

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 373**

7 (SENATORS UNGER, KESSLER (MR. PRESIDENT), PALUMBO, PLYMALE, LAIRD, YOST,
8 MILLER, PREZIOSO, FITZSIMMONS, WELLS, CANN, CHAFIN, TUCKER, STOLLINGS,
9 COOKMAN AND SNYDER, *original sponsor*)

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11
12 [Passed March 8, 2014; in effect ninety days from passage.]
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16 AN ACT to amend and reenact §16-1-2 and §16-1-9a of the Code of
17 West Virginia, 1931, as amended; to amend said code by adding
18 thereto three new sections, designated §16-1-9c, §16-1-9d and
19 §16-1-9e; to amend and reenact §22-26-2, §22-26-3, §22-26-5,
20 §22-26-6, §22-26-7 and §22-26-8 of said code; to amend said
21 code by adding thereto a new article, designated §22-30-1,
22 §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7,
23 §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12,
24 §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17,
25 §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22,
26 §22-30-23, §22-30-24 and §22-30-25; to amend said code by
27 adding thereto a new article, designated §22-31-1, §22-31-2,

1 §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8,
2 §22-31-9, §22-31-10, §22-31-11 and §22-31-12; and to amend
3 said code by adding thereto a new article, designated §24-2G-1
4 and §24-2G-2, all relating to the protection of water
5 resources and public health generally; defining terms
6 generally; providing for rulemaking generally; providing for
7 civil and criminal penalties generally; providing for the
8 regulation of the public water systems by the Commissioner of
9 the Bureau for Public Health; providing for entry into and
10 evaluations of water systems; authorizing commissioner to seek
11 injunctive relief; requiring source water protection plans;
12 specifying contents of plan; requiring assessment and
13 monitoring of plans; requiring Bureau for Public Health to
14 coordinate the conduct of a long-term medical study;
15 continuing wellhead and source water protection grant program;
16 continuing grant fund to provide water source protection;
17 revising the Water Resources Protection and Management Act;
18 modifying registration requirements; requiring reports to the
19 Secretary of the Department of Environmental Protection;
20 requiring reports by secretary to legislative entities;
21 requiring continuation of matching funds for stream-gauging
22 network; modifying duties of legislative commission; requiring
23 water resources survey and registry; requiring information
24 from drilling contractors for water systems; adopting state
25 water resources management plan; requiring reports from
26 certain water users; establishing the Aboveground Storage Tank

1 Act; requiring the secretary to compile inventory of
2 aboveground storage tanks in the state; requiring
3 registration; authorizing certain fees; requiring secretary to
4 develop regulatory program for the tanks; providing minimum
5 factors to be included in program; requiring annual inspection
6 and certification of the tanks; requiring evidence of
7 financial security; requiring corrective action and plans;
8 requiring spill prevention response plans; requiring notice of
9 inventory of tanks to local water systems and governments;
10 requiring the posting of signs at the tanks; creating an
11 administrative fund; creating the Protect Our Water Fund;
12 authorizing public access to certain information; authorizing
13 inspections, monitoring and testing by secretary; authorizing
14 secretary to issue administrative orders and seek injunctive
15 relief; allowing appeals to Environmental Quality Board;
16 prohibiting duplicative enforcement; requiring secretary to
17 report to legislative entities; requiring interagency
18 coordination; establishing duties of secretary upon imminent
19 and substantial danger; providing additional duties and powers
20 of secretary generally; providing certain exemptions; creating
21 the Public Water Supply Protection Act; requiring inventories
22 of sources of certain contaminants in the zones of critical
23 concern of certain public water systems; requiring
24 registration and permits; authorizing inspections, monitoring
25 and testing by secretary; requiring individual NPDES permits
26 in certain circumstances; authorizing secretary to require

1 NPDES permits in certain circumstances; creating public water
2 system supply study commission; membership of study
3 commission; scope of study; establishing reporting
4 requirements; requiring the establishment of advance warning,
5 testing and monitoring at certain water utilities; requiring
6 certain information be filed with the Public Water Commission;
7 and requiring utility to report back to Legislature if
8 technology is infeasible.

9 *Be it enacted by the Legislature of West Virginia:*

10 That §16-1-2 and §16-1-9a of the Code of West Virginia, 1931,
11 as amended, be amended and reenacted; that said code be amended by
12 adding thereto three new sections, designated §16-1-9c, §16-1-9d
13 and §16-1-9e; that §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7
14 and §22-26-8 of said code be amended and reenacted; that said code
15 be amended by adding thereto a new article, designated §22-30-1,
16 §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7,
17 §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13,
18 §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19,
19 §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-
20 25; that said code be amended by adding thereto a new article,
21 designated §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5,
22 §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and
23 §22-31-12; and that said code be amended by adding thereto a new
24 article, designated §24-2G-1 and §24-2G-2, all to read as follows:

25 **CHAPTER 16. PUBLIC HEALTH.**

26 **ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

1 **§16-1-2. Definitions.**

2 As used in this article:

3 (1) "Basic public health services" means those services that
4 are necessary to protect the health of the public. The three areas
5 of basic public health services are communicable and reportable
6 disease prevention and control, community health promotion and
7 environmental health protection;

8 (2) "Bureau" means the Bureau for Public Health in the
9 department;

10 (3) "Combined local board of health" means one form of
11 organization for a local board of health and means a board of
12 health serving any two or more counties or any county or counties
13 and one or more municipalities within or partially within the
14 county or counties;

15 (4) "Commissioner" means the commissioner of the bureau, who
16 is the state health officer;

17 (5) "County board of health" means one form of organization
18 for a local board of health and means a local board of health
19 serving a single county;

20 (6) "Department" means the West Virginia Department of Health
21 and Human Resources;

22 (7) "Director" or "director of health" means the state health
23 officer. Administratively within the department, the bureau
24 through its commissioner carries out the public health functions of
25 the department, unless otherwise assigned by the secretary;

26 (8) "Essential public health services" means the core public

1 health activities necessary to promote health and prevent disease,
2 injury and disability for the citizens of the state. The services
3 include:

4 (A) Monitoring health status to identify community health
5 problems;

6 (B) Diagnosing and investigating health problems and health
7 hazards in the community;

8 (C) Informing, educating and empowering people about health
9 issues;

10 (D) Mobilizing community partnerships to identify and solve
11 health problems;

12 (E) Developing policies and plans that support individual and
13 community health efforts;

14 (F) Enforcing laws and rules that protect health and ensure
15 safety;

16 (G) Uniting people with needed personal health services and
17 assuring the provision of health care when it is otherwise not
18 available;

19 (H) Promoting a competent public health and personal health
20 care workforce;

21 (I) Evaluating the effectiveness, accessibility and quality of
22 personal and population-based health services; and

23 (J) Researching for new insights and innovative solutions to
24 health problems;

25 (9) "Licensing boards" means those boards charged with
26 regulating an occupation, business or profession and on which the

1 commissioner serves as a member;

2 (10) "Local board of health", "local board" or "board" means
3 a board of health serving one or more counties or one or more
4 municipalities or a combination thereof;

5 (11) "Local health department" means the staff of the local
6 board of health;

7 (12) "Local health officer" means the physician with a current
8 West Virginia license to practice medicine who supervises and
9 directs the activities, services, staff and facilities of the local
10 health department and is appointed by the local board of health
11 with approval by the commissioner;

12 (13) "Municipal board of health" means one form of
13 organization for a local board of health and means a board of
14 health serving a single municipality;

15 (14) "Performance-based standards" means generally accepted,
16 objective standards such as rules or guidelines against which
17 public health performance can be measured;

18 (15) "Potential source of significant contamination" means a
19 facility or activity that stores, uses or produces substances or
20 compounds with potential for significant contaminating impact if
21 released into the source water of a public water supply;

22 (16) "Program plan" or "plan of operation" means the annual
23 plan for each local board of health that must be submitted to the
24 commissioner for approval;

25 (17) "Public groundwater supply source" means a primary source
26 of water supply for a public water system which is directly drawn

1 from a well, underground stream, underground reservoir, underground
2 mine or other primary source of water supplies which is found
3 underneath the surface of the state;

4 (18) "Public surface water supply source" means a primary
5 source of water supply for a public water system which is directly
6 drawn from rivers, streams, lakes, ponds, impoundments or other
7 primary sources of water supplies which are found on the surface of
8 the state;

9 (19) "Public surface water influenced groundwater supply
10 source" means a source of water supply for a public water system
11 which is directly drawn from an underground well, underground river
12 or stream, underground reservoir or underground mine, and the
13 quantity and quality of the water in that underground supply source
14 is heavily influenced, directly or indirectly, by the quantity and
15 quality of surface water in the immediate area;

16 (20) "Public water system" means:

17 (A) Any water supply or system which regularly supplies or
18 offers to supply water for human consumption through pipes or other
19 constructed conveyances, if serving at least an average of
20 twenty-five individuals per day for at least sixty days per year,
21 or which has at least fifteen service connections, and shall
22 include:

23 (i) Any collection, treatment, storage and distribution
24 facilities under the control of the owner or operator of the system
25 and used primarily in connection with the system; and

26 (ii) Any collection or pretreatment storage facilities not

1 under such control which are used primarily in connection with the
2 system;

3 (B) A public water system does not include a system which
4 meets all of the following conditions:

5 (i) Consists only of distribution and storage facilities and
6 does not have any collection and treatment facilities;

7 (ii) Obtains all of its water from, but is not owned or
8 operated by, a public water system which otherwise meets the
9 definition;

10 (iii) Does not sell water to any person; and

11 (iv) Is not a carrier conveying passengers in interstate
12 commerce;

13 (21) "Public water utility" means a public water system which
14 is regulated by the West Virginia Public Service Commission
15 pursuant to the provisions of chapter twenty-four of this code.

16 (22) "Secretary" means the secretary of the department.

17 (23) "Service area" means the territorial jurisdiction of a
18 local board of health;

19 (24) "State Advisory Council on Public Health" means the
20 advisory body charged by this article with providing advice to the
21 commissioner with respect to the provision of adequate public
22 health services for all areas in the state;

23 (25) "State Board of Health" means the secretary,
24 notwithstanding any other provision of this code to the contrary,
25 whenever and wherever in this code there is a reference to the
26 State Board of Health;

1 (26) "Zone of critical concern" for a public surface water
2 supply is a corridor along streams within a watershed that warrant
3 more detailed scrutiny due to its proximity to the surface water
4 intake and the intake's susceptibility to potential contaminants
5 within that corridor. The zone of critical concern is determined
6 using a mathematical model that accounts for stream flows, gradient
7 and area topography. The length of the zone of critical concern is
8 based on a five-hour time-of-travel of water in the streams to the
9 water intake, plus an additional one-fourth mile below the water
10 intake. The width of the zone of critical concern is one thousand
11 feet measured horizontally from each bank of the principal stream
12 and five hundred feet measured horizontally from each bank of the
13 tributaries draining into the principal stream.

14 **§16-1-9a. Regulation of public water systems.**

15 (a) The commissioner shall regulate public water systems as
16 prescribed in this section.

17 (b) The commissioner shall establish by legislative rule, in
18 accordance with article three, chapter twenty-nine-a of this code:

19 (1) The maximum contaminant levels to which all public water
20 systems shall conform in order to prevent adverse effects on the
21 health of individuals;

22 (2) Treatment techniques that reduce the contaminant or
23 contaminants to a level which will not adversely affect the health
24 of the consumer;

25 (3) Provisions to protect and prevent contamination of
26 wellheads and well fields used by public water supplies so that

1 contaminants do not reach a level that would adversely affect the
2 health of the consumer;

3 (4) Minimum requirements for:

4 (A) Sampling and testing;

5 (B) System operation;

6 (C) Public notification by a public water system on being
7 granted a variance or exemption or upon failure to comply with
8 specific requirements of this section and regulations promulgated
9 under this section;

10 (D) Recordkeeping;

11 (E) Laboratory certification; and

12 (F) Procedures and conditions for granting variances and
13 exemptions to public water systems from state public water systems'
14 regulations;

15 (5) Requirements covering the production and distribution of
16 bottled drinking water;

17 (6) Requirements governing the taste, odor, appearance and
18 other consumer acceptability parameters of drinking water; and

19 (7) Any other requirement the commissioner finds necessary to
20 effectuate the provisions of this article.

21 (c) The commissioner or his or her authorized representatives
22 or designees may enter any part of a public water system, whether
23 or not the system is in violation of a legal requirement, for the
24 purpose of inspecting, sampling or testing and shall be furnished
25 records or information reasonably required for a complete
26 inspection.

1 (d) The commissioner, his or her authorized representative or
2 designee may conduct an evaluation necessary to assure the public
3 water system meets federal safe drinking water requirements. The
4 public water system shall provide a written response to the
5 commissioner within thirty days of receipt of the evaluation by the
6 public water system, addressing corrective actions to be taken as
7 a result of the evaluation.

8 (e) (1) Any individual or entity who violates any provision of
9 this article, or any of the rules or orders issued pursuant to this
10 article, is liable for a civil penalty not less than \$1,000 nor
11 more than \$5,000. Each day's violation shall constitute a separate
12 offense.

13 (2) For a willful violation of a provision of this article, or
14 of any of the rules or orders issued under this article, an
15 individual or entity shall be subject to a civil penalty of not
16 more than \$10,000 and each day's violation shall be grounds for a
17 separate penalty.

18 (3) Civil penalties are payable to the commissioner. All
19 moneys collected under this section shall be deposited into a
20 restricted account known as the Safe Drinking Water Fund. All
21 moneys deposited into the fund shall be used by the commissioner to
22 provide technical assistance to public water systems.

23 (f) The commissioner, or his or her authorized representative,
24 may also seek injunctive relief in the circuit court of the county
25 in which all or part of the public water system is located for
26 threatened or continuing violations.

