



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

3/9/2018 4:19 PM

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Waste Management Division Of Water And Waste Management TITLE-SERIES: 33-30
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: UNDERGROUND STORAGE TANKS
CITE STATUTORY AUTHORITY: W. Va. Code § 22-17-6

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB163

Section W. Va. Code § 64-3-1 Passed On 2/16/2018 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

June 1, 2018

This rule shall terminate and have no further force or effect from the following date:

TITLE 33
LEGISLATIVE RULES
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WASTE MANAGEMENT

SERIES 30
UNDERGROUND STORAGE TANKS

§33-30-1. General.

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

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

1.3. Filing Date. -- March 9, 2018

1.4. Effective Date. -- June 1, 2018

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

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

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

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

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

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

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

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

§33-30-3. Certification Requirements for Individuals Who Install, Repair, Retrofit, Upgrade, Perform Change-in-Service, Close or Tightness Test Underground Storage Tank Systems or Install, Repair, Upgrade or Test Corrosion Protection on Underground Storage Tank Systems.

3.1. Application of Requirements. – The requirements of this section apply to individuals engaged in underground storage tank system installation, repair, retrofitting, upgrading, change-in-service, closure,

tightness testing or corrosion protection installation, repair, upgrade or testing.

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

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

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

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

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

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

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

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

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

3.3.a. A class A certificate will allow the individual certified to install, repair, retrofit or upgrade an underground storage tank system, to tightness test Under Dispenser Containment (UDC) basins,

tightness test all sumps and spill buckets during installation or replacements, excluding activities associated with corrosion protection or linings (e.g. internal lining, external coating, installation of or maintenance on galvanic or impressed current systems), which must be performed by a Class D or E certified worker as appropriate;

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

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

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

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

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

3.4. Certification Requirements. – An individual applying for a certification under any Class listed above must file a written application on a form supplied by the Secretary showing the Secretary that he or she meets the following requirements:

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

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

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

3.4.d. The applicant for class A, B, C, or F certification must demonstrate active participation in a minimum of ten (10) regulated underground storage tank system installations, repairs, retrofits, upgrades, performances of a change-in-service, closures or tightness testing conducted after December 22, 1988, as is applicable to the class A, B, C, or F certificate. The applicant shall submit documentation of a minimum of ten (10) active job participations for each individual certificate classification for which the applicant has applied. An applicant who is a professional civil or mechanical engineer duly licensed by the State Board

of Registration for Professional Engineers of West Virginia may substitute this license for the required experience for class A or class B certification;

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

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

3.4.e. Applicants for Class D certification must submit, at a minimum, proof of a current certification level as a corrosion technician by the National Association of Corrosion Engineers (NACE) or an equivalent certification from another organization if the applicant will be installing, upgrading, repairing or testing galvanic and impressed current systems. Applicants for Class D certification must have, at a minimum, proof of current certification level as a protective coating technician by NACE or an equivalent certification from another organization if the applicant will be installing, upgrading or repairing internal and external coatings and certification from the coating manufacturer. The applicant must prove that certification by an organization other than the National Association of Corrosion Engineers is equivalent to the National Association of Corrosion Engineers by submitting copies of the course of study for review by the Secretary.

3.4.f. Applicants for Class E certification must submit, at a minimum, proof of a current certification level as a corrosion tester by the National Association of Corrosion Engineers or an equivalent certification from another organization for testing of galvanic and impressed current systems. The applicant must prove that certification by an organization other than the National Association of Corrosion Engineers is equivalent to the National Association of Corrosion Engineers by submitting copies of the course of study for review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5.b. Individuals certified in Class C must submit a copy of their current certification by the manufacturer of each test method that they are and will be using. Individuals certified in Class D or Class

E must submit a copy of their current certification by the National Association of Corrosion Engineers or another previously approved equivalent organization.

3.6. Identification Card. – Upon issuance of the certification, the Secretary shall issue an identification card to the successful applicant that shows the individual's name, certificate issuance date, certificate expiration date, certification number, and the class(es) of certification. An individual who holds a current certificate shall present his or her identification card upon request by a representative of the Secretary or the owner or operator of the underground storage tank system for which an installation, repair, retrofit, upgrade, change-in-service, closure, tightness test or corrosion protection installation, repair, upgrade or test is to be conducted.

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

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

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

§33-30-4. Notification Requirements.

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

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

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

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

4.2. Notification of Compliance. -- All owners and operators of underground storage tank systems installed on or after December 22, 1988 must provide the Secretary notification of compliance with the following requirements:

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

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

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

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

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

4.3. Notification of Installation or Upgrade. – At least 30 days prior to commencement of the activity, all owners and operators of underground storage tank systems shall notify the Secretary in writing of any installation, upgrade or repair of the tank's internal lining or corrosion protection systems. The owner or operator shall also notify the Secretary, in writing, within 30 days of discovery of any deficiency in the structural integrity of the tank(s). The Secretary may waive the 30-day time period when such action is in response to a release from an existing UST system on the site.

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

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

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

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

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

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

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

4.7. Notification of Change in Status. – Except as provided in subsection 4.6. of this rule, the owner and operator must report changes in the status of any underground storage tank system by completing the form prescribed by the Secretary and submitting the form to the Secretary by December 31 of the year in which the change of status occurred. A new owner of an underground storage tank must provide notification of the transfer of ownership of that tank, a change in tank operator or a change of contact information and address for the tank owner and operator by completing the form prescribed by and submitting the form to the Secretary, along with proof of financial responsibility in accordance with the provisions of 40 C.F.R. Part 280, Subpart H. The new owner and operator must submit this information to the Secretary within 30 days of the change of ownership, change of operator or change of address information.

§33-30-5. Delivery Prohibition.

5.1. Proof of Compliance. – Product deliverers, including any person who approves a delivery order or delivers or deposits product into an underground storage tank, shall not deliver product into an underground storage tank unless the Secretary has certified that the underground storage tank owner or operator is in compliance with the requirements of the Underground Storage Tank Fee Assessments (33 C.S.R. 31) and the notification requirements under section 4 of this Rule, and the owner or operator presents proof of this certification along with proof of financial responsibility in compliance with 40 C.F.R. Part 280, Subpart H to the product deliverer.

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

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

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

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

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

5.2.e. Required financial responsibility is maintained.

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

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

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

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

§33-30-6. Operator Training Requirements.

6.1. Approval of Required Training.

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

6.1.a.1. Operator training courses must be renewed every five years or as otherwise specified by the Secretary. The training provider shall submit to the Secretary in writing applications for approval of specific training programs. The submissions shall meet the operator training course requirements set forth in 40 C.F.R. § 280.242, the requirements of this Rule, and guidance provided by the Secretary.

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