



# WEST VIRGINIA RIVERS COALITION

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July 30, 2015

WVDEP

AST Rule Comments

Attn: Joe Sizemore

601 57<sup>th</sup> Street, SE

Charleston, WV 25304

*Hand-delivered at Public Hearing on July 30, 2015*

## **RE: Comments on 2016 Proposed Aboveground Storage Tanks Rule (47CSR63)**

Thank you for providing the public the opportunity to comment on the 2016 Aboveground Storage Tank (AST) rule (47CSR63). West Virginia Rivers Coalition submits these comments in collaboration with the organizations listed on the signatory page of this document. Each signatory has a vested interest in the quality of West Virginia's waters, and believes that effective implementation of the AST Act is critical to the future health and safety of our water supplies.

We appreciate the hard work of numerous Department of Environmental Protection (DEP) employees who have been involved in drafting various incarnations of AST-related proposed rules and implementing the Act. We present comments on the rule sequentially according to the sections in the rule, primarily focusing on changes in the rule from 2015 to the 2016 rule currently under consideration.

### **§47-63-1. General**

DEP can now designate a change in the level assigned to an AST—but this change can be to a level with more or less stringent requirements (§ 1.5.b). Previously, DEP could only change the level to Level 1, which has the most stringent requirements. Also, this section provides no criteria for raising or lowering the level. ***We recommend this section be modified so that it only allows DEP to change a Level 2 AST to a Level 1 AST.***

### **§47-63-3 Registration**

If there is a change in the previously submitted information, the AST owner must submit an amended registration form. Previously, if the substance changed or if an AST is relocated to a zone of critical concern (ZCC), the amended form was required to be submitted within 24 hours. The proposed rule

relaxes this requirement to three days (§ 3.1.d). ***We recommend keeping the original requirement to submit amended registration forms within 24 hours for these critical types of modifications.***

Similarly, for a change of operational status, the new rule relaxes the timeline for submitting the amended registration form from 60 to 180 days (§ 3.1.d.2). ***We recommend keeping the original requirement to submit amended registration forms within 60 days for changes in operational status.***

#### **§47-63-4. AST Certificates to Operate and Permits/Plans**

A new section is included that addresses Senate Bill 423's new language that allows owners and operators to seek alternative means of compliance with AST Act requirements if the entities are subject to other site-specific permits and plans (§ 4.2). The rule is helpful in outlining the procedure for such a request.

AST construction, design, integrity and secondary containment standards should be as stringent for modified permits/ plans as in the AST Act. ***We support the rule's assertion that DEP will interpret the terms "should", "may", "recommends", etc. in these industry standards as "shall".*** AST owners and operators will therefore be required to comply with the specified industry standards.

Inspection requirements should be as stringent for modified permits/plans as in the AST Act. ***We support this section maintaining inspection requirements of the AST Act for ASTs that would be approved under this alternative compliance option.***

It is in the public interest that the public be notified of requests for amendments permits/plans to incorporate AST requirements and given opportunity to provide comments through a public comment period. We see this as a substantial change of the enforcement mechanism for management and control of regulated tanks, thus contend that these requests should be treated as major modifications to permits/plans with public notice requirements. ***We strongly recommend the rule be modified to include a public notice and comment requirement of permit or plan modification requests.***

#### **§47-63-5. Operation and Maintenance Requirements**

The entire section regarding general operations and maintenance and a life-cycle preventive maintenance plan has been removed (§ 5.1 in the 2015 rule). We question the justification for removing this entire section.

More detail is provided on the inspections and certifications required for "intervening years". The rule allows for the owner, operator, or "a qualified representative" to perform the inspections and certifications required for intervening years (§ 5.2.b.5), "provided that the individual performing the inspection is qualified to perform tank inspections." However, there are no standards for how someone will be deemed to be qualified. ***We recommend the rule specify standards for determining if a person is "qualified to perform tank inspections" in this section.***

The rule requires Spill Prevention Response Plans (SPRPs) to be approved by DEP (§ 5.5), but it does not require SPRPs to be submitted to DEP if the owner or operator certifies that the AST is subject to certain other types of plans (§ 5.5.b.1). Also, in lieu of submitting an SPRP, the owner or operator can certify that the AST is subject to certain other types of plans (§ 5.5.b.1). Some plans would have already been submitted to DEP (e.g., a Groundwater Protection Plan). But other plans would not have been submitted to DEP (e.g., a Spill Prevention Control and Countermeasures Plan). ***We recommend the rule be modified to clarify that all plans be submitted to DEP and subject to public inspection.***

Requirements to consult with the Bureau for Public Health and County and Municipal Emergency Management Agencies in the development of SPRPs has been removed (§ 5.6.a in the 2015 rule). ***We recommend reinstating this requirement, at least for Level 1 ASTs.***

Safety Data Sheets (SDSs) no longer must be submitted with SPRPs; instead, SPRPs must only reference the location of the SDSs (§ 5.5.c.1). ***We recommend that the rule be modified to require the location of the SDSs to be easily accessed by emergency personnel and public water systems.***

For ASTs located in a zone of critical concern, SPRPs no longer must be provided to the applicable public water systems and County and Municipal Emergency Management Agencies (§ 5.6.e in the 2015 rule). ***We think this is an important accountability and safety measure and recommend the rule be modified to restore this provision.***

As noted in the Registration section, here again the rule relaxes timelines for tank owners. We are concerned about allowing in such further delays in evaluating damaged ASTs and updating spill plans.