1 **§16-1-9c. Required update or completion of source water protection**
2 **plans.**

3 (a) On or before July 1, 2016, each existing public water
4 utility which draws and treats water from a surface water supply
5 source or a surface water influenced groundwater supply source
6 shall submit to the commissioner an updated or completed source
7 water protection plan for each of its public water system plants
8 with such intakes to protect its public water supplies from
9 contamination. Every effort shall be made to inform and engage the
10 public, local governments, local emergency planners, local health
11 departments and affected residents at all levels of the development
12 of the protection plan.

13 (b) The completed or updated plan for each affected plant, at
14 a minimum, shall include the following:

15 (1) A contingency plan that documents each public water
16 utility's planned response to contamination of its public surface
17 water supply source or its public surface water influenced
18 groundwater supply source;

19 (2) An examination and analysis of the public water system's
20 ability to isolate or divert contaminated waters from its surface
21 water intake or groundwater supply, and the amount of raw water
22 storage capacity for the public water system's plant;

23 (3) An examination and analysis of the public water system's
24 existing ability to switch to an alternative water source or intake
25 in the event of contamination of its primary water source;

26 (4) An analysis and examination of the public water system's

1 existing ability to close its water intake in the event the system
2 is advised that its primary water source has become contaminated
3 due to a spill or release into a stream, and the duration of time
4 it can keep that water intake closed without creating a public
5 health emergency;

6 (5) The following operational information for each plant
7 receiving water supplies from a surface water source:

8 (A) The average number of hours the plant operates each day,
9 and the maximum and minimum number of hours of operation in one day
10 at that plant during the past year; and

11 (B) The average quantities of water treated and produced by
12 the plant per day, and the maximum and minimum quantities of water
13 treated and produced at that plant in one day during the past year;

14 (6) An analysis and examination of the public water system's
15 existing available storage capacity on its system, how its
16 available storage capacity compares to the public water system's
17 normal daily usage and whether the public water system's existing
18 available storage capacity can be effectively utilized to minimize
19 the threat of contamination to its system;

20 (7) The calculated level of unaccounted for water experienced
21 by the public water system for each surface water intake,
22 determined by comparing the measured quantities of water which are
23 actually received and used by customers served by that water plant
24 to the total quantities of water treated at the water plant over
25 the past year. If the calculated ratio of those two figures is
26 less than eighty-five percent, the public water system is to

1 describe all of the measures it is actively taking to reduce the
2 level of water loss experienced on its system;

3 (8) A list of the potential sources of significant
4 contamination contained within the zone of critical concern as
5 provided by the Department of Environmental Protection, the Bureau
6 for Public Health and the Division of Homeland Security and
7 Emergency Management. The exact location of the contaminants
8 within the zone of critical concern is not subject to public
9 disclosure in response to a Freedom of Information Act request
10 under article one, chapter twenty-nine-b of this code. However,
11 the location, characteristics and approximate quantities of
12 potential sources of significant contamination within the zone of
13 critical concern shall be made known to one or more designees of
14 the public water utility, and shall be maintained in a confidential
15 manner by the public water utility. In the event of a chemical
16 spill, release or related emergency, information pertaining to any
17 spill or release of contaminant shall be immediately disseminated
18 to any emergency responders responding to the site of a spill or
19 release, and the general public shall be promptly notified in the
20 event of a chemical spill, release or related emergency.

21 (9) If the public water utility's water supply plant is served
22 by a single-source intake to a surface water source of supply or a
23 surface water influenced source of supply, the submitted plan shall
24 also include an examination and analysis of the technical and
25 economic feasibility of each of the following options to provide
26 continued safe and reliable public water service in the event its

1 primary source of supply is detrimentally affected by
2 contamination, release, spill event or other reason:

3 (A) Constructing or establishing a secondary or backup intake
4 which would draw water supplies from a substantially different
5 location or water source;

6 (B) Constructing additional raw water storage capacity and/or
7 treated water storage capacity, to provide at least two days of
8 system storage, based on the plant's maximum level of production
9 experienced within the past year;

10 (C) Creating or constructing interconnections between the
11 public water system with other plants on the public water utility
12 system or another public water system, to allow the public water
13 utility to receive its water from a different source of supply
14 during a period its primary water supply becomes unavailable or
15 unreliable due to contamination, release, spill event or other
16 circumstance;

17 (D) Any other alternative which is available to the public
18 water utility to secure safe and reliable alternative supplies
19 during a period its primary source of supply is unavailable or
20 negatively impacted for an extended period; and

21 (E) If one or more alternatives set forth in paragraphs (A)
22 through (D) of this subdivision is determined to be technologically
23 or economically feasible, the public water utility shall submit an
24 analysis of the comparative costs, risks and benefits of
25 implementing each of the described alternatives;

26 (10) A management plan that identifies specific activities

1 that will be pursued by the public water utility, in cooperation
2 and in concert with the Bureau for Public Health, local health
3 departments, local emergency responders, local emergency planning
4 committee, and other state, county or local agencies and
5 organizations to protect its source water supply from
6 contamination, including, but not limited to, notification to and
7 coordination with state and local government agencies whenever the
8 use of its water supply is inadvisable or impaired, to conduct
9 periodic surveys of the system, the adoption of best management
10 practices, the purchase of property or development rights,
11 conducting public education or the adoption of other management
12 techniques recommended by the commissioner or included in the
13 source water protection plan;

14 (11) A communications plan that documents the manner in which
15 the public water utility, working in concert with state and local
16 emergency response agencies, shall notify the local health agencies
17 and the public of the initial spill or contamination event and
18 provide updated information related to any contamination or
19 impairment of the source water supply or the system's drinking
20 water supply, with an initial notification to the public to occur
21 in any event no later than thirty minutes after the public water
22 system becomes aware of the spill, release or potential
23 contamination of the public water system;

24 (12) A complete and comprehensive list of the potential
25 sources of significant contamination contained within the zone of
26 critical concern, based upon information which is directly provided

1 or can otherwise be requested and obtained from the Department of
2 Environmental Protection, the Bureau for Public Health, the
3 Division of Homeland Security and Emergency Management and other
4 resources; and

5 (13) An examination of the technical and economic feasibility
6 of implementing an early warning monitoring system.

7 (c) Any public water utility's public water system with a
8 primary surface water source of supply or a surface water
9 influenced groundwater source of supply that comes into existence
10 on or after the effective date of this article shall submit prior
11 to the commencement of its operations a source water protection
12 plan satisfying the requirements of subsection (b) of this section.

13 (d) The commissioner shall review a plan submitted pursuant to
14 this section and provide a copy to the Secretary of the Department
15 of Environmental Protection. Thereafter, within one hundred eighty
16 days of receiving a plan for approval, the commissioner may
17 approve, reject or modify the plan as may be necessary and
18 reasonable to satisfy the purposes of this article. The
19 commissioner shall consult with the local public health officer and
20 conduct at least one public hearing when reviewing the plan.
21 Failure by a public water system to comply with a plan approved
22 pursuant to this section is a violation of this article.

23 (e) The commissioner may request a public water utility to
24 conduct one or more studies to determine the actual risk and
25 consequences related to any potential source of significant
26 contamination identified by the plan, or as otherwise made known to

1 the commissioner.

2 (f) Any public water utility required to file a complete or
3 updated plan in accordance with the provisions of this section
4 shall submit an updated source water protection plan at least every
5 three years or when there is a substantial change in the potential
6 sources of significant contamination within the identified zone of
7 critical concern.

8 (g) Any public water utility required to file a complete or
9 updated plan in accordance with the provisions of this section
10 shall review any source water protection plan it may currently have
11 on file with the bureau and update it to ensure it conforms with
12 the requirements of subsection (b) of this section on or before
13 July 1, 2016.

14 (h) The commissioner's authority in reviewing and monitoring
15 compliance with a source water protection plan may be transferred
16 by the bureau to a nationally accredited local board of public
17 health.

18 **§16-1-9d. Wellhead and Source Water Protection Grant Program.**

19 (a) The commissioner shall continue the Wellhead and Source
20 Water Protection Grant Program.

21 (b) The fund heretofore created to provide funds for the
22 Wellhead and Source Water Protection Grant Program is continued in
23 the State Treasury and shall be known as the Wellhead and Source
24 Water Protection Grant Fund. The fund shall be administered by the
25 commissioner and shall consist of all moneys made available for the
26 program from any source, including, but not limited to, all fees,

1 civil penalties and assessed costs, all gifts, grants, bequests or
2 transfers from any source, any moneys that may be appropriated and
3 designated for the program by the Legislature and all interest or
4 other return earned from investment of the fund. Expenditures from
5 the fund shall be for the purposes set forth in this article to
6 provide water source protection pursuant to the program and are not
7 authorized from collections but are to be made only in accordance
8 with appropriation by the Legislature and in accordance with the
9 provisions of article three, chapter twelve of this code and upon
10 the fulfillment of the provisions set forth in article two, chapter
11 eleven-b of this code: *Provided*, That for the fiscal years ending
12 June 30, 2014 and 2015, expenditures are authorized from
13 collections rather than pursuant to an explicit appropriation by
14 the Legislature. Any balance, including accrued interest and other
15 returns, remaining in the fund at the end of each fiscal year shall
16 not revert to the General Revenue Fund but shall remain in the fund
17 and be expended as provided by this section.

18 (c) In prospectively awarding any grants under the Wellhead
19 and Source Water Protection Grant Program, the commissioner shall
20 prioritize those public water systems where there is the highest
21 probability of contamination of the water source based on the
22 source water assessment report or the source water protection plans
23 which were previously performed. Priority shall also be extended
24 to publicly owned public water systems over privately owned public
25 water systems.

26 (d) The commissioner, or his or her designee, shall apply for

1 and diligently pursue all available federal funds to help offset
2 the cost of completing source water protection plans by the
3 deadlines established in section nine-c of this article.

4 (e) The commissioner may receive any gift, federal grant,
5 other grant, donation or bequest and receive income and other funds
6 or appropriations to contribute to the Wellhead and Source Water
7 Protection Grant Program.

8 **§16-1-9e. Long-term medical study.**

9 The Bureau for Public Health shall endeavor to engage the
10 Centers for Disease Control and other federal agencies for the
11 purpose of creating, organizing and implementing a medical study to
12 assess any long-term health effects resulting from the chemical
13 spill that occurred on January 9, 2014, and which exposed the
14 public to chemicals, including 4-methylcyclohexane.

15 The commissioner shall conduct such study pursuant to the
16 authority granted to the commissioner pursuant to section six of
17 this article: *Provided*, That in the event the commissioner
18 determines that, in order to adequately perform such study,
19 additional authority is required, the commissioner shall provide a
20 report of such additional authority requested to the Governor and
21 the Joint Committee on Government and Finance.

22 The commissioner shall cause to be collected and preserved
23 information from health providers who treated patients presenting
24 with symptoms diagnosed as having been caused or exacerbated as a
25 result of exposure related to the January 9, 2014, chemical spill.
26 The commissioner shall analyze such data and other information

1 deemed relevant by the commissioner and provide a report of the
2 commissioner's findings regarding potential long-term health
3 effects of the January 9, 2014, chemical spill to the Joint
4 Committee on Health by January 1, 2015, including the results of
5 its efforts to engage federal cooperation and assistance for a
6 long-term comprehensive study on the costs of conducting such study
7 on behalf of the state.

8 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

9 **ARTICLE 26. WATER RESOURCES PROTECTION AND MANAGEMENT ACT.**

10 **§22-26-2. Definitions.**

11 For purposes of this article:

12 (1) "Baseline average" means the average amount of water
13 withdrawn by a large-quantity user over a representative historical
14 time period as defined by the secretary.

15 (2) "Beneficial use" means uses that include, but are not
16 limited to, public or private water supplies, agriculture, tourism,
17 commercial, industrial, coal, oil and gas and other mineral
18 extraction, preservation of fish and wildlife habitat, maintenance
19 of waste assimilation, recreation, navigation and preservation of
20 cultural values.

21 (3) "Commercial well" means a well that serves small
22 businesses and facilities in which water is the prime ingredient of
23 the service rendered, including water wells drilled to support
24 horizontal well operations.

25 (4) "Community water system" means a public water system that
26 pipes water for human consumption to at least fifteen service

1 connections used by year-round residents or one that regularly
2 serves at least twenty-five residents.

3 (5) "Consumptive withdrawal" means any withdrawal of water
4 which returns less water to the water body than is withdrawn.

5 (6) "Department" means the West Virginia Department of
6 Environmental Protection.

7 (7) "Farm use" means irrigation of any land used for general
8 farming, forage, aquaculture, pasture, orchards, nurseries, the
9 provision of water supply for farm animals, poultry farming or any
10 other activity conducted in the course of a farming operation.

11 (8) "Industrial well" means a well used exclusively for
12 nonpotable purposes, including industrial processing, fire
13 protection, washing, packing or manufacturing of a product
14 excluding food and beverages, or other nonpotable uses.

15 (9) "Interbasin transfer" means the permanent removal of water
16 from the watershed from which it is withdrawn.

17 (10) "Large-quantity user" means any person who withdraws over
18 three hundred thousand gallons of water in any thirty-day period
19 from the state's waters and any person who bottles water for resale
20 regardless of quantity withdrawn. "Large-quantity user" excludes
21 farm use, including watering livestock or poultry on a farm, though
22 farms may voluntarily report water withdrawals to assist with the
23 accuracy of the survey.

24 (11) "Maximum potential" means the maximum designed capacity
25 of a facility to withdraw water under its physical and operational
26 design.

1 (12) "Noncommunity nontransient water system" means a public
2 water system that serves at least twenty-five of the same persons
3 over six months per year.

4 (13) "Nonconsumptive withdrawal" means any withdrawal of water
5 which is not a consumptive withdrawal as defined in this section.

6 (14) "Person", "persons" or "people" means an individual,
7 public and private business or industry, public or private water
8 service and governmental entity.

