

**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. -- April 24, 2008.

1.4. Effective Date. -- July 1, 2008.

§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 May 1, 2007, 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 phrase "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) shall not apply and shall be replaced by "(1) notification in accordance with the provisions of section 4 of this rule".

2.1.f. The provisions contained in appendices 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 and 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, strapping, anytime during the installation in which piping components are connected, installation of corrosion protection either galvanic or impressed current when anodes are installed, electrical connections are made 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;

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, electrical connections are made 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 testing of a corrosion protection system either galvanic or impressed current.

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;

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, to perform minor repairs, 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 or impressed current 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.

3.4. Certification Requirements. -- An individual applying for a class A, class B, class

C, class D or class E certificate 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 conduct a police check and checks 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 based upon the documentary evidence obtained pursuant to this subdivision;

3.4.d. The applicant for class A, B, or C 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 or C certificate. An applicant who is a registered 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 they will be using and must assure by a signed written statement filed with the secretary that they 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 proof of a current certification level as at a minimum a corrosion technician by the National Association of Corrosion Engineers or an equivalent certification from another organization and must assure by a signed written statement that they will follow the West Virginia public service commission rule 150C.S.R.4 regarding corrosion protection;

3.4.e.1. 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.f. Applicants for class E certification must submit proof of a current certification level as at a minimum a corrosion tester by the National Association of Corrosion Engineers or an equivalent certification from another organization and must assure by a signed written statement that they will follow the West Virginia public service commission rule 150C.S.R.4 regarding corrosion protection;

3.4.f.1. 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, or C 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 can 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;

3.4.g.3. Applicants for certification must correctly answer not less than 80 percent 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 (3) times within a twelve (12) month period. Applications are considered current for a period of one (1) year from the date they are received by the secretary. After one (1) year, a new application must be filed and the examination fee paid;

3.4.h. At the time of the examination the applicant for class A, B, or C certification shall remit a nonrefundable \$75 fee by check or money order. This fee shall be deposited in the Underground Storage Tank Administrative Fund. A fee of \$35 shall be assessed for each retesting within the same year; and

3.4.i. Applicants for class D or E certification shall submit a nonrefundable application fee of \$75 by check or money order. 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 second year. Applications for certificate renewal and payment of a nonrefundable renewal fee of \$50 must be submitted to the secretary by November 1 of the

year in which the certificate expires. An individual whose certificate has expired prior to his or her submission of an application for renewal is considered a new applicant for certification.

3.5.a. An individual may renew his or her certificate for another two (2) year period by:

3.5.a.1. Paying the renewal fee; and

3.5.a.2. Submitting on a form supplied by the secretary a certificate renewal application demonstrating that he or she has completed sixteen (16) hours of continuing education training courses approved by the secretary for each class of certification and has participated in at least one (1) job 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; and

3.5.a.2.B. Applications for approval of specific training programs shall be submitted by the training provider to the secretary in writing. 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 (1) job applicable to the class of certification within the prior certification period and successfully passing the written examination described in sub-division 3.4.g. of this rule. At the time of the examination, the applicant applying for renewal must remit a nonrefundable \$50 fee by check or money order; 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 of certification.

3.6.a. 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 an applicant be denied issuance or renewal of certification or should the individual's certificate be revoked, the reason or reasons for the denial or revocation shall be set forth in writing to the individual by the secretary.

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 sub-division 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 follow West Virginia public service commission rules 150C.S.R.4 regarding 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, 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 sub-division 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.

3.8. Enforcement Action. -- Any individual who violates the provisions of this section of this rule is subject to enforcement action under W. Va. Code §22-17-1 et seq.

§33-30-4. Notification Requirements.

4.1. Notification. -- Except as provided in sub-division 4.1.a., 4.1.b., or 4.1.c. of this rule, the owner or 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 or 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 or 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 or 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. -- In addition to the provisions of subdivision 4.1.c. of this rule, 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 December 22, 1988, and before January 1, 1995, installation of tanks and piping as certified under section XI of the form prescribed by the secretary in accordance with subsection 4.1., excluding item B (installer certified or licensed by the implementing agency) under section 1 (installation) of part XI (certification of compliance).

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

4.2.d. Spill and overfill prevention

equipment in accordance with the provisions of 40 C.F.R. §280.20(c).

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

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

4.3. Notification of Installation or Upgrade. -- All owners and operators of underground storage tank systems to be installed or upgraded must notify the secretary in writing at least thirty (30) days prior to beginning the installation or upgrade. The thirty (30) day time period may be waived 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, 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).

4.5. Notification Requirements. -- An owner or 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 thirty (30) days. Consult the department's Underground Storage Tank Rule (33 C.S.R. 30) to determine if you must provide this notification."

4.6.a. 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 thirty (30) days prior to the transfer of ownership.

4.7. Notification of Change in Status. -- Except as provided in sub-division 4.6.a. of this rule, the owner or operator must report changes in the status of any underground storage tank system by completing the form prescribed by the secretary and submit the form to the secretary by December 31 of the year in which the change of status occurred.