- The timeline for evaluating damaged ASTs has been relaxed from seven days to 10 days for Level 1 tanks and 30 days for Level 2 tanks (§ 5.4.b.1).
- The update frequency for SPRPs has been relaxed from three to five years for Level 1 tanks, and from five to seven years for Level 2 tanks.

#### **§47-63-6. Reporting and Recordkeeping Requirements**

Many recordkeeping requirements have been eliminated, including, for example, the requirements to log verifiable content levels, deliveries received, amounts and quantities currently being stored, and dispensing activities. (§ 6.1.b.13 in the 2015 rule) and the requirement to keep certain permanent records (§ 6.1.c in the 2015 rule). ***We think these are important requirements for tracking contents and recommend they be included in the rule.***

Upon the occurrence of a confirmed release, the owner or operator no longer must notify the nearest downstream public water supplier (§ 6.2.a in the 2015 rule). We see no justification to not err on the side of caution and require this notification. The definition of “confirmed release” involves a pollutant that has entered a water supply or escaped its secondary containment. ***In the interest of protecting the public from potential drinking water contamination, we recommend modifying the rule to require notification to the downstream water system when a “confirmed release” has occurred.***

Again, we note an easing of timelines for tank owner requirements in this section as the timeline within which findings must be reported to DEP regarding suspected or threatened releases has been extended (§ 6.3.a).

#### **§47-63-8. AST Design, Construction, and Installation**

There are several changes from the 2015 rule of concern, as they appear to weaken the AST design standards:

- Explicit language requiring protection from corrosion and deterioration, a release prevention system, and a release detection monitoring system has been removed (§ 8.1.c-e in the 2015 rule).
- The 2015 rule required all new ASTs to be double walled, double bottomed, or placed on a Release Prevention Barrier. In the new rule, this requirement only applies to Level 1 tanks (§ 8.2.i).
- Many requirements for vaults have been deleted (§ 8.5).
- The word “may” was added to requirements regarding ancillary equipment, which appears to make these requirements optional (§ 8.6.a). The wording in the 2015 rule was more strict.
- When deficiencies are noted in inspections but the AST is still certified as Fit for Service, the deadlines for addressing the deficiencies have been extended.

We question if there is compelling justification for why these standards have been weakened from the 2015 rule.

#### **§47-63-10. Release Prevention, Leak Detection and Secondary Containment**

Again, there are several changes of concern from the 2015 rule, as they appear to weaken the release prevention standards:

- Many requirements regarding transfer operations not continuously monitored by a transfer operator were removed (§ 10.1.g in the 2015 rule).
- Secondary containment requirements that previously applied to all ASTs now apply only to Level 1 tanks (§ 10.2.f). These requirements include directing releases to a monitoring point and the permeability of the secondary containment.
- Freeboard calculations no longer must make use of a 25-year, 24-hour storm event. Instead, the 2015 rule requires “the appropriateness of using” this storm (§10.2.i.2.G).
- The paragraph related to secondary containment and combustible materials was modified in a way that makes it weaker and contradictory (§10.2.i.3).
- Requirements related to keeping secondary containment free of woody vegetation, debris, and other material has been weakened (§10.2.i.4).
- Certain leak detection records are no longer required to be kept (§10.3.l).

We question if there is compelling justification for why these standards have been weakened from the 2015 rule.

### **§47-63-12. Delivery Prohibition**

There is a mistake in a subsection reference in § 12.2.a. The phrase “delivery prohibition requirements of subsection 14.1 above” should be changed to “delivery prohibition requirements of subsection 12.1 above”.

***We support the inclusion of the delivery prohibition requirements as a means of accountability and enforcement of standards.***

### **§47-63-13. Financial Responsibility Requirements**

The bonding and financial assurance requirements detailed in the rule are critically important, but we are concerned that the bond amounts are not sufficiently high (20 cents per gallon for Level 1 tanks, 10 cents per gallon for Level 2 tanks, with a minimum of \$5,000). The bond amount for Freedom Industries’ 48,000-gallon MCHM tank would have been a paltry \$9,600. This amount is nowhere near the millions of dollars required to fully remediate the site and to compensate the people and businesses left without clean drinking water. ***We recommend that DEP significantly increase the bond amounts, at least for Level 1 tanks, so that the bond amounts are commensurate with the potential liability that would be incurred if the tank fails.***

### **47CSR64 – Aboveground Storage Tank Fee Assessments**

***Fees should be set as so as to adequately fund additional staffing and operations required to fully implement the AST program.***

While we appreciate the significant resources devoted by existing DEP staff to get the AST program established, we are concerned about pulling existing staff away from other important responsibilities of the DEP and the Division of Water and Waste Management. We appreciate DEP’s acknowledgment that additional staff positions should be created to manage the AST program, and funding them through registration fees is a sensible approach. ***We recommend DEP annually evaluate needed staffing capacity to implement the AST program and adjust fees accordingly to assure the program is fully staffed and able to carry out its responsibilities.***

Thank you for your consideration of these comments.

Signed,

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West Virginia Rivers Coalition

Nancy Novak, President and Helen Gibbins, Director  
League of Women Voters of West Virginia

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