9 (15) "Secretary" means the Secretary of the Department of
10 Environmental Protection or his or her designee.

11 (16) "Transient water system" means a public water system that
12 serves at least twenty-five transient people at least sixty days a
13 year.

14 (17) "Test well" means a well that is used to obtain
15 information on groundwater quantity, quality, aquifer
16 characteristics and availability of production water supply for
17 manufacturing, commercial and industrial facilities.

18 (18) "Water resources", "water" or "waters" means any and all
19 water on or beneath the surface of the ground, whether percolating,
20 standing, diffused or flowing, wholly or partially within this
21 state, or bordering this state and within its jurisdiction and
22 includes, without limiting the generality of the foregoing, natural
23 or artificial lakes, rivers, streams, creeks, branches, brooks,
24 ponds, impounding reservoirs, springs, wells, watercourses and
25 wetlands: *Provided*, That farm ponds, industrial settling basins and
26 ponds and waste treatment facilities are excluded from the waters

1 of the state.

2 (19) "Watershed" means a hydrologic unit utilized by the
3 United States Department of Interior's Geological Survey, adopted
4 in 1974, as a framework for detailed water and related
5 land-resources planning.

6 (20) "Withdrawal" means the removal or capture of water from
7 water resources of the state regardless of whether it is
8 consumptive or nonconsumptive: *Provided*, That water encountered
9 during coal, oil, gas, water well drilling and initial testing of
10 water wells, or other mineral extraction and diverted, but not used
11 for any purpose and not a factor in low-flow conditions for any
12 surface water or groundwater, is not deemed a withdrawal.

13 **§22-26-3. Waters claimed by state; water resources protection**
14 **survey; registration requirements; agency cooperation;**
15 **information gathering.**

16 (a) The waters of the State of West Virginia are claimed as
17 valuable public natural resources held by the state for the use and
18 benefit of its citizens. The state shall manage and protect its
19 waters effectively for present and future use and enjoyment and for
20 the protection of the environment. Therefore, it is necessary for
21 the state to determine the nature and extent of its water
22 resources, the quantity of water being withdrawn or otherwise used
23 and the nature of the withdrawals or other uses: *Provided*, That no
24 provisions of this article may be construed to amend or limit any
25 other rights and remedies created by statute or common law in
26 existence on the date of the enactment of this article.

1 (b) The secretary shall conduct an ongoing water resources
2 survey of consumptive and nonconsumptive surface water and
3 groundwater withdrawals by large-quantity users in this state. The
4 secretary shall determine the form and format of the information
5 submitted, including the use of electronic submissions. The
6 secretary shall establish and maintain a statewide registration
7 program to monitor large-quantity users of water resources.

8 (c) Large-quantity users, except those who purchase water from
9 a public or private water utility or other service that is
10 reporting its total withdrawal, shall register with the department
11 and provide all requested survey information regarding withdrawals
12 of the water resources. Multiple withdrawals from state water
13 resources that are made or controlled by a single person and used
14 at one facility or location shall be considered a single withdrawal
15 of water. Water withdrawals for self-supplied farm use and private
16 households will be estimated. Water utilities regulated by the
17 Public Service Commission pursuant to article two, chapter
18 twenty-four of this code are exempted from providing information on
19 interbasin transfers to the extent those transfers are necessary to
20 provide water utility services within the state.

21 (d) Except as provided in subsection (f) of this section,
22 large-quantity users who withdraw water from a West Virginia water
23 resource shall comply with the survey and registration requirements
24 of this article. Registration shall be maintained annually by
25 every large-quantity user on forms and in a manner prescribed by
26 the secretary.

1 (e) The secretary shall maintain a listing of all large-
2 quantity users and each user's baseline average water withdrawal.

3 (f) The secretary shall make a good faith effort to obtain
4 survey and registration information from persons who are
5 withdrawing water from in-state water resources, but who are
6 located outside the state borders.

7 (g) All state agencies and local governmental entities that
8 have a regulatory, research, planning or other function relating to
9 water resources, including, but not limited to, the State
10 Geological and Economic Survey, the Division of Natural Resources,
11 the Public Service Commission, the Bureau for Public Health, the
12 Commissioner of the Department of Agriculture, the Division of
13 Homeland Security and Emergency Management, Marshall University,
14 West Virginia University and regional, county and municipal
15 planning authorities may enter into interagency agreements with the
16 secretary and shall cooperate by: (i) Providing information
17 relating to the water resources of the state; (ii) providing any
18 necessary assistance to the secretary in effectuating the purposes
19 of this article; and (iii) assisting in the development of a state
20 water resources management plan. The secretary shall determine the
21 form and format of the information submitted by these agencies.

22 (h) Persons required to participate in the survey and
23 registration shall provide any reasonably available information on
24 stream flow conditions that impact withdrawal rates.

25 (i) Persons required to participate in the survey and
26 registration shall provide the most accurate information available

1 on water withdrawal during seasonal conditions and future potential
2 maximum withdrawals or other information that the secretary
3 determines is necessary for the completion of the survey or
4 registration: *Provided*, That a coal-fired electric generating
5 facility shall also report the nominal design capacity of the
6 facility, which is the quantity of water withdrawn by the
7 facility's intake pumps necessary to operate the facility during a
8 calendar day.

9 (j) The secretary shall, to the extent reliable water
10 withdrawal data is reasonably available from sources other than
11 persons required to provide data and participate in the survey and
12 registration, utilize that data to fulfill the requirements of this
13 section. If the data is not reasonably available to the secretary,
14 persons required to participate in the survey and registration are
15 required to provide the data. Altering locations of intakes and
16 discharge points that result in an impact to the withdrawal of the
17 water resources shall also be reported.

18 (k) The secretary shall report annually to the Joint
19 Legislative Oversight Commission on State Water Resources on the
20 survey results. The secretary shall also make a progress report
21 annually on the implementation of the State Water Resources
22 Management Plan and any significant changes that may have occurred
23 since the State Water Resources Management Plan was submitted in
24 2013.

25 (l) In addition to any requirements for completion of the
26 survey established by the secretary, the survey must accurately

1 reflect both actual and maximum potential water withdrawal. Actual
2 withdrawal shall be established through metering, measuring or
3 alternative accepted scientific methods to obtain a reasonable
4 estimate or indirect calculation of actual use.

5 (m) The secretary shall make recommendations to the Joint
6 Legislative Oversight Commission on Water Resources created in
7 section five of this article relating to the implementation of a
8 water quantity management strategy for the state or regions of the
9 state where the quantity of water resources are found to be
10 currently stressed or likely to be stressed due to emerging
11 beneficial or other uses, ecological conditions or other factors
12 requiring the development of a strategy for management of these
13 water resources.

14 (n) The secretary may propose rules pursuant to article three,
15 chapter twenty-nine-a of this code as necessary to implement the
16 survey registration or plan requirements of this article.

17 (o) The secretary is authorized to enter into cooperative
18 agreements with local, state and federal agencies and private
19 policy or research groups to obtain federal matching funds, conduct
20 research and analyze survey and registration data and other
21 agreements as may be necessary to carry out his or her duties under
22 this article.

23 (p) The department, the Division of Natural Resources, the
24 Division of Highways and the Conservation Agency (cooperating state
25 agencies) shall continue providing matching funds for the United
26 States Geological Survey's (USGS) stream-gauging network to the

1 maximum extent practicable. Should a cooperating state agency
2 become unable to maintain its contribution level, it should notify
3 the USGS and the commission of its inability to continue funding
4 for the subsequent federal fiscal year by July 1 in order to allow
5 for the possible identification of alternative funding resources.

6 **§22-26-5. Joint Legislative Oversight Commission on State Water**
7 **Resources.**

8 (a) The President of the Senate and the Speaker of the House
9 of Delegates shall each designate five members of their respective
10 houses, at least one of whom shall be a member of the minority
11 party, to serve on a joint legislative oversight commission charged
12 with immediate and ongoing oversight of the water resources survey,
13 registration and development of a state water resources management
14 plan. This commission shall be known as the Joint Legislative
15 Oversight Commission on State Water Resources and shall regularly
16 investigate and monitor all matters relating to water resources,
17 including the survey and plan.

18 (b) The expenses of the commission, including the cost of
19 conducting the survey and monitoring any subsequent strategy and
20 those incurred in the employment of legal, technical,
21 investigative, clerical, stenographic, advisory and other
22 personnel, are to be approved by the Joint Committee on Government
23 and Finance and paid from legislative appropriations.

24 **§22-26-6. Mandatory survey and registration compliance.**

25 (a) The water resources survey and subsequent registry will
26 provide critical information for protection of the state's water

1 resources and, thus, mandatory compliance with the survey and
2 registry is necessary.

3 (b) All large-quantity users who withdraw water from a West
4 Virginia water resource shall complete the survey and register use
5 with the department. Any person who fails to complete the survey
6 or register, provides false or misleading information on the survey
7 or registration, or fails to provide other information as required
8 by this article may be subject to a civil administrative penalty
9 not to exceed \$5,000 to be collected by the secretary consistent
10 with the secretary's authority pursuant to this chapter. Every
11 thirty days after the initial imposition of the civil
12 administrative penalty, another penalty may be assessed if the
13 information is not provided. The secretary shall provide written
14 notice of failure to comply with this section thirty days prior to
15 assessing the first administrative penalty.

16 **§22-26-7. Secretary authorized to log wells; collect data.**

17 (a) In order to obtain important information about the state's
18 surface and groundwater, the secretary is authorized to collect
19 scientific data on surface and groundwater and to enter into
20 agreements with local and state agencies, the federal government
21 and private entities to obtain this information.

22 (b) Any person who installs a community water system,
23 noncommunity nontransient water system, transient water system,
24 commercial well, industrial or test well shall notify the secretary
25 of his or her intent to drill a water well no less than ten days
26 prior to commencement of drilling. The ten-day notice is the

1 responsibility of the owner, but may be given by the drilling
2 contractor.

3 (c) The secretary has the authority to gather data, including
4 driller and geologist logs, run electric and other remote-sensing
5 logs and devices and perform physical characteristics tests on
6 nonresidential and multifamily water wells.

7 (d) The drilling contractor shall submit to the secretary a
8 copy of the well completion forms submitted to the Bureau for
9 Public Health for a community water system, noncommunity
10 nontransient water system, transient water system, commercial well,
11 industrial or test well. The drilling contractor shall also
12 provide the well GPS location and depth to groundwater on the well
13 report submitted to the secretary.

14 (e) Any person who fails to notify the secretary prior to
15 drilling a well or impedes collection of information by the
16 secretary under this section is in violation of the Water Resources
17 Protection and Management Act and is subject to the civil
18 administrative penalty authorized by section six of this article.

19 (f) Any well contracted for construction by the secretary for
20 groundwater or geological testing must be constructed at a minimum
21 to well design standards as promulgated by the Bureau for Public
22 Health. Any wells contracted for construction by the secretary for
23 groundwater or geological testing that would at a later date be
24 converted to a public use water well must be constructed to comport
25 to state public water design standards.

26 **§22-26-8.State Water Resources Management Plan; powers and duty of**

1 **secretary.**

2 (a) The secretary shall oversee the development of a State
3 Water Resources Management Plan to be completed no later than
4 November 30, 2013. The plan shall be reviewed and revised as
5 needed after its initial adoption. The plan shall be developed
6 with the cooperation and involvement of local and state agencies
7 with regulatory, research or other functions relating to water
8 resources including, but not limited to, those agencies and
9 institutions of higher education set forth in section three of this
10 article and a representative of large-quantity users. The State
11 Water Resources Management Plan shall be developed utilizing the
12 information obtained pursuant to said section and any other
13 relevant information available to the secretary.

14 (b) The secretary shall develop definitions for use in the
15 State Water Resources Management Plan for terms that are defined
16 differently by various state and federal governmental entities as
17 well as other terms necessary for implementation of this article.

18 (c) The secretary shall continue to develop and obtain the
19 following:

20 (1) An inventory of the surface water resources of each region
21 of this state, including an identification of the boundaries of
22 significant watersheds and an estimate of the safe yield of sources
23 for consumptive and nonconsumptive uses during periods of normal
24 conditions and drought.

25 (2) A listing of each consumptive or nonconsumptive withdrawal
26 by a large-quantity user, including the amount of water used,

1 location of the water resources, the nature of the use, location of
2 each intake and discharge point by longitude and latitude where
3 available and, if the use involves more than one watershed or
4 basin, the watersheds or basins involved and the amount
5 transferred.

6 (3) A plan for the development of the infrastructure necessary
7 to identify the groundwater resources of each region of this state,
8 including an identification of aquifers and groundwater basins and
9 an assessment of their safe yield, prime recharge areas, recharge
10 capacity, consumptive limits and relationship to stream base flows.

11 (4) After consulting with the appropriate state and federal
12 agencies, assess and project the existing and future nonconsumptive
13 use needs of the water resources required to serve areas with
14 important or unique natural, scenic, environmental or recreational
15 values of national, regional, local or statewide significance,
16 including national and state parks; designated wild, scenic and
17 recreational rivers; national and state wildlife refuges; and the
18 habitats of federal and state endangered or threatened species.

19 (5) Assessment and projection of existing and future
20 consumptive use demands.

21 (6) Identification of potential problems with water
22 availability or conflicts among water uses and users including, but
23 not limited to, the following:

24 (A) A discussion of any area of concern regarding historical
25 or current conditions that indicate a low-flow condition or where
26 a drought or flood has occurred or is likely to occur that

1 threatens the beneficial use of the surface water or groundwater in
2 the area; and

3 (B) Current or potential in-stream or off-stream uses that
4 contribute to or are likely to exacerbate natural low-flow
5 conditions to the detriment of the water resources.

6 (7) Establish criteria for designation of critical water
7 planning areas comprising any significant hydrologic unit where
8 existing or future demands exceed or threaten to exceed the safe
9 yield of available water resources.

