

**TITLE 47
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT**

**SERIES 64
RULES GOVERNING ABOVEGROUND STORAGE TANK FEE ASSESSMENTS**

§47-64-1. General.

1.1. Scope and Purpose. -- This rule establishes schedules of registration fees, annual operating fees, and annual response fees for aboveground storage tanks governed by the Aboveground Storage Tank Act, W. Va. Code § 22-30-1, et seq. This rule applies to any person who is subject to regulation by that Act.

1.2. Authority. -- W. Va. Code §§ 22-30-12 and 22-30-13.

1.3. Filing Date. --

1.4. Effective Date. --

§47-64-2. Definitions.

2.1. Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code § 22-30-3 and the Aboveground Storage Tank Rule (47 CSR 63) apply to this Rule and prevail if conflicting.

2.2. "Level 1 AST" means an aboveground storage tank (AST) or AST system located within a zone of critical concern, source water protection area, public surface water influenced groundwater supply source area or any AST system designated by the Secretary as a Level 1. Additionally, a Level 1 AST is any tank that contains substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a "hazardous substance" (42 U.S.C. § 9601(14)); or is on EPA's "Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act (CAA)" (known as "the List of Lists") as provided by 40 C.F.R. §§ 355, 372, 302, and 68) in a concentration of one percent (1%) or greater, regardless of the AST's location, except petroleum is not a Level 1 solely based upon having constituents on the CERCLA lists. Furthermore, an AST with a capacity of 50,000 gallons or more is a Level 1 AST regardless of location or contents, except for tanks that meet the definition of a Level 3 AST.

2.3. "Level 2 AST" means an AST or AST system that is considered to be low risk based upon location with respect to water intakes and populated areas. Additionally, a Level 2 AST or AST system is an AST that is not defined as a Level 1 or Level 3 AST system.

2.4. "Level 3 AST" means an AST or AST system that contains potable water, filtered or unfiltered surface water or groundwater (except flowback from oil and gas wells and coalbed methane wells), demineralized water, noncontact cooling water, or water stored for fire or emergency purposes, food or food grade materials intended for actual human or animal consumption, empty mobile tanks, viscous liquids having a viscosity greater than 10,000 centipoise at standard

temperature and pressure, or hazardous waste tanks subject to regulation under 40C.F.R. §§ 264 and 265, exclusive of tanks subject to regulation under 40 C.F.R. § 265.201.

§47-64-3. Fee Assessment.

3.1. Inventory Registration Fee

3.1.a. The Department shall collect an inventory registration fee from each owner of an AST subject to registration under the Aboveground Storage Tank Act to be used to establish the Aboveground Storage Tank Administrative Fund and the Protect Our Water Fund.

3.1.a.1. For the initial inventory and registration, the fee shall be \$40.00 per tank, regardless of whether the tank is categorized as a Level 1, Level 2 or Level 3 tank. For fee purposes, the initial registration period is June 6, 2014 through June 5, 2015.

3.1.b. For all Level 1, Level 2 or Level 3 ASTs installed after June 5, 2015, the registration fee shall be \$20.00 per tank.

3.2. Annual Operating Fee

3.2.a. The Department shall collect an annual operating fee from owners of Level 1 and Level 2 ASTs that have not undergone permanent closure or change-in-service to a Level 3 tank. Level 3 ASTs shall not pay an annual operating fee.

3.2.a.1. The operating fee for Level 1 ASTs shall be \$370.00 per tank per year.

3.2.a.2. The operating fee for Level 2 ASTs shall be \$24.00 per tank per year.

3.3. Annual Response Fee

3.3.a. The Department shall collect an annual response fee from owners of Level 1 and Level 2 ASTs, unless the owner's tanks have undergone permanent closure or change-in-service to a Level 3 tank. This fee shall be reviewed annually in accordance with W. Va. Code § 22-30-13(b). If a fee schedule projection for any calendar year shows the annual response fee would generate an amount insufficient to meet the statutory obligations of the Protect Our Water Fund, the Department shall assess an additional amount, equitably prorated for each Level 1 and Level 2 AST, to ensure compliance with W. Va. Code § 22-30-13(b).

3.3.b. The response fee for Level 1 and Level 2 ASTs shall be \$25.00 per tank per year. Level 3 ASTs shall not pay an annual response fee.

3.4. Fee Calculation

3.4.a. For tanks that came into service before June 6, 2015, the owners shall pay an initial inventory and registration fee as provided in Section 3.1.a.1 above.

3.4.b. For tanks that came into service on or after June 6, 2015, the owners shall pay the registration fee assessed in 3.1.b. and the annual operating and response fees assessed in Sections 3.2 and 3.3 above.

3.4.c. All Level 1 and Level 2 ASTs shall pay an annual Operating Fee and an annual Response Fee as assessed in Sections 3.2 and 3.3 above. The fee shall be collected pursuant to the provisions of Section 4 of this Rule.

3.4.d. The fees assessed pursuant to this Rule shall not be prorated. Once the registration fee, annual operating fee, and annual response fees are paid, the Department shall not refund any portion of those payments if the tank subsequently goes out of service or goes through a change-in-service in the year for which the fees were paid.

