

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



West Virginia DEP Holds Stakeholders Meeting on New AST Program

On October 1, 2014, the West Virginia Department of Environmental Protection (WVDEP) conducted an unusual day-long “Stakeholders” meeting at the Charleston Civic Center to discuss the agency’s pending regulations implementing the Aboveground Storage Tank (AST) Act, *W.Va. Code* § 22-30-1, et seq., enacted earlier this year in the wake of the Freedom Industries’ release into the Elk River on January 9, 2014. Approximately 70 people were in attendance, including industry representatives, trade group leaders, media, public interest group representatives, consultants, attorneys and others. Nearly 20 WVDEP staff participated. The Stakeholders were divided into three groups, with WVDEP staff presenting a series of three rotating workshop/listening sessions on different sections of the draft Emergency Rule.

Generally, there are substantial concerns with the WVDEP’s approach of adopting much of the Underground Storage Tank regulations and making them applicable to ASTs, without adequately considering the relative risks and number of affected facilities that will have to comply with the new rules. Although it is believed that most covered ASTs associated with oil and gas production will fall within the “Level 2” tank classification that is intended to be less stringent than Level 1, the draft rule imposes numerous performance standards, recordkeeping, and reporting obligations on owners of Level 2 ASTs that would still require considerable management attention and effort. Oil and gas tanks classified as Level 1 will be subject to the most detailed and demanding requirements. As of September 30, 2014, WVDEP representatives indicated that more than 45,000 tanks have been registered using the agency’s on-line registration system, and estimated that less than six percent of those fall within the Level 1 category.

The WVDEP plans to take comments on the draft Emergency Rule until October 24, 2014, after which the agency will revise and formally file it as a proposed Emergency Rule, with a final version likely to take effect in early 2015. At the same time, the proposed regulations will be filed as a proposed Legislative Rule to be considered by the West Virginia Legislature when it convenes on January 15, 2015. That will open a new comment period on the proposed rule, and the legislative committees that consider it may also hold hearings on it. (In West Virginia, all regulations other than interpretive or procedural rules must be approved by the Legislature.)

Comments will be accepted on a separate, draft Interpretive Rule (47 CSR 62), addressing Initial Inspection, Certification and Spill Response Plan requirements until October 9, 2014. It addresses some of the immediate concerns with the large majority of tanks that are believed to fall within the Level 2 category, minimizing the first inspection and response plan requirements that must be satisfied in 2014, before other rules can become effective.

If you have any questions or concerns about the WVDEP’s proposed regulation, or the AST Act, please contact Christopher (Kip) Power at (681) 265-1362 or cpower@babstcalland.com, Anne C. Blankenship at (681) 205-8955 or ablankenship@babstcalland.com, or Robert M. Stonestreet at (681) 265-1364 or rstonestreet@babstcalland.com.

Babst | Calland

Attorneys at Law

babstcalland.com

Pittsburgh, PA

Two Gateway Center
603 Stanwix Street
Sixth Floor
Pittsburgh PA 15222
412-394-5400
FAX 412-394-6576

State College, PA

Suite 302
330 Innovation Blvd.
State College, PA 16803
814-867-8055
FAX 814-867-8051

Charleston, WV

Suite 590
United Center
500 Virginia Street East
Charleston, WV 25301
681-205-8888
FAX 681-205-8814

Akron, OH

Suite 1010
One Cascade Plaza
Akron, OH 44308
234-352-1650
FAX 234-352-1640

Sewell, NJ

380-A Tylers Mill Road
Sewell, NJ 08080
856-256-2495
FAX 412-586-1082