10 (8) An assessment of the current and future capabilities of
11 public water supply agencies and private water supply companies to
12 provide an adequate quantity and quality of water to their service
13 areas.

14 (9) An assessment of floodplain and stormwater management
15 problems.

16 (10) Efforts to improve data collection, reporting and water
17 monitoring where prior reports have found deficiencies.

18 (11) A process for identifying projects and practices that are
19 being, or have been, implemented by water users that reduce the
20 amount of consumptive use, improve efficiency in water use, provide
21 for reuse and recycling of water, increase the supply or storage of
22 water or preserve or increase groundwater recharge and a
23 recommended process for providing appropriate positive recognition
24 of those projects or practices in actions, programs, policies,
25 projects or management activities.

26 (12) An assessment of both structural and nonstructural

1 alternatives to address identified water availability problems,
2 adverse impacts on water uses or conflicts between water users,
3 including potential actions to develop additional or alternative
4 supplies, conservation measures and management techniques.

5 (13) A review and evaluation of statutes, rules, policies and
6 institutional arrangements for the development, conservation,
7 distribution and emergency management of water resources.

8 (14) A review and evaluation of water resources management
9 alternatives and recommended programs, policies, institutional
10 arrangements, projects and other provisions to meet the water
11 resources needs of each region and of this state.

12 (15) Proposed methods of implementing various recommended
13 actions, programs, policies, projects or management activities.

14 (d) The State Water Resources Management Plan shall consider:

15 (1) The interconnections and relationships between groundwater
16 and surface water as components of a single hydrologic resource.

17 (2) Regional or watershed water resources needs, objectives
18 and priorities.

19 (3) Federal, state and interstate water resource policies,
20 plans, objectives and priorities, including those identified in
21 statutes, rules, regulations, compacts, interstate agreements or
22 comprehensive plans adopted by federal and state agencies and
23 compact basin commissions.

24 (4) The needs and priorities reflected in comprehensive plans
25 and zoning ordinances adopted by a county or municipal government.

26 (5) The water quantity and quality necessary to support

1 reasonable and beneficial uses.

2 (6) A balancing and encouragement of multiple uses of water
3 resources, recognizing that all water resources of this state are
4 capable of serving multiple uses and human needs, including
5 multiple uses of water resources for reasonable and beneficial
6 uses.

7 (7) The distinctions between short-term and long-term
8 conditions, impacts, needs and solutions to ensure appropriate and
9 cost-effective responses to water resources issues.

10 (8) Application of the principle of equal and uniform
11 treatment of all water users that are similarly situated without
12 regard to established political boundaries.

13 (e) Each November, the secretary shall report to the Joint
14 Legislative Oversight Commission on State Water Resources on the
15 implementation of the State Water Resources Management Plan.

16 (f) The State Water Resources Management Plan is adopted.
17 Persons identified as large-quantity users prior to the effective
18 date of this subsection shall report actual monthly water
19 withdrawals, or monthly water withdrawals by a method approved by
20 the secretary, for the previous calendar year by March 31 of each
21 succeeding year. Persons identified as large-quantity users on or
22 after the effective date of this subsection shall submit their
23 initial annual report no later than March 31, 2016, and subsequent
24 annual reports by March 31 of each year thereafter.

25 **ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.**

26 **§22-30-1. Short title.**

1 This article may be known and cited as the Aboveground Storage
2 Tank Act.

3 **§22-30-2. Legislative findings.**

4 (a) The West Virginia Legislature finds the public policy of
5 the State of West Virginia is to protect and conserve the water
6 resources for the state and its citizens. The state's water
7 resources are vital natural resources that are essential to
8 maintain, preserve and promote human health, quality of life and
9 economic vitality of the state.

10 (b) The West Virginia Legislature further finds the public
11 policy of the state is for clean, uncontaminated water to be made
12 available for its citizens who are dependent on clean water as a
13 basic need for survival, and who rely on the assurances from public
14 water systems and the government that the water is safe to consume.

15 (c) The West Virginia Legislature further finds it in the
16 public policy of the state that clean, uncontaminated water be
17 available to its businesses and industries that rely on water for
18 their economic survival, and the well-being of their employees.
19 These include hospitals and the medical industry, schools and
20 educational institutions, the food and hospitality industries, the
21 tourism industry, manufacturing, coal, natural gas and other
22 industries. Businesses and industries searching for places to
23 locate or relocate consider the quality of life for their employees
24 as well as the quality of the raw materials such as clean water.

25 (d) The Legislature further finds that large quantities of
26 fluids are stored in aboveground storage tanks within the state and

1 that emergency situations involving these fluids can and will arise
2 that may present a hazard to human health, safety, the water
3 resources, the environment and the economy of the state. The
4 Legislature further recognizes that some of these fluids have been
5 stored in aboveground storage tanks in a regulated manner
6 insufficient to protect human health, safety, water resources, the
7 environment and the economy of the state.

8 **§22-30-3. Definitions.**

9 For purposes of this article:

10 (1) "Aboveground storage tank" or "tank" means a device made
11 to contain an accumulation of more than one thousand three hundred
12 twenty gallons of fluids that are liquids at standard temperature
13 and pressure, which is constructed primarily of noncarbon
14 materials, including wood, concrete, steel, plastic or fiberglass
15 reinforced plastic, which provide structural support, more than
16 ninety percent capacity of which is above the surface of the
17 ground, but does not include any process vessel. The term includes
18 stationary devices which are permanently affixed, and mobile
19 devices which remain in one location on a continuous basis for
20 sixty or more days, and includes all ancillary aboveground pipes
21 and dispensing systems up to the first point of isolation and all
22 ancillary underground pipes and dispensing systems connected to the
23 aboveground containers to the first point of isolation.
24 Notwithstanding any other provision of this code to the contrary,
25 shipping containers, including railroad freight cars, subject to
26 federal regulation under the Federal Railroad Safety Act, 49 U. S.

1 C.§§20101-2015, as amended, including but not limited to federal
2 regulations promulgated thereunder at 49 CFR 172, 173 or 174, or
3 subject to other federal law governing the transportation of
4 hazardous materials are not subject to any provision of this
5 article or of article thirty-one of this chapter. Notwithstanding
6 any other provision of this code to the contrary, barges or boats
7 subject to federal regulation under the United States Coast Guard,
8 United States Department of Homeland Security, including, but not
9 limited to, federal regulations promulgated at 33 CFR 1, et seq, or
10 subject to other federal law governing the transportation of
11 hazardous materials are not subject to any provision of this
12 article or of article thirty-one of this chapter. Notwithstanding
13 any other provision of this code to the contrary, swimming pools
14 are not subject to any provision of this article or article thirty-
15 one of this chapter.

16 (2) "Department" means the West Virginia Department of
17 Environmental Protection.

18 (3) "Nonoperational storage tank" means an empty aboveground
19 storage tank in which fluids will not be deposited or from which
20 fluids will not be dispensed on or after the effective date of this
21 article.

22 (4) "Operator" means any person in control of, or having
23 responsibility for, the daily operation of an aboveground storage
24 tank.

25 (5) "Owner" means a person who holds title to, controls or
26 owns an interest in an aboveground storage tank, including owners

1 of tanks immediately preceding the discontinuation of a tank's use.
2 "Owner" does not mean a person who holds an interest in a tank for
3 financial security, unless the holder has taken possession of and
4 operated the tank.

5 (6) "Person", "persons" or "people" means any individual,
6 trust, firm, owner, operator, corporation or other legal entity,
7 including the United States government, an interstate commission or
8 other body, the state or any agency, board, bureau, office,
9 department or political subdivision of the state, but does not
10 include the Department of Environmental Protection.

11 (7) "Process vessel" means tanks, containers or other vessels
12 utilized in a facility in the manufacturing process through which
13 there is a steady, variable, recurring or intermittent flow of
14 materials. This does not include tanks used for storage of
15 materials prior to their introduction into the production process
16 or for the storage of finished products or by-products of the
17 production process.

18 (8) "Public groundwater supply source" means a primary source
19 of water supply for a public water system which is directly drawn
20 from a well, underground stream, underground reservoir, underground
21 mine or other primary source of water supplies which is found
22 underneath the surface of the state.

23 (9) "Public surface water supply source" means a primary
24 source of water supply for a public water system which is directly
25 drawn from rivers, streams, lakes, ponds, impoundments or other
26 primary sources of water supplies which are found on the surface of

1 the state.

2 (10) "Public surface water influenced groundwater supply
3 source" means a source of water supply from a public water system
4 which is directly drawn from an underground well, underground river
5 or stream, underground reservoir or underground mine, and the
6 quantity or quality of the water in that underground supply source
7 is heavily influenced, directly or indirectly, by the quantity and
8 quality of surface water in the immediate area.

9 (11) "Public water system" means:

10 (A) Any water supply or system which regularly supplies or
11 offers to supply water for human consumption through pipes or other
12 constructed conveyances, if serving at least an average of
13 twenty-five individuals per day for at least sixty days per year,
14 or which has at least fifteen service connections, and shall
15 include:

16 (i) Any collection, treatment, storage and distribution
17 facilities under the control of the owner or operator of the system
18 and used primarily in connection with the system; and

19 (ii) Any collection or pretreatment storage facilities not
20 under such control which are used primarily in connection with the
21 system.

22 (B) A public water system does not include a system which
23 meets all of the following conditions:

24 (i) Consists only of distribution and storage facilities and
25 does not have any collection and treatment facilities;

26 (ii) Obtains all of its water from, but is not owned or

1 operated by, a public water system which otherwise meets the
2 definition;

3 (iii) Does not sell water to any person; and

4 (iv) Is not a carrier conveying passengers in interstate
5 commerce.

6 (12) "Release" means any spilling, leaking, emitting,
7 discharging, escaping, leaching or disposing of fluids from an
8 aboveground storage tank into groundwater, surface water or
9 subsurface soils. The term shall also include spilling, leaking,
10 emitting, discharging, escaping, leaching or disposing of fluids
11 from an aboveground storage tank into a containment structure or
12 facility that poses an immediate threat of contamination of the
13 soils, subsurface soils, surface water or groundwater: *Provided,*
14 That the overflow or spillage of up to twenty gallons of fluid
15 during the loading or unloading of liquids shall not be required to
16 be reported if the overflow or spillage is wholly contained within
17 a containment structure or facility, it is promptly cleaned up and
18 no portion of the overflow or spillage escapes onto the ground or
19 into adjacent surface water.

20 (13) "Secondary containment" means a safeguard applied to one
21 or more tanks that prevents the discharge into the waters of the
22 state of the entire capacity of the largest single tank and
23 sufficient freeboard to contain precipitation. In order to qualify
24 as secondary containment, the barrier and containment field must be
25 sufficiently impervious to contain fluids in the event of a
26 release, and may include double-walled tanks, dikes, containment

1 curbs, pits or drainage trench enclosures that safely confine the
2 release from a tank in a facility catchment basin or holding pond.

3 (14) "Secretary" means the Secretary of the Department of
4 Environmental Protection, or his or her designee.

5 (15) "Source water protection area" for a public groundwater
6 supply source is the area within an aquifer that supplies water to
7 a public water supply well within a five-year time-of-travel, and
8 is determined by the mathematical calculation of the locations from
9 which a drop of water placed at the edge of the protection area
10 would theoretically take five years to reach the well.

11 (16) "Zone of critical concern" for a public surface water
12 supply is a corridor along streams within a watershed that warrants
13 more detailed scrutiny due to its proximity to the surface water
14 intake and the intake's susceptibility to potential contaminants
15 within that corridor. The zone of critical concern is determined
16 using a mathematical model that accounts for stream flows, gradient
17 and area topography. The length of the zone of critical concern is
18 based on a five-hour time-of-travel of water in the streams to the
19 water intake, plus an additional one-fourth mile below the water
20 intake. The width of the zone of critical concern is one thousand
21 feet measured horizontally from each bank of the principal stream
22 and five hundred feet measured horizontally from each bank of the
23 tributaries draining into the principal stream.

24 **§22-30-4. Inventory and registration of existing aboveground storage**
25 **tanks.**

26 (a) To assure protection of the water resources of the state,

1 the secretary shall compile an inventory of all aboveground storage
2 tanks in existence this state, regardless of whether it is an
3 operational or nonoperational storage tank on the effective date of
4 this article. The secretary shall prescribe an inventory and
5 registration form for this purpose within thirty days of the
6 effective date of the enactment of this article.

7 (b) At a minimum the inventory form shall identify the
8 ownership of the tank, tank location, date of installation if
9 known, type of construction, capacity and age of the tank, the type
10 and volume of fluid stored therein, and the identity of and
11 distance to the nearest groundwater public water supply intake
12 and/or nearest surface water downstream public water supply intake.

13 (c) If the inventoried tank is regulated under any existing
14 state or federal regulatory program, the owner of the tank shall be
15 required to provide the identifying number of any license,
16 registration or permit issued for the tank, and identify the
17 regulatory standards and requirements the tank is required to meet.

18 (d) Any aboveground storage tank placed into service on or
19 after the effective date of this section, but prior to the
20 establishment of a permit program, shall complete and submit an
21 inventory form with the secretary.

22 (e) Upon receipt of an inventory form, the secretary shall
23 determine whether the storage tank is required to meet the minimum
24 design, construction, inspection, secondary containment, leak
25 reporting and performance standards equivalent to or greater than
26 the standards and requirements established under an existing

1 license or permit issued for the individual storage tank, storage
2 tank farm or site on which the storage tank is located.

3 (f) The secretary may charge a reasonable fee to cover the
4 cost of maintaining and overseeing the inventory and registration
5 program. The fee may be set by emergency and legislative rules
6 proposed for promulgation in accordance with the provisions of
7 article three, chapter twenty-nine-a of this code.