3.5. Fee Consolidation. – All fees assessed pursuant to this Rule shall be consolidated.

3.5.a. If a tank has previously been registered and the appropriate registration fee paid, the combined annual Operating Fee and Response Fee for a Level 1 AST will be \$395. The combined annual Operating Fee and Response Fee for a Level 2 AST will be \$49.

§47-64-4. Fee Collection.

4.1. The Department shall provide to each tank owner an invoice for the fees assessed pursuant to this Rule. The invoice shall include an itemized list of fees assessed and the date upon which the fees are due and payable. The invoice shall be provided in the form and manner as prescribed by the Department.

4.2. Fees assessed pursuant to this Rule shall be paid by check, money order, credit card or bank draft payable to the West Virginia Department of Environmental Protection. Payment of the entire amount of the fees assessed, as calculated on the assessment invoice, must be made in a single payment.

4.3. Fee payments shall be sent to the address on the fee assessment invoice provided by the Department by the date specified on the invoice. If the owner mails the fee payment, it shall be postmarked by the date specified on the invoice.

4.4. Correcting Fee Assessment Errors

4.4.a. If the Department undercharges a tank owner on a Fee Assessment Invoice, the Department shall issue a Corrected Fee Assessment Invoice to that tank owner for payment.

4.4.b. If the Department overcharges a tank owner on a Fee Assessment Invoice, the Department shall issue a correction on the Fee Assessment Invoice that is distributed for the next calendar year, unless the tank owner submits a written Request for Refund to the Department. The Request for Refund, along with documentation supporting the claim of erroneous assessment shall accompany the payment of the assessed fee. The Department shall investigate the tank owner's claim and issue a refund for the amount in excess of the proper assessment, if the tank owner's claim proves to be valid.

4.4.c. Any errors made in the calculation or assessment of fees, whether by the Department or as a result of inaccurate information submitted by the tank owner or operator, shall be corrected within one year of the due date posted on the Fee Assessment Invoice. Any errors not identified within this one year period shall be deemed waived.

§47-64-5. Fee Deposit.

5.1. For the initial 2014 registration fees assessed pursuant to subdivision 3.1.a.1 of this Rule, the Department shall deposit fifty percent of the fees collected into the special revenue account within the

State Treasury designated the Aboveground Storage Tank Administrative Fund and fifty percent of the fees collected into the special revenue account within the State Treasury designated the Protect Our Water Fund.

5.2. The Department shall deposit the registration fees assessed for tanks registered after January 1, 2015 pursuant to subdivisions 3.1.b of this Rule into the special revenue account within the State Treasury designated the Aboveground Storage Tank Administrative Fund.

5.3. The Department shall deposit the annual operating fees assessed pursuant to subsection 3.2 above and any penalties assessed in accordance with Section 6.2 below into the Aboveground Storage Tank Administrative Fund.

5.4. The Department shall deposit the annual response fees assessed pursuant to subsection 3.3 above into the Protect Our Water Fund.

5.5. The deposit of a fee payment into the State Treasury is not acquiescence by the Department that the tank owner or operator has paid for the correct number of tanks. Each tank owner is obligated to notify the Department if the number of tanks assessed is incorrect. The Department shall make necessary corrections in accordance with subsection 4.4 above.

§47-64-6. Failure to Pay Fees.

6.1. A tank owner who does not make a full, timely payment of fees assessed pursuant to this Rule, or who otherwise fails to comply with the provisions of this Rule, is subject to the penalties provided in the Aboveground Storage Tank Act, W. Va. Code § 22-30-16.

6.2. The Department shall assess penalties on fee payments not received by the Department by the specified due date on the Fee Assessment Invoice. Late fees shall be a cumulative sum based on the following penalty assessment: Fifty percent of the balance assessed for delinquent fees in excess of 30 days after the due date specified on the Fee Assessment Invoice.

6.3. An owner or operator who fails to pay any of the fees required by the Aboveground Storage Tank Act and this Rule may be subject to civil action for collection of delinquent debts.

6.4. Failure to pay any of the fees required by the Aboveground Storage Tank Act and this Rule may result in administrative actions against the tank owner or operator, including revocation of operating permits issued by the Department.

6.5. If a tank owner or operator attempts to register an AST and the Department accepts the registration, but the tank owner or operator is delinquent in payment of any of the fees required by the Aboveground Storage Tank Act and this Rule, the Department may deny issuance of the Certificate to Operate the subject tank.

6.6. If tank ownership changes and any of the fees required by the Aboveground Storage Tank Act and this Rule for the subject tank are delinquent, the unpaid fee balance shall transfer to the new owner.

§47-64-7. Inflation or Deflation Based Fee Adjustments.

7.1. All fees set forth in this Rule are based on calendar year 2015 dollar values. All registration fees, annual operating fees, and annual response fees shall be indexed annually, up or down, based on the

U.S. Department of Labor's Consumer Price Index (All items).

7.2. Invoices issued by the Department after July 1, 2016 shall reflect the cumulative inflation or deflation adjustment(s).