:15, 17,	29:9	24 25:4,	services
reset	22, 23	schedule	13 27:6,	6:16
31:19	6:2, 8, 24	20:7 32:8	12, 14	session
respect	7:14, 23	schedules	28:8, 24	17:14
14:17	8:3, 20, 22	32:17	29:7, 8,	22:2
respectful	10:15, 19,	scientist	19, 24	33:10, 13
4:23	22, 24	27:8	30:6, 20	set
respond	11:1	Scott	32:9, 17	12:17
4:16	12:3, 5,	15:21	sections	13:19, 22
response	10, 17, 23	16:3	28:18	sets
20:6	13:1, 19	21:19	33:6	28:1
resume	14:2, 7	screen	seeking	share
31:17	17:2, 3, 4,	4:7 21:15	12:9	4:10
retain	10 18:7,	seam	13:3, 7, 9	21:15
7:6	10 19:15	10:8, 9	seeks	shared
return	20:19	11:18	14:3	15:3
18:22	21:2, 22,	secondary	Senate	sharing
review	24 23:6,	17:20	17:8	14:20
3:16 17:7	15 24:5,	18:5, 12	23:23	shorten
revision	12 28:14	20:19, 21	25:15	29:20
24:19	29:14, 15	22:17, 19	26:13	shortened
30:21	30:3, 17	23:13, 21	28:11	19:10
risks	31:3, 23	24:15, 17,	30:12, 23	signage
	32:6, 18	20 27:6,	senior	
	33:18		27:8	
	rule's			
	17:23			

18:19	Standards	stored	supports	technical
signed	12:11	9:21	29:6 30:5	15:20
17:9	start	strongly	surface	technically
similar	5:17 6:2	26:10	9:13 11:5	24:11
11:1	state	31:4	28:5,6	technologie
23:8,22	7:19 9:10	structure	surrounding	s
singular	13:24	18:12	21:3	19:23
15:4	15:12	25:7	suspected	20:2
sir	18:14	27:7,13	20:13,15	technology
8:12	19:1 21:8	sturdy	24:24	28:21
15:24	23:8,13	6:23	system	temporarily
26:16	stated	submission	15:3	18:15,17,
31:17	22:13	17:6	22:11	20 22:23
size	32:12	submit	25:12	24:8
27:24	statement	20:16	systems	term
small	25:14	submits	20:9	22:23
4:6	26:11	21:20	22:15	testified
sought	states	submitted		32:10
17:9	23:10	3:15	T	testimony
source	27:20	4:13,17	takes	5:9
28:5,7	32:1,18	16:9	27:23	testing
sources	status	22:10	taking	13:6
27:17	18:20	32:8	8:16	16:16
28:17	19:17	substitute	34:14	text
spaces	24:7	33:12	talk	4:6
20:23	statute	subterranea	8:20	therefor
speak	11:17	n	tank	25:23
5:2,7	17:11	9:12	5:22	26:6
21:13	steady	successfull	17:3,16	thereof
speaking	6:23	y	18:2	32:22
17:4	steel	4:21,22	19:7,8	thickness
specificall	9:15 11:6	sufficient	20:3,5,21	10:9
y	STI-	12:15	21:22	11:7,19
18:10	CERTIFIED	supply	23:12,21	thing
spill	29:3	28:5,6	28:3 29:3	20:4
20:6	storage	support	32:13	things
spilling	5:22	13:6,8,	tanks	14:11
23:10,19	17 21:22	10,11,12,	18:17	20:12
standard	23:12,21	14 16:5,	27:23	third-party
28:3,10	27:22	8,13,14	28:1,2,22	6:10,16
		29:23	32:13	

thread 33:4	tissue 13:11	20:7, 11	virtual 34:4	21:19 22:20
threat 27:17	tonight 4:15 27:9	updates 12:24 13:4, 5 15:7 20:7 21:1	visual 32:5	24:18 27:8, 10 28:15, 23
threatened 20:13 24:24	tonight's 4:19	updating 19:24	voice 16:5	29:5, 17 30:5, 18
throw 33:21	topic 5:3	utilize 6:15	volatile 13:7	31:4 32:24
tiered 28:1	toxic 13:7		volume 30:9	window 25:15
time 3:16 5:4, 7, 16 6:17, 22 10:20 11:23 16:23 26:17, 19, 21 31:7, 14, 18 33:24 34:8, 14	traditional 9:23 11:10	V 	W 	work 7:1
timeframe 29:1, 5, 20	transfers 19:17 20:23	vandalized 9:3	walled 30:3, 4	workable 10:5, 6, 8 11:17
timelines 20:11	treatment 30:8	version 22:2 23:23 29:9 30:12, 23 33:9	wastewater 30:8	worked 10:10, 12 11:20
timer 21:16	twenty 10:8	versions 19:10	water 16:11 23:12 27:17 28:5, 6, 17	works 6:19, 20
times 32:10	types 14:6	versus 18:9 29:8	waters 18:13 19:1 23:7	wrap 31:8 34:15
Tincher 3:3, 4 4:1 7:12 8:16 11:24 15:9, 24 16:19 26:15 27:3 31:11 33:21	undergo 18:21	vessel 17:17	weaken 21:24	writing 22:10 27:10
	understand 23:16	view 11:21	welded 9:16 11:7	written 5:10 25:5, 21 26:5
	understandi ng 6:23	Virginia 3:5 10:7 16:3, 7, 9 21:19 22:20 24:18 27:8, 11 28:15, 23 29:6, 17 30:5, 18 31:4 32:24	well- defined 14:2	
	unique 16:7		wells 8:21 9:8 10:2, 4, 14, 17 11:15	year 17:15 20:8 23:23 29:9
	update 12:9, 13, 18 20:20		West 3:5 10:7 16:3, 7, 9	year's 17:6
	updated 12:21 17:11, 13			

years

6:7 12:22

14:19

18:20

20:8

z

ZCC

19:9

Zone

19:10, 11

Zones

19:4

ZPC

19:9

25:17

§

§22-30-3

17:21

22:13

23:9

§22-30-5(a)

27:20

§22-6-1(e)

10:7