8 (g) On and after October 1, 2014, it shall be unlawful for any
9 owner or operator to operate or use an aboveground storage tank
10 subject to this article which has not been properly registered or
11 for which any applicable registration fee has not been paid.

12 **§22-30-5. Aboveground Storage Tank Regulatory Program;**
13 **promulgation of appropriate aboveground tank standards;**
14 **permitting procedures and waiver requirements; rulemaking**
15 **requirements.**

16 (a) The secretary shall promulgate for review and
17 consideration by the West Virginia Legislature legislative rules
18 during the 2015 Regular Session of the West Virginia Legislature,
19 on all matters related to this article.

20 (b) To assure further protection of the water resources of the
21 state, the secretary shall develop a regulatory program for new and
22 existing aboveground storage tanks incorporating nationally
23 recognized tank standards such as those standards developed by the
24 American Petroleum Institute (API), the Steel Tank Institute (STI)
25 or comparable authorities, and taking into account the size,
26 location and contents of the tanks. At a minimum, the program

1 shall include the following:

2 (1) A requirement to submit a verified application for a
3 permit containing information as may be prescribed by the
4 secretary;

5 (2) Performance standards for design, construction,
6 installation, maintenance, corrosion detection and maintenance,
7 release detection and prevention and secondary containment to
8 ensure the structural integrity of the storage tank and the
9 secondary containment;

10 (3) Requirements for maintaining a leak detection system,
11 inventory control systems together with tank testing or a
12 comparable system or method designed to identify releases from
13 aboveground storage tanks in a manner consistent with the
14 protection of human health, safety, water resources and the
15 environment;

16 (4) Requirements for maintaining records of any monitoring or
17 leak detection system, corrosion prevention, inventory control
18 system or tank testing system;

19 (5) Requirements for early detection of releases and immediate
20 reporting of releases;

21 (6) Requirements for developing a corrective action plan to
22 expeditiously respond to any releases;

23 (7) Requirements for the closure of aboveground storage tanks
24 and remediation to prevent future releases of fluids or materials
25 to the state's water resources;

26 (8) Requirements for certification of installation, removal,

1 retrofit, corrosion and other testing and inspection of aboveground
2 storage tanks, leak detection systems and secondary containment by
3 a qualified registered professional engineer regulated and licensed
4 by the State Board of Registration for Professional Engineers, or
5 by an individual certified to perform tank inspections by the
6 American Petroleum Institute, or by a person holding certification
7 under another program approved by the secretary;

8 (9) Requirements for life-cycle management of aboveground
9 storage tanks that include mitigation and corrosion prevention
10 plans that include, but are not limited to:

11 (A) A life-cycle maintenance schedule for the use of
12 protective coatings and or other repair, rehabilitation, and
13 maintenance methods used for the preservation of aboveground
14 storage tanks;

15 (B) A process for ensuring that corrosion prevention and
16 mitigation is carried out according to corrosion prevention
17 industry standards adopted by the secretary for aboveground storage
18 tanks that includes the use of industry trained and certified:

19 (i) Protective coatings personnel to carry out surface
20 preparation operations and coating application on any type of
21 substrate and or surface, but especially concrete and steel;

22 (ii) Cathodic protection experts for all aspects of corrosion
23 prevention projects requiring knowledge of the design,
24 installation, monitoring or maintenance of a cathodic protection
25 system; and

26 (iii) Inspectors to ensure best practices and standards are

1 adhered to on a corrosion prevention and mitigation project;

2 (C) A plan to prevent environmental degradation that could
3 occur as a result of carrying out corrosion prevention and
4 mitigation including, but not limited to, the careful handling and
5 containment of hazardous materials, not including the contaminant
6 within, removed from the interior and or exterior of an aboveground
7 storage tank; and

8 (D) Use of industry experts for consultation and direct to
9 determine whether to approve a corrosion prevention and mitigation
10 plan, or any part therein, the secretary shall consult, and
11 interact directly with, corrosion industry experts specializing in
12 the training and certification of personnel to carry out corrosion
13 prevention and mitigation methods.

14 (10) The assessment of permit application and registration
15 fees as determined by the secretary;

16 (11) Permit issuance only after the application and any other
17 supporting documents have been submitted, reviewed and approved by
18 the secretary, and that permits may be issued with certain
19 conditions or contingencies;

20 (12) A requirement that any aboveground storage tank
21 maintenance work shall commence within six months from the date the
22 permit was issued and must be completed within one year of
23 commencement. If the work has not started or is not completed
24 during the stated time periods, the permit shall expire and a new
25 permit shall be required unless a written extension is granted by
26 the secretary. An extension may be granted only if the applicant

1 can demonstrate that the delay was not deliberate and that the
2 delay will not present harm to human health, safety, water
3 resources or the environment;

4 (13) A procedure for the administrative resolution of
5 violations including the assessment of administrative civil
6 penalties;

7 (14) A procedure for any person adversely affected by a
8 decision or order of the secretary relating to the aboveground
9 storage tank program to appeal to the Environmental Quality Board,
10 pursuant to the provisions of article one, chapter twenty-two-b of
11 this code;

12 (15) In coordination and cooperation with the Bureau for
13 Public Health and the Division of Homeland Security and Emergency
14 Management, create a process and procedure for identifying any
15 aboveground storage tanks which are located within a defined zone
16 of critical concern for a public water system's surface water
17 intake or within a defined source water protection area for a
18 public water system's groundwater intake, and determining whether
19 additional permit requirements and inspections should be imposed on
20 that tank or facility by requiring the issuance of any new permit
21 pursuant to this article, or by amending any existing permit which
22 may pertain to that tank or facility, under this chapter, or by any
23 other article of this chapter;

24 (16) Requirements for maintaining written or electronic
25 records that log at least the following information for each
26 aboveground storage tank: Tank numbers, additives, verifiable

1 content levels, deliveries, amounts and quantities, dispensing,
2 repairs and maintenance; and including the requirement that such
3 logs be signed by the owner or a designated responsible supervisor,
4 and be available for inspection upon request of the secretary; and

5 (17) Compliance with a nationally recognized tank standard as
6 solely determined by the department, shall be deemed compliance
7 with the requirements that are developed in accordance with
8 subsection (9) of this section.

9 **§22-30-6. Annual inspection and certification.**

10 (a) Every owner or operator of an aboveground storage tank
11 regulated herein shall have an annual inspection of each tank
12 performed by a qualified registered professional engineer or a
13 qualified person working under the direct supervision of a
14 registered professional engineer, regulated and licensed by the
15 State Board of Registration for Professional Engineers, or by an
16 individual certified to perform tank inspections by the American
17 Petroleum Institute, or by a person holding certification under
18 another program approved by the secretary. Every owner or operator
19 shall submit, on a form prescribed by the secretary, a
20 certification from the engineer that each tank, associated
21 equipment, leak detection system and secondary containment
22 structure meets the minimum standards established by this article
23 or by the secretary by rule.

24 (b) The certification form shall be submitted to the secretary
25 on or before January 1, 2015, and each year thereafter.

26 **§22-30-7. Financial responsibility.**

1 The secretary shall promulgate rules requiring owners and
2 operators to provide evidence of adequate financial resources to
3 undertake reasonable corrective action for releases of fluid from
4 aboveground storage tanks. The means of demonstrating adequate
5 financial responsibility may include, but not be limited to,
6 providing evidence of current insurance, guarantee, surety bond,
7 letter of credit, proof of assets, trust fund or qualification as
8 a self insurer.

9 **§22-30-8. Corrective action.**

10 (a) Prior to the effective date of the emergency and
11 legislative rules promulgated pursuant to the authority granted
12 under this article, the secretary is authorized to:

13 (1) Require the owner or operator to develop a preliminary
14 corrective action plan taking into consideration the types of
15 fluids and types of tanks on the premises;

16 (2) Require the owner or operator of an aboveground storage
17 tank to undertake prompt corrective action to protect human health,
18 safety, water resources or the environment from contamination
19 caused by a release; or

20 (3) Undertake immediate corrective action with respect to any
21 release or threatened release of fluid from an aboveground storage
22 tank when, in the judgment of the secretary, the action is
23 necessary to protect human health, safety, water resources or the
24 environment from contamination caused by a release.

25 (b) The corrective action undertaken or required by this
26 section shall be what may be necessary to protect human health,

1 water resources and the environment from contamination caused by a
2 release, including the ordered cessation or closure of a source of
3 contamination and the ordered remediation of a contaminated site.
4 The secretary shall use funds in the Protect Our Water Fund
5 established pursuant to this article for payment of costs incurred
6 for corrective action taken by the secretary in accordance with
7 this article. In undertaking corrective actions under this section
8 and in issuing orders requiring owners or operators to undertake
9 the actions, the secretary shall give priority to releases or
10 threatened releases of fluid from aboveground storage tanks that
11 pose the greatest threat to human health, water resources or the
12 environment.

13 (c) Following the effective date of rules promulgated pursuant
14 to this article, all actions or orders of the secretary shall be in
15 conformity with those rules. Following the effective date of the
16 rules, the secretary may undertake corrective action with respect
17 to any release or threatened release of fluid from an aboveground
18 storage tank only if, in the judgment of the secretary, the action
19 is necessary to protect human health, safety, water resources or
20 the environment from contamination, and one or more of the
21 following situations exists:

22 (1) If no person can be found within thirty days, or a shorter
23 period as may be necessary to protect human health, safety, water
24 resources and the environment, who is an owner or operator of the
25 aboveground storage tank at issue and who is capable of carrying
26 out the corrective action properly;

1 (2) A situation exists that requires immediate action by the
2 secretary under this section to protect human health, safety, water
3 resources or the environment;

4 (3) The cost of corrective action to be expended on an
5 aboveground storage tank exceeds the amount of resources that the
6 owner or operator can reasonably be expected to possess based on
7 the information required to be submitted pursuant to this article
8 and, considering the fluid being stored in the aboveground storage
9 tank in question, expenditures from the Protect Our Water Fund are
10 necessary to assure an effective corrective action; or

11 (4) The owner or operator of the tank has failed or refused to
12 comply with an order of the secretary under this article or of the
13 Environmental Quality Board under article one, chapter twenty-two-b
14 of this code to comply with appropriate corrective action measures
15 ordered by the secretary or the Environmental Quality Board.

16 (d) The secretary may draw upon the Protect Our Water Fund in
17 order to take action under subdivision (1) or (2), subsection (c)
18 of this section if the secretary has made diligent good-faith
19 efforts to determine the identity of the owner or operator
20 responsible for the release or threatened release and:

21 (1) The secretary is unable to determine the identity of the
22 owner or operator in a manner consistent with the need to take
23 timely corrective action; or

24 (2) The owner or operator determined by the secretary to be
25 responsible for the release or threatened release has been informed
26 in writing of the secretary's determination and has been requested

1 by the secretary to take appropriate corrective action but is
2 unable or unwilling to take proper action in a timely manner.

3 (e) The written notice to the owner or operator must inform
4 the owner or operator that if it is subsequently found liable for
5 releases pursuant to this section, the owner or operator will be
6 required to reimburse the Protect Our Water Fund for the costs of
7 the investigation, information gathering and corrective action
8 taken by the secretary.

9 (f) If the secretary determines that immediate response to an
10 imminent threat to human health, safety, water resources or the
11 environment is necessary to avoid substantial injury or damage
12 thereto, corrective action may be taken pursuant to this section
13 without the prior written notice required by subdivision (2),
14 subsection (d) of this section. In that case, the secretary must
15 give subsequent written notice to the owner or operator within
16 fifteen days after the action is taken describing the circumstances
17 that required the action to be taken and setting forth the matters
18 identified in subsection (e) of this section.

19 **§22-30-9. Spill prevention response plan.**

20 (a) Within one hundred eighty days of the effective date of
21 this article, each owner or operator of an aboveground storage tank
22 shall submit a spill prevention response plan for each aboveground
23 storage tank. Owners and operators of aboveground storage tanks
24 shall file updated plans required to be submitted by this section
25 no less frequently than every three years. Each plan shall be
26 site-specific, consistent with the requirements of this article,

1 and developed in consultation with Bureau for Public Health, county
2 and municipal emergency management agencies. The spill prevention
3 response plan shall at a minimum:

4 (1) Identify and describe the activity that occurs at the site
5 and identify applicable hazard and process information, including
6 a specific listing and inventory of all types of fluids stored,
7 amount of fluids stored and wastes generated that are stored in
8 aboveground storage tanks at the facility. The plan shall include
9 the material safety data sheets (MSDS) required by the Occupational
10 Safety and Health Administration for all fluids in use or stored in
11 aboveground storage tanks at the facility. The material safety
12 data sheets must include the health hazard number identified by the
13 National Fire Protection Association. The plan shall also include
14 drawings of the aboveground storage tank facility, including the
15 locations of all drainage pipes and water outlets;

16 (2) Identify all facility-related positions with duties and
17 responsibilities for developing, implementing and maintaining the
18 facility's plan. The plan shall describe in detail the chain of
19 command at the aboveground storage tank facility and list all
20 facility emergency coordinators and all known emergency response
21 contractors;

22 (3) Provide a preventive maintenance program that includes
23 monitoring and inspection procedures, including identification of
24 stress points, employee training programs and security systems.
25 The plan shall include a description of potential sources and areas
26 where spills and leaks may occur by drawings and plot plans and

1 shall identify specific spill prevention measures for those
2 identified areas;

3 (4) Detail the specific response that the aboveground storage
4 tank facility and contract emergency personnel shall take upon the
5 occurrence of any release of fluids from an aboveground storage
6 tank at the facility;

7 (5) Provide contact information obtained by the owner or
8 operator of the aboveground storage tanks from the county and
9 municipal emergency management agencies and the nearest downstream
10 public water supply intake, and designate the person or persons to
11 be notified in the event of a release from an aboveground storage
12 tank; and

13 (6) Provide the secretary with all other requested
14 information.