4.7.a. A new owner of an underground storage tank must provide notification of the transfer of ownership of that tank by completing the form prescribed by the secretary along with proof of financial responsibility in accordance with the provisions of 40 C.F.R. Part 280 Subpart H. The information must be submitted to the secretary within thirty (30) days of the transfer.

§33-30-5. Secondary Containment Requirements, Release Prevention, and Release Detection.

5.1. Secondary Containment Requirements for New or Replaced Underground Tanks or Piping. -- Each new or replaced tank or piping

connected to any such new or replaced tank, including tanks or piping used for emergency power generation, must be secondarily contained and monitored for leaks.

5.1.a. The secondary containment shall apply only to the specific underground storage tank and piping being replaced and not to other underground storage tanks and connected pipes comprising such system.

5.1.b. The interstitial space shall be monitored in compliance with 40 C.F.R. §280.43(g).

5.1.c. The secondary containment system must be designed, constructed, and installed to:

5.1. c.1. Contain regulated substances released from the tank and piping system until they are detected and removed;

5.1. c.2. Prevent the release of regulated substances to the environment at any time during the operational life of the tank and piping system; and

5.1. c.3. Be checked for evidence of a release at least every 30 days.

5.1.d. The requirements of this subsection do not apply to suction piping that meets the requirements of 40 C.F.R. §280.41(b)(2)(I) or to piping that manifolds two or more tanks together.

5.2. Secondary Containment Requirements for New or Replaced Motor Fuel Dispenser Systems. -- New or replaced motor fuel dispensers must have under-dispenser containment.

5.2.a. The motor fuel dispenser system shall include the equipment necessary to connect the system to the underground storage tank system such as check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

5.2.b. The secondary containment must:

5.2.b.1. Be liquid-tight on its sides, bottom, and at any penetration;

5.2.b.2. Be compatible with the substance conveyed by the piping;

5.2.b.3. Allow for visual inspection and access to the components in the containment system, be monitored or both; and

5.2.b.4. Be liquid-tightness tested every three years.

5.3. Application of Secondary Containment Requirements. -- These requirements do not apply to repairs as defined in 40 C.F.R. §280.12 meant to restore an underground storage tank, piping, or dispenser to operating condition.

§33-30-6. Delivery Prohibition.

6.1. 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 department 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), notification requirements (33 C.S.R. 30 §4); and capitalization fee requirements (33 C.S.R. 32 §5) 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.

6.2. 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:

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

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

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

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

6.2.e. Required financial responsibility is maintained.

6.3. 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 department has identified as ineligible to receive product.

6.4. Notification of Ineligibility -- The department 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 compliance with the requirements under subsection 6.2 is achieved.

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

6.5. 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.

§33-30-7. Training Requirements for Individuals Who Operate, Maintain, or Are Responsible for Addressing Emergencies Presented by Spills or Releases from an Underground Storage Tank System.

7.1. Applicability of Requirements. -- The requirements of this section apply to:

7.1.a. Individuals who have primary responsibility for on-site operation and maintenance of underground storage tank systems;

7.1.b. Individuals who have daily on-site responsibility for the operation and maintenance of underground storage tank systems; and

7.1.c. Daily on-site employees who have primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

7.2. Effective Date of Training Requirements.

7.2.a. Beginning August 8, 2012, those individuals identified in subsection 7.1.a. or 7.1.b. must have received the required training within thirty days after assuming operation and maintenance responsibilities at the underground storage tank system;

7.2.b. Beginning August 8, 2012, those individuals identified in subsection 7.1.c. must have received the required training before assuming responsibility for responding to emergencies;

7.2.c. Beginning August 8, 2012, those individuals identified in subsection 7.1.a., 7.1.b., or 7.1.c. shall repeat the required training if their underground storage tank systems are determined by the department to be out of compliance.

7.3. Approval of Required Training.

7.3.a. Training for individuals identified in subsection 7.1.a., 7.1.b., or 7.1.c. must receive prior approval by the department. Upon approval the training may be conducted multiple times at multiple locations.

7.3.a.1. Applications for approval

of specific training programs shall be submitted by the training provider to the secretary in writing. 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; and

7.3.a.2. Upon application for approval of a training program a nonrefundable application fee of \$280 by check or money order shall be submitted. This fee shall be deposited in the Underground Storage Tank Administrative Fund.

7.3.b. The approved training may include in-class, on-line, or hands-on training.

7.3.c. The approved training must include an evaluation designed to measure all aspects of the individual's knowledge and skills to competently operate underground storage tank systems.

7.4. Proof of Required Training.

7.4.a. The training provider must provide the individual and the department with a certificate of training documenting the level of training received.

7.4.b. Individuals identified in subsection 7.1.a., 7.1.b., or 7.1.c. shall demonstrate that they have received the required training by providing a copy of the training certificate to the department upon request.