15 (b) Each owner of an aboveground storage tank with an approved
16 spill prevention response plan shall submit to the secretary a
17 revised plan or addendum to the plan in accordance with the
18 requirements of this article if any of the following occur:

19 (1) There is a substantial modification in design,
20 construction, operation or maintenance of any aboveground storage
21 tank or associated equipment, or there are other circumstances that
22 increase the potential for fires, explosions or releases of fluids;

23 (2) There is a substantial modification in emergency equipment
24 at the facility;

25 (3) There are substantial changes in emergency response
26 protocols at the aboveground storage tank facility;

1 (4) The plan fails in an emergency;

2 (5) The removal or the addition of any aboveground storage
3 tank; or

4 (6) Other circumstances occur about which the secretary
5 requests an update.

6 (c) The secretary shall approve the spill prevention response
7 plan or reject the plan and require modifications as may be
8 necessary and reasonable to assure the protection of the source
9 water of a public water system from a release of fluids from an
10 aboveground storage tank. If rejected, the owner of the
11 aboveground storage tank shall submit a revised plan to the
12 secretary for approval within thirty days of receipt of
13 notification of the secretary's decision. Failure to comply with
14 a plan approved by the secretary pursuant to this section is a
15 violation of this article.

16 (d) Nothing contained in this section relieves the owner or
17 operator of an aboveground storage tank from his or her obligation
18 to report any release immediately to the department's emergency
19 notification telephone number.

20 **§22-30-10. Notice to local governments and water companies.**

21 The owner or operator of an aboveground storage tank facility
22 shall provide as required by the secretary public notice to any
23 public water system where the facility is located within the
24 system's identified groundwater supply's source water protection
25 area or within the system's surface water supply's zone of critical
26 protection, to the local municipality, if any, and to the county in

1 which the facility is located. The notice shall provide a detailed
2 inventory of the type and quantity of fluid stored in aboveground
3 storage tanks at the facility and the material safety data sheets
4 (MSDS) associated with the fluid in storage. The owner or operator
5 shall also provide as required by the secretary a copy of the spill
6 prevention response plan and any updates thereto, which have been
7 approved by the secretary pursuant to this act, to the applicable
8 public water systems and county and municipal emergency management
9 agencies.

10 **§22-30-11. Required signage.**

11 Every aboveground storage tank shall display the signage, if
12 any, required by the Occupational Safety and Health Administration;
13 the tank registration number, when issued by the secretary; and the
14 emergency contact number for the owner or operator of the tank and
15 the emergency contact number for the Department of Environmental
16 Protection's Spill Reporting Hotline. For the purposes of this
17 section, the requirements for prominently posted signage shall be
18 specified in the rules proposed for promulgation by the secretary
19 pursuant to this article and article three, chapter twenty-nine-a
20 of this code.

21 **§22-30-12. Aboveground Storage Tank Administrative Fund.**

22 (a) The secretary shall collect annual registration fees from
23 owners or operators of each aboveground storage tank in an amount
24 to be promulgated in the legislative rules authorized by this
25 article to be used by the secretary to defray the costs of
26 administering this article. All registration and permit fees and

1 the net proceeds of all fines, penalties and forfeitures collected
2 under this article, including accrued interest, shall be paid into
3 a special revenue account, hereby created within the State
4 Treasury, designated the Aboveground Storage Tank Administrative
5 Fund.

6 (b) At the end of each fiscal year, any unexpended balance,
7 including accrued interest, on deposit in the Aboveground Storage
8 Tank Administrative Fund shall not be transferred to the General
9 Revenue Fund, but shall remain in the Aboveground Storage Tank
10 Administrative Fund for expenditure pursuant to this section.

11 **§22-30-13. Protect Our Water Fund.**

12 (a) Each owner or operator of an aboveground storage tank
13 located in this state shall pay an annual fee to establish a fund
14 to assure adequate response to leaking aboveground storage tanks.
15 The amount of fees assessed pursuant to this section shall be set
16 forth by rule. The fees must be sufficient to cover the regulatory
17 oversight and services to be provided by designated agencies,
18 including necessary technical and administrative personnel. The
19 proceeds of the assessment shall be paid into a special revenue
20 account, hereby created within the State Treasury, designated the
21 Protect Our Water Fund. The fund shall be administered by the
22 secretary. Expenditures from the fund shall be solely to respond
23 to leaking aboveground storage tanks, and are not authorized from
24 collections but are to be made only in accordance with
25 appropriation by the Legislature and in accordance with the
26 provisions of article three, chapter twelve of this code and upon

1 the fulfillment of the provisions set forth in article two, chapter
2 eleven-b of this code: *Provided*, That for the fiscal years ending
3 June 30, 2014 and 2015, expenditures are authorized from
4 collections rather than pursuant to an explicit appropriation by
5 the Legislature. At the end of each fiscal year, any unexpended
6 balance, including accrued interest, on deposit in the Protect Our
7 Water Fund shall not be transferred to the General Revenue Fund,
8 but shall remain in the Protect Our Water Fund for expenditure
9 pursuant to this section.

10 (b) Each owner or operator of an aboveground storage tank
11 subject to a fee assessment under subsection (a) of this section
12 shall pay a fee based on the number of aboveground storage tanks he
13 or she owns or operates, as applicable. The secretary shall vary
14 the fees annually to a level necessary to produce a sufficient fund
15 at the beginning of each calendar year.

16 (c) At the end of each fiscal year, any unexpended balance,
17 including accrued interest, on deposit in the Protect Our Water
18 Fund shall not be transferred to the General Revenue fund, but
19 shall remain in the Protect Our Water Fund.

20 (d) The secretary may enter into agreements and contracts and
21 to expend the moneys in the fund for the following purposes:

22 (1) Responding to aboveground storage tank releases when,
23 based on readily available information, the secretary determines
24 that immediate action is necessary to prevent or mitigate
25 significant risk of harm to human health, safety, water resources
26 or the environment from contamination caused by a release of fluid

1 from aboveground storage tanks in situations for which no federal
2 funds are immediately available for the response, cleanup or
3 containment: *Provided*, That the secretary shall apply for and
4 diligently pursue all available federal funds at the earliest
5 possible time;

6 (2) Reimbursing any nonresponsible parties for reasonable
7 cleanup costs incurred with the authorization of the secretary in
8 responding to an aboveground storage tank release; or

9 (3) Reimbursing any nonresponsible parties for reasonable
10 costs incurred with the authorization of the secretary responding
11 to perceived, potential or threatened releases from aboveground
12 storage tanks.

13 (e) The secretary, through a cooperative agreement with
14 another state regulatory agency, in this or another state, may use
15 the fund to compensate the cooperating agency for expenses the
16 cooperating agency incurs in carrying out regulatory
17 responsibilities that agency may have pursuant to this article.

18 **§22-30-14. Public access to information.**

19 (a) The public shall have access to all documents and
20 information submitted to the agency, subject to the limitations
21 contained in the state Freedom of Information Act, article one,
22 chapter twenty-nine-b of this code. Records, reports or
23 information obtained from any persons under this article may be
24 disclosed to other officers, employees or authorized
25 representatives of this state or federal agency implementing the
26 provisions of this article or any other applicable law related to

1 releases of fluid from aboveground storage tanks that impact the
2 state's water resources.

3 (b) A list of the potential sources of significant
4 contamination contained within the zone of critical concern as
5 provided by the Department of Environmental Protection, the Bureau
6 for Public Health and the Division of Homeland Security and
7 Emergency Management may be disclosed. The exact location of the
8 contaminants within the zone of critical concern is not subject to
9 public disclosure in response to a Freedom of Information Act
10 request under article one, chapter twenty-nine-b of this code.
11 However, the location, characteristics and approximate quantities
12 of potential sources of significant contamination within the zone
13 of critical concern shall be made known to one or more designees of
14 the public water utility, and shall be maintained in a confidential
15 manner by the public water utility. In the event of a chemical
16 spill, release or related emergency, information pertaining to any
17 spill or release of contaminant shall be immediately disseminated
18 to any emergency responders responding to the site of a spill or
19 release, and the general public shall be promptly notified in the
20 event of a chemical spill, release or related emergency.

21 **§22-30-15. Inspections, monitoring and testing.**

22 (a) For the purposes of developing or assisting in the
23 development of any rule, conducting any study, taking any
24 corrective action or enforcing any provision of this article, any
25 owner or operator of an aboveground storage tank shall, upon
26 request of the secretary:

1 (1) Furnish information relating to the aboveground storage
2 tanks, their associated equipment and contents;

3 (2) Conduct reasonable monitoring or testing;

4 (3) Permit the secretary, at all reasonable times, to inspect
5 and copy records relating to aboveground storage tanks; and

6 (4) Permit the secretary to have access to the aboveground
7 storage tanks for corrective action.

8 (b) For the purposes of developing or assisting in the
9 development of any rule, conducting any study, taking corrective
10 action or enforcing any provision of this article, the secretary
11 may:

12 (1) Enter at any time any establishment or other place where
13 an aboveground storage tank is located;

14 (2) Inspect and obtain samples of any fluid contained in an
15 aboveground storage tank from any person;

16 (3) Conduct monitoring or testing of the aboveground storage
17 tanks, associated equipment, contents or surrounding soils, surface
18 water or groundwater; and

19 (4) Take corrective action as specified in this article.

20 (c) Each inspection shall be commenced and completed with
21 reasonable promptness.

22 (d) To ensure protection of the water resources of the state
23 and compliance with any provision of this article or rule
24 promulgated thereunder, the secretary shall inspect at least
25 annually any aboveground storage tank facility located within the
26 zone of critical concern of a public water system with a public

1 surface water supply source or a public surface water influenced
2 groundwater supply source.

3 **§22-30-16. Administrative orders; injunctive relief.**

4 (a) When the secretary determines, on the basis of any
5 information, that a person is in violation of any requirement of
6 this article or the rules promulgated thereunder, the secretary may
7 issue an order stating with reasonable specificity the nature of
8 the violation and requiring compliance within a reasonable
9 specified time period, or the secretary may commence a civil action
10 in the circuit court of the county in which the violation occurred
11 or in the circuit court of Kanawha County for appropriate relief,
12 including a temporary or permanent injunction. The secretary may,
13 except as provided in subsection (b) of this section, stay any
14 order he or she issues upon application, until the order is
15 reviewed by the Environmental Quality Board.

16 (b) In addition to the powers and authority granted to the
17 secretary by this chapter to enter into consent agreements,
18 settlements, and otherwise enforce this chapter, the secretary
19 shall propose rules for legislative approval to establish a
20 mechanism for the administrative resolution of violations set forth
21 in this article through consent order or agreement as an
22 alternative to instituting a civil action.

23 **§22-30-17. Civil and criminal penalties.**

24 (a) Any person who fails to comply with an order of the
25 secretary issued under subsection (a), section sixteen of this
26 article within the time specified in the order is liable for a

1 civil penalty of not more than \$25,000 for each day of continued
2 noncompliance.

3 (b) Any owner or operator of an aboveground storage tank who
4 knowingly fails to register or obtain a permit required by this
5 article for an aboveground storage tank or submits false
6 information pursuant to this article is liable for a civil penalty
7 not to exceed \$10,000 for each aboveground storage tank that is not
8 registered or permitted or for which false information is
9 submitted.

10 (c) Any owner or operator of an aboveground storage tank who
11 fails to comply with any requirement of this article or any
12 standard promulgated by the secretary pursuant to this article is
13 subject to a civil penalty not to exceed \$10,000 for each day of
14 violation.

15 (d) Any person who knowingly and intentionally violates any
16 provision of this article shall be guilty of a misdemeanor, and,
17 upon conviction thereof, shall be confined in a regional jail for
18 a period of time not exceeding one year, and be fined an amount not
19 to exceed \$25,000.

20 (e) Any person convicted of a second or subsequent willful
21 violation of subsection (d) of this section or knowingly and
22 willfully violates any provision of any permit, rule or order
23 issued under or subject to the provisions of this article is guilty
24 of a felony and, upon conviction, shall be imprisoned in a
25 correctional facility not less than one nor more than three years,

1 or fined not more than \$50,000 for each day of violation, or both
2 fined and imprisoned.

3 (f) Any person may be prosecuted and convicted under the
4 provisions of this section notwithstanding that none of the
5 administrative remedies provided in this article have been pursued
6 or invoked against said person and notwithstanding that civil
7 action for the imposition and collection of a civil penalty or an
8 application for an injunction under the provisions of this article
9 has not been filed against such person.

10 (g) Where a person holding a permit is carrying out a program
11 of pollution abatement or remedial action in compliance with the
12 conditions and terms of the permit, the person is not subject to
13 criminal prosecution for pollution recognized and authorized by the
14 permit.

15 (h) Civil penalties are payable to the secretary. All moneys
16 collected under this section for civil fines collected under this
17 article shall be deposited into a restricted account known as the
18 Protect Our Water Fund. All money deposited into this account
19 shall be used by the secretary solely to respond to leaking
20 aboveground storage tanks.

21 **§22-30-18. Appeal to Environmental Quality Board.**

22 Any person aggrieved or adversely affected by an order of the
23 secretary made and entered in accordance with the provisions of
24 this article may appeal to the Environmental Quality Board,
25 pursuant to the provisions of article one, chapter twenty-two-b of
26 this code.

1 **§22-30-19. Duplicative enforcement prohibited.**

2 No enforcement proceeding brought pursuant to this article may
3 be duplicated by an enforcement proceeding subsequently commenced
4 under some other article of this code with respect to the same
5 transaction or event, unless the subsequent proceeding involves the
6 violation of a permit or permitting requirement of other article.

7 **§22-30-20. Reporting and accountability.**

8 (a) Every year, the secretary shall submit a report to the
9 Joint Legislative Oversight Commission on State Water Resources and
10 the Joint Committee on Government and Finance which assesses the
11 effectiveness of this article and provides other information as may
12 be requested by the commission to allow it to assess the
13 effectiveness of this article, including, without limitation, the
14 secretary's observations concerning all aspects of compliance with
15 this article and any legislative rules promulgated pursuant hereto,
16 the regulatory process, and any pertinent changes to federal rules
17 or regulations.

18 (b) The secretary shall keep accurate accounts of all receipts
19 and disbursements related to the administration of the Aboveground
20 Storage Tank Administrative Fund and shall make a detailed annual
21 report to the Joint Legislative Oversight Commission on State Water
22 Resources and the Joint Committee on Government and Finance
23 addressing the administration of the fund.

24 (c) The secretary shall keep accurate accounts of all receipts
25 and disbursements related to the administration of the Protect Our
26 Water Fund and shall make a specific annual report to the Joint

1 Legislative Oversight Commission on State Water Resources and the
2 Joint Committee on Government and Finance addressing the
3 administration of the fund.

4 **§22-30-21. Interagency cooperation.**

5 (a) In implementation of this article, the secretary shall
6 coordinate with the Department of Health and Human Resources, the
7 West Virginia Public Service Commission, the Division of Homeland
8 Security and Emergency Management and local health departments to
9 ensure the successful planning and implementation of this act,
10 including consideration of the role of those agencies in providing
11 services to owners and operators of aboveground storage tanks and
12 public water systems.

13 (b) The secretary shall also coordinate with state and local
14 emergency response agencies to prepare and issue appropriate
15 emergency response plans to facilitate a coordinated emergency
16 response and incident command and communication between the owner
17 or operator of the aboveground storage tank, the state and local
18 emergency response agencies and the affected public water system.

19 (c) The secretary shall also coordinate with the State Fire
20 Marshal in addressing the periodic inspection of local fire
21 departments to include a requirement for inspectors to examine and
22 identify the status of National Incident Management System fire
23 department personnel training.

24 **§22-30-22. Imminent and substantial danger.**

25 (a) Notwithstanding any other provision of this chapter to the
26 contrary, upon receipt of evidence that an aboveground storage tank

1 may present an imminent and substantial danger to human health,
2 water resources or the environment, the secretary may bring suit on
3 behalf of the State of West Virginia in the Circuit Court of
4 Kanawha County against any owner or operator of an aboveground
5 storage tank who has contributed or who is contributing to imminent
6 and substantial danger to public health, safety, water resources or
7 the environment to order the person to take action as may be
8 necessary to abate the situation and protect human health, safety,
9 water resources and the environment from contamination caused by a
10 release of fluid from an aboveground storage tank.

11 (b) Upon receipt of information that there is any aboveground
12 storage tank that presents an imminent and substantial danger to
13 human health, safety, water resources or the environment, the
14 secretary shall provide immediate notice to the appropriate state
15 and local government agencies and any affected public water system.
16 In addition, the secretary shall require notice of any danger to be
17 promptly posted at the aboveground storage tank facility containing
18 the aboveground storage tank at issue.

19 **§22-30-23. Promulgation of rules.**

20 The secretary shall promulgate emergency and legislative rules
21 as necessary to implement the provisions of this article in
22 accordance with the provisions of article three, chapter
23 twenty-nine-a of this code.

24 **§22-30-24. Powers and duties of secretary.**

25 (a) In addition to the powers and duties prescribed in this
26 chapter or otherwise provided by law, the secretary has the

1 exclusive authority to perform all acts necessary to implement this
2 article.

3 (b) The secretary may receive and expend money from the
4 federal government or any other sources to implement this article.

5 (c) The secretary may revoke any registration, authorization
6 or permit for a violation of this article or the rules promulgated
7 hereunder.

8 (d) The secretary may issue orders, assess civil penalties,
9 institute enforcement proceedings and prosecute violations of this
10 article as necessary.

11 (e) The secretary, in accordance with this article, may order
12 corrective action to be undertaken, take corrective action or
13 authorize a third party to take corrective action.

14 (f) The secretary may recover the costs of taking corrective
15 action, including costs associated with authorizing third parties
16 to perform corrective action. Costs may not include routine
17 inspection and administrative activities not associated with a
18 release.

19 **§22-30-25. Scope of article; waiving additional permitting**
20 **requirements for certain categories of aboveground storage**
21 **tanks; establishing a process for granting waivers for**
22 **additional categories of ground storage tanks, by legislative**
23 **rule, upon verification that the category of tanks are**
24 **regulated under comparable or more rigorous protective state**
25 **or federal standards.**

1 (a) While all aboveground storage tanks shall be required to
2 participate in the inventory and registration process set forth in
3 section four of this article, the following categories of
4 containers and tanks shall not be required to be permitted under
5 section five of this article, either because they do not represent
6 a substantial threat of contamination, or they are currently
7 regulated under standards which meet or exceed the protective
8 standards and requirements set forth in this article:

9 (1) An aboveground storage tank containing drinking water,
10 filtered surface water, demineralized water, noncontact cooling
11 water or water stored for fire or emergency purposes;

12 (2) Any natural gas or propane tanks regulated under NFPA
13 58-30A or NFPA 58-30B;

14 (3) Septic tanks and home aeration systems;

15 (4) A pipeline facility, including gathering lines, regulated
16 under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous
17 Liquid Pipeline Safety Act of 1979, or an intrastate pipeline
18 facility regulated by the West Virginia Public Service Commission
19 or otherwise regulated under any state law comparable to the
20 provisions of either the Natural Gas Pipeline Safety Act of 1968 or
21 the Hazardous Liquid Pipeline Safety Act of 1979;

22 (5) Equipment or machinery containing substances for
23 operational purposes, including integral hydraulic lift tanks,
24 lubricating oil reservoirs for pumps and motors, electrical
25 equipment and heating and cooling equipment;

1 (6) A mobile tank, truck or rail car that is located on a site
2 for less than sixty consecutive calendar days;

3 (7) Liquid traps or associated gathering lines related to oil
4 or gas production and gathering operations;

5 (8) A surface impoundment, pit, pond or lagoon;

6 (9) Aboveground storage tanks for which spill prevention,
7 control, and countermeasure plans are required by the Environmental
8 Protection Agency (EPA) under 40 CFR Part 112 (oil pollution
9 prevention), unless located within a zone of critical protection.

10 (b) The Department of Environmental Protection may designate,
11 by legislative rule, additional categories of aboveground storage
12 tanks for which an individual aboveground storage tank permit may
13 be waived, after confirming that the tank is regulated under an
14 existing state or federal regulatory permit or enforceable standard
15 which includes, but is not limited to, the following:

16 (1) Secondary containment with an impermeable base, which is
17 sufficient to fully contain the contents of the tank or the
18 contents of the largest tank in the group of tanks in the event of
19 a leak from spilling out onto the ground or adjacent surface water;

20 (2) Spill prevention, leak detection and control and
21 inspection requirements which meet or exceed the standards
22 established by the article or by rules promulgated thereunder;

23 (3) Regular inspections and routine integrity testing
24 requirements which are equally protective to the requirements
25 established pursuant to this article or any rules promulgated
26 thereunder; and

1 (4) Emergency response and notification requirements which are
2 at least as prompt and comprehensive as the emergency response and
3 notification requirements established by this article or any rules
4 promulgated thereunder.

5 (c) In lieu of requiring a separate permit issued under this
6 section, the secretary may adopt rules that would allow the
7 requirements of this article to be incorporated into, and enforced
8 through, the state-only portion of a National Pollutant Discharge
9 Elimination System (NPDES) permit or a permit under article six or
10 six-a of this chapter.

11 (d) If the aboveground storage tank or tanks' location is to
12 be regulated pursuant to a general NPDES permit or an individual
13 NPDES permit, the secondary containment, spill prevention, leak
14 detection and control requirements, inspection requirements,
15 reporting requirements and routine integrity testing requirements
16 for that tank or tanks are to be specifically set forth as
17 enforceable permit conditions and requirements.

18 **ARTICLE 31. THE PUBLIC WATER SUPPLY PROTECTION ACT.**

19 **§22-31-1. Short title.**

20 This article may be known and cited as the Public Water Supply
21 Protection Act.

22 **§22-31-2. Legislative findings.**

23 (a) The West Virginia Legislature finds that it is in the
24 public policy of the State of West Virginia to protect and conserve
25 the water resources which are relied upon by the state and its
26 citizens. The state's water resources are vital natural resources

1 that are essential to maintain, preserve and promote human health,
2 quality of life and economic vitality of the state.

3 (b) The West Virginia Legislature further finds that it is the
4 public policy of the state that clean, uncontaminated water be
5 available for its citizens who are dependent on clean water as a
6 basic need for survival, and who rely on the assurances from public
7 water systems and the government that the water is safe to consume.

8 (c) The West Virginia Legislature further finds that it is the
9 public policy of the state that clean, uncontaminated water be
10 available to its businesses and industries that rely on water for
11 their economic survival, and the well-being of their employees.
12 These include hospitals and the medical industry, schools and
13 educational institutions, the food and hospitality industries, the
14 tourism industry, manufacturing, coal, natural gas and other
15 industries. Businesses and industries searching for places to
16 locate or relocate consider the quality of life for their employees
17 as well as the quality of the raw materials such as clean water.

18 (d) The Legislature further finds that large quantities of
19 fluids are stored in aboveground storage tanks, below ground
20 storage tanks, in impoundments and other locations which pose a
21 threat of potential contamination to surface waters and
22 groundwaters which are relied upon as primary sources of public
23 water supplies in the state. Emergency situations involving these
24 fluids can and will arise that may present a hazard to human
25 health, safety, the water resources, the environment and the
26 economy of the state.

1 (e) It is important that the public water systems, the
2 responding emergency providers and regulatory inspectors and
3 personnel require complete and accurate information regarding the
4 volume, identity, characteristics and qualities of each potential
5 source of significant contamination to efficiently and accurately
6 anticipate and respond to any associated threat to the public posed
7 by a leak or spill event.

8 (f) The Legislature also finds it reasonable and appropriate
9 to impose additional regulatory oversight and reporting
10 requirements for potential contaminants which are in close
11 proximity to a public water intake, due to the sudden and
12 devastating impact that potential contaminants in that zone pose to
13 a public water system's critical source of supply.

14 **§22-31-3. Definitions.**

15 For the purposes of this article:

16 (1) "Potential source of significant contamination" means a
17 facility or activity that stores, uses or produces compounds with
18 potential for significant contaminating impact if released into the
19 source water of a public water supply.

20 (2) "Public water system" means:

21 (A) Any water supply or system which regularly supplies or
22 offers to supply water for human consumption through pipes or other
23 constructed conveyances, if serving at least an average of
24 twenty-five individuals per day for at least sixty days per year,
25 or which has at least fifteen service connections, and shall
26 include:

1 (i) Any collection, treatment, storage and distribution
2 facilities under the control of the owner or operator of the system
3 and used primarily in connection with the system; and

4 (ii) Any collection or pretreatment storage facilities not
5 under such control which are used primarily in connection with the
6 system.

7 (B) A public water system does not include a system which
8 meets all of the following conditions:

9 (i) Consists only of distribution and storage facilities and
10 does not have any collection and treatment facilities;

11 (ii) Obtains all of its water from, but is not owned or
12 operated by, a public water system which otherwise meets the
13 definition;

14 (iii) Does not sell water to any person; and

15 (iv) Is not a carrier conveying passengers in interstate
16 commerce.

17 (4) "Public groundwater supply source" means a primary source
18 of water supply for a public water system which is directly drawn
19 from a well, underground stream, underground reservoir, underground
20 mine or other primary source of water supplies which is found
21 underneath the surface of the state.

22 (5) "Public surface water supply source" means a primary
23 source of water supply for a public water system which is directly
24 drawn from rivers, streams, lakes, ponds, impoundments or other
25 primary sources of water supplies which are found on the surface of
26 the state.

1 (6) "Public surface water influenced groundwater supply
2 source" means a source of water supply from a public water system
3 which is directly drawn from an underground well, underground river
4 or stream, underground reservoir or underground mine, and the
5 quantity and quality of the water in that underground supply source
6 is heavily influenced, directly or indirectly, by the quantity and
7 quality of surface water in the immediate area.

8 (7) "Zone of critical concern" for a public surface water
9 supply is a corridor along streams within a watershed that warrant
10 more detailed scrutiny due to its proximity to the surface water
11 intake and the intake's susceptibility to potential contaminants
12 within that corridor. The zone of critical concern is determined
13 using a mathematical model that accounts for stream flows, gradient
14 and area topography. The length of the zone of critical concern is
15 based on a five-hour time of travel of water in the streams to the
16 water intake, plus an additional one-fourth mile below the water
17 intake. The width of the zone of critical concern is one thousand
18 feet measured horizontally from each bank of the principal stream
19 and five hundred feet measured horizontally from each bank of the
20 tributaries draining into the principal stream.

21 **§22-31-4. Inventory of potential sources of significant**
22 **contamination in a zone of critical concern; registration;**
23 **permitting; and notice.**

24 (a) To assure protection of the water resources of the state,
25 the secretary, working in collaboration with the Bureau for Public
26 Health and the Division of Homeland Security and Emergency

1 Management, shall compile an inventory of all potential sources of
2 significant contamination contained within a public water system's
3 zone of critical concern for all public water systems whose source
4 of supply is obtained from a surface water supply source or a
5 surface water influenced groundwater supply source.

6 (b) If the secretary shall determine that a designated
7 potential significant source of contamination is not currently
8 permitted and subject to regulation by the secretary under one or
9 more articles of this chapter, and the secretary determines that
10 the public interest in protecting the public drinking waters of the
11 state warrant additional regulation and inspection of the site to
12 protect the public interests, the secretary may require the owner
13 and operator of that facility to register and obtain a permit for
14 its location pursuant to the provisions of this article.

15 (c) Within sixty days of the date receiving notice from the
16 secretary of the facility's obligation to register pursuant to this
17 article, the owner or operator shall register the location pursuant
18 to the provisions of this section.

19 (d) The secretary shall prescribe a registration form for this
20 purpose within thirty days of the effective date of the enactment
21 of this article. Any potential significant sources of
22 contamination within a public water system's defined zone of
23 critical concern which are required to register with the Department
24 of Environmental Protection pursuant to this section shall do so
25 within sixty days from the receiving notice of their obligation to
26 register.

1 (e) Any potential source of significant contamination placed
2 into service on and after the effective date of this section, but
3 prior to the establishment of a permit program, may be required to
4 register by the secretary at any time.

5 (f) The secretary may charge a reasonable fee to cover the
6 cost of the registration and permitting program. The fee may be
7 set by emergency and legislative rules proposed for promulgation in
8 accordance with the provisions of article three, chapter
9 twenty-nine-a of this code.

10 **§22-31-5. Promulgation of rules.**

11 The secretary shall promulgate emergency and legislative rules
12 as necessary to implement the provisions of this article in
13 accordance with the provisions of article three, chapter
14 twenty-nine-a of this code.

15 **§22-31-6. Powers and duties of secretary.**

16 (a) In addition to the powers and duties prescribed in this
17 chapter or otherwise provided by law, the secretary has the
18 exclusive authority to perform all acts necessary to implement this
19 article.

20 (b) The secretary is authorized to utilize his or her
21 authority under the West Virginia Water Pollution Control Act to
22 require appropriate permitting and any other conditions or
23 limitations to assure protection of water intakes in zones of
24 critical concern.

25 (c) The secretary may receive and expend money from the
26 federal government or any other sources to implement this article.

1 (d) The secretary may revoke any registration, authorization
2 or permit for a violation of this article or the rules promulgated
3 hereunder.

4 (e) The secretary may issue orders, assess civil penalties,
5 institute enforcement proceedings and prosecute violations of this
6 article as necessary.

7 (f) The secretary, in accordance with this article, may order
8 corrective action to be undertaken, take corrective action or
9 authorize a third party to take corrective action.

10 (g) The secretary may recover the costs of taking corrective
11 action, including costs associated with authorizing third parties
12 to perform corrective action. Costs may not include routine
13 inspection and administrative activities not associated with a
14 release.

15 **§22-31-7. Public access to information.**

16 (a) Subject to the exemptions listed in section four, article
17 one, chapter twenty-nine-b of this code, the public shall have
18 access to all documents and information submitted to the agency in
19 accordance with this section pursuant to the state Freedom of
20 Information Act. Records, reports or information obtained from any
21 persons under this article may be disclosed to other officers,
22 employees or authorized representatives of this state or the United
23 States Environmental Protection Agency or of this state if the
24 officers, employees or authorized representatives are implementing
25 the provisions of this article or any other applicable law related

1 to releases of contaminants tanks that impact the state's water
2 resources.

3 (b) In submitting data under this article, a person required
4 to provide the data may designate the data that he or she believes
5 is entitled to protection under this section and may submit the
6 designated data separately from other data submitted under this
7 article. A designation under this subsection shall be made in
8 writing and in a manner as the secretary may prescribe.

9 (c) The Department of Environmental Protection shall provide
10 a copy of the compiled list of contaminants in each zone of
11 critical concern to the affected public water system, the Bureau
12 for Public Health, the Department of Environmental Protection and
13 the Division of Homeland Security and Emergency Management. This
14 will enable those entities to possess a compiled list of the types,
15 quantities, characteristics and locations of all of the known
16 potential contaminants within the zone of critical concern for each
17 public water supply. If any of the submitted information is
18 requested to be kept confidential and good cause is found to grant
19 the request, for reasons of security or other legitimate public
20 interest concern, the protected information shall be redacted from
21 public view and kept confidential, and it shall not be subject to
22 public release in response to a Freedom of Information Act request
23 made under chapter twenty-nine-b of this code.

24 **§22-31-8. Inspections, monitoring and testing.**

25 (a) For the purposes of developing or assisting in the
26 development of any rule, conducting any study, taking any

1 corrective action or enforcing any provision of this article, any
2 owner or operator of designated site of potential contamination
3 within a zone of critical concern shall, upon request of the
4 secretary:

5 (1) Furnish information relating to the site and potential
6 contaminants on the site, their aboveground and underground storage
7 tanks, their associated equipment and contents;

8 (2) Conduct reasonable monitoring or testing;

9 (3) Permit the secretary, at all reasonable times, to inspect
10 and copy records relating to the facilities and equipment used to
11 store or contain the potential contaminants; and

12 (4) Permit the secretary to have access to the site for
13 corrective action.

14 (b) For the purposes of developing or assisting in the
15 development of any rule, conducting any study, taking corrective
16 action or enforcing any provision of this article, the secretary
17 may:

18 (1) Enter at any time any establishment or other place where
19 on the site or where the potential contaminant is located;

20 (2) Inspect and obtain samples of any fluid contained or
21 stored on the site from any person;

22 (3) Conduct monitoring or testing of the site and any
23 associated aboveground storage tanks, underground storage tanks,
24 associated equipment, contents or surrounding soils, surface, water
25 or groundwater; and

26 (4) Take corrective action as specified in this article.

1 (c) Each inspection shall be commenced and completed with
2 reasonable promptness.

3 (d) To ensure protection of the water resources of the state
4 and compliance with any provision of this article or rule
5 promulgated thereunder, the secretary shall inspect at least
6 annually any designated site of potential contamination which is
7 located within the zone of critical concern for a public water
8 system's surface water intake.

9 (e) Due to the potential impact of contaminants within a zone
10 of critical concern on public drinking water supplies, whenever
11 there is an apparent spill of a chemical or substance within a zone
12 of critical concern for a public water system, the Director of the
13 Bureau for Public Health, and his or her representatives or
14 designees, shall have the same right to enter, inspect and conduct
15 sampling and monitoring at any site that is extended by this
16 article to the Department of Environmental Protection.

17 **§22-31-9. Prohibition of general NPDES permits within a zone of**
18 **critical concern for sites with aboveground storage**
19 **tanks; and authorizing the Division of**
20 **Environmental Protection to require individual**
21 **NPDES permit for any other site when deemed**
22 **appropriate.**

23 Because of the potential public health impact of pollution to
24 downstream public water intakes in a watershed basin designated in
25 an area of critical concern, on and after September 1, 2014, any
26 permittee which presently holds a National Pollutant Discharge

1 Elimination System (NPDES) general permit pursuant to the West
2 Virginia Water Pollution Control Act which has an aboveground
3 storage tank as defined by article thirty of this chapter on a site
4 which is located within any public water system's zone of critical
5 concern must apply for and hold an individual permit under that
6 act. The secretary shall also have the authority to require other
7 holders of a general NPDES permit to obtain an individual NPDES
8 permit, when deemed appropriate to protect the public water supply.
9 Any general NPDES permit held currently under that act shall remain
10 in effect until the individual NPDES permit is either issued or
11 denied.

12 **§22-31-10. Civil and criminal penalties.**

13 (a) Any person who fails to comply with an order of the
14 secretary issued pursuant to this article in the time specified in
15 the order is liable for a civil penalty of not more than \$25,000
16 for each day of continued noncompliance.

17 (b) Any owner or operator of a site designated as a potential
18 source of significant contamination within a zone of critical
19 concern above a public water intake who knowingly fails to register
20 or obtain a permit for an aboveground storage tank or submits false
21 information pursuant to this article is liable for a civil penalty
22 not to exceed \$10,000 for each aboveground storage tank that is not
23 registered or permitted or for which false information is
24 submitted.

25 (c) Any owner or operator of a site designated as a potential
26 source of significant contamination within a zone of critical
27 concern above a public water intake who fails to comply with any

1 requirement of this article or any standard promulgated by the
2 secretary pursuant to this article is subject to a civil penalty
3 not to exceed \$10,000 for each day of violation.

4 (d) Any person who knowingly and intentionally violates any
5 provision of this article shall be guilty of a misdemeanor and,
6 upon conviction thereof, shall be confined in a regional jail for
7 a period of time not exceeding one year and be fined an amount not
8 to exceed \$25,000.

9 (e) Any person convicted of a second or subsequent willful
10 violation of subsection (b) or (c) of this section or knowingly and
11 willfully violates any provision of any permit, rule or order
12 issued under or subject to the provisions of this article is guilty
13 of a felony and, upon conviction, shall be imprisoned in a
14 correctional facility not less than one nor more than three years,
15 or fined not more than \$50,000 for each day of violation, or both
16 fined and imprisoned.

17 (f) Any person may be prosecuted and convicted under the
18 provisions of this section notwithstanding that none of the
19 administrative remedies provided in this article have been pursued
20 or invoked against said person and notwithstanding that civil
21 action for the imposition and collection of a civil penalty or an
22 application for an injunction under the provisions of this article
23 has not been filed against such person.

24 (g) Where a person holding a permit is carrying out a program
25 of pollution abatement or remedial action in compliance with the
26 conditions and terms of the permit, the person is not subject to

1 criminal prosecution for pollution recognized and authorized by the
2 permit.

3 **§22-31-11. Appeal to Environmental Quality Board.**

4 A person aggrieved or adversely affected by an order of the
5 secretary made and entered in accordance with the provisions of
6 this article may appeal to the Environmental Quality Board,
7 pursuant to the provisions of article one, chapter twenty-two-b of
8 this code.

9 **§22-31-12. Public Water System Supply Study Commission.**

10 (a) There is hereby established the Public Water System Supply
11 Study Commission which is created for the purpose of studying and
12 reporting back to the Joint Committee on Government and Finance on
13 the following subject matters:

14 (1) A review and assessment of the effectiveness and the
15 quality of information contained in updated source water protection
16 plans required for certain public water systems by the provisions
17 of section nine-c, article one, chapter sixteen of this code;

18 (2) A review and assessment of the effectiveness of
19 legislation enacted during the 2014 Regular Session of the West
20 Virginia Legislature, as it pertains to assisting public water
21 systems in identifying and reacting or responding to identified
22 potential sources of significant contamination, and increasing
23 public awareness and public participation in the emergency planning
24 and response process;

25 (3) The extent of available financing and funding alternatives
26 which are available to existing public water systems to pursue
27 projects which are designed to create alternate sources of supply

1 or increased stability of supply in the event of a spill, release
2 or contamination event which impairs the water system's primary
3 source of supply;

4 (4) A review and consideration of the recommendations of the
5 U. S. Chemical Safety and Hazard and Investigation Board after its
6 investigation of the Bayer CropScience incident of 2008; and

7 (5) Any recommendations or suggestions the study commission
8 may offer to improve the infrastructure of existing public water
9 systems, to provide safe and reliable sources of supplies, and to
10 pursue other measures designed to protect the integrity of public
11 water service.

12 (b) The study commission shall consist of the following twelve
13 members, who shall be appointed and comprised as follows:

14 (1) Four members appointed by the Governor, one of whom shall
15 be a professional engineer experienced in the design and
16 construction of public water systems; one of whom shall be a
17 hydrologist or other expert experienced in determining the flow
18 characteristics of rivers and streams; one of whom shall be an
19 environmental toxicologist or other public health expert who is
20 familiar with the impact of contaminants on the human body; and one
21 citizen representative;

22 (2) One representative designated by the Rural Water
23 Association;

24 (3) One representative designated by the Municipal League;

25 (4) The Secretary of the Department of Environmental
26 Protection or his or her designee;

1 (5) The Commissioner of the Bureau for Public Health or his or
2 her designee;

3 (6) The Director of the Division of Homeland Security and
4 Emergency Management or his or her designee;

5 (7) The Chairman of the Public Service Commission or his or
6 her designee;

7 (8) One nonvoting member appointed by the President of the
8 Senate; and

9 (9) One nonvoting member appointed by the Speaker of the House
10 of Delegates.

11 (c) Reports by the commission shall be submitted to the Joint
12 Committee on Government and Finance on or before December 15 of
13 each year, beginning December 15, 2014.

14 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

15 **ARTICLE 2G. PUBLIC WATER UTILITIES MONITORING REQUIREMENTS.**

16 **§24-2G-1. Public water utilities required to install monitor for**
17 **contaminants.**

18 All public water utilities that provide water to more than one
19 hundred thousand customers, including public service districts
20 providing water service and municipally owned and operated
21 utilities, subject to the requirements and limitations of this
22 article, shall implement a regular monitoring system as specified
23 to the same technical capabilities for detection as utilized by the
24 Ohio River Valley Water Sanitation Commission.

25 **§24-2G-2. Requirements.**

26 (a) Each public water utility, public service district or
27 municipal water system, as set forth in section one of this

1 article, shall provide testing for contamination of its water
2 supply by the following contaminants:

- 3 (1) Salts or ions;
- 4 (2) Metals, including heavy metals;
- 5 (3) Polar organic compounds;
- 6 (4) Nonpolar organic compounds;
- 7 (5) Volatile compounds, oils and other hydrocarbons;
- 8 (6) Pesticides; and
- 9 (7) Biotoxins.

10 (b) Each public water utility is empowered to determine at its
11 discretion which of the contaminants listed in subsection (a) of
12 this section are most likely to contaminate its water supply, and
13 shall provide a monitoring system which shall detect the three of
14 the listed contaminants deemed most likely to affect that water
15 system: *Provided*, That each public water utility shall file its
16 list with the commission: *Provided, however*, That any public water
17 system serving over one hundred thousand customers from any one
18 treatment plant is requested to test for all listed contaminants at
19 each treatment plant: *Provided further*, That if technology to
20 adequately detect contaminants as required by this section proves
21 to be not feasible to implement, the public water utility shall
22 report by January 1, 2015, such to the Joint Committee on
23 Government and Finance with the reasons why such technology is not
24 feasible to obtain or use, and suggest alternatives.