

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 423

(By Senators M. Hall, Blair, Carmichael, Facemire,
D. Hall, Kirkendoll, Mullins, Plymale, Romano,
Trump, Woelfel, Williams and Stollings)

[Originating in the Committee on
the Judiciary;
reported February 25, 2015.]

A BILL to repeal §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated, §16-1-9f; to amend and reenact §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code; to amend said code by adding thereto a new section, designated §22-30-26; and to amend and reenact §22-31-2 of said code, all relating to protection of water resources and public health generally; amending the Aboveground Storage Tank Act; defining terms; requiring secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; authorizing the Secretary of the Department of Environmental Protection to propose emergency and legislative rules; creating alternative regulatory

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program to allow permitted and otherwise regulated entities to compel permits and plans to accomplish tank and secondary containment standards under existing programs; requiring secretary to develop regulatory program for tanks; creating a zone of peripheral concern for some; creating certain exemptions to regulation; providing factors to be considered in a program; requiring inspection and certification of tanks; requiring evidence of financial responsibility; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of type and quantity of fluids stored in tanks to local water utilities and governments; requiring posting of signs at or near tanks; creating an administrative fund; creating Protect Our Water Fund; authorizing public access to certain information; authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; providing for civil and criminal penalties; allowing appeals to Environmental Quality Board; prohibiting duplicative enforcement; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing for waiver of certain requirements; authorizing secretary to require individual NPDES permits; authorizing Secretary of Department of Health and Human Resources to inventory potential sources of significant contamination; membership of study commission; scope of study; and establishing reporting requirements.

Be it enacted by the Legislature of West Virginia:

That §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §16-1-9f; that §22-30-2, §22-30-3,

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§22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-30-26; and that §22-31-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM

§16-1-9f. Inventory of potential sources of significant contamination.

1 (a) The secretary, working in collaboration with the Department of Environmental Protection
2 and the Division of Homeland Security and Emergency Management, shall compile an inventory of
3 all potential sources of significant contamination contained within a public water system's zone of
4 critical concern and identify those that are not currently permitted or subject to regulation by the
5 Secretary of the Department of Environmental Protection under one or more articles of chapter
6 twenty-two of this code. In compiling the inventory, the secretary shall use information provided
7 in the registrations submitted pursuant to section four, article thirty, chapter twenty-two of this code,
8 information provided to the Division of Homeland Security and Emergency Management pursuant
9 to section 312 of the federal Emergency Planning and Community Right-to-Know Act, and other
10 information available to the agency.

11 (b) The Department shall provide a copy of the compiled list of known potential sources of
12 significant contamination in each zone of critical concern to the Department of Environmental
13 Protection and the Division of Homeland Security and Emergency Management.

CHAPTER 22. ENVIRONMENTAL RESOURCES

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

2 **§22-30-2. Legislative findings.**

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

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

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

18 (d) The Legislature further finds that large quantities of fluids are stored in aboveground
19 storage tanks within the state and that emergency situations involving these fluids can and will arise
20 that may present a hazard to human health, safety, the water resources, the environment and the
21 economy of the state. The Legislature further recognizes that some of these fluids have been stored
22 in aboveground storage tanks in a ~~regulated~~ manner insufficient to protect human health, safety,

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1 water resources, the environment and the economy of the state.

2 **§22-30-3. Definitions.**

3 For purposes of this article:

4 (1) "Aboveground storage tank" or "tank" or "AST" means a device made to contain an
5 accumulation of more than one thousand three hundred twenty gallons of fluids that are ~~liquids~~ liquid
6 at standard temperature and pressure, which is constructed primarily of ~~noncarbon~~ nonearthen
7 materials, including ~~wood~~, concrete, steel, plastic or fiberglass reinforced plastic, which provide
8 structural support, more than ninety percent of the capacity of which is above the surface of the
9 ground, ~~but does not include any process vessel and includes all ancillary pipes and dispensing~~
10 systems up to the first point of isolation. The term includes stationary devices which are
11 permanently affixed, and mobile devices which remain in one location on a continuous basis for
12 three hundred sixty-five or more days. A device meeting this definition containing hazardous waste
13 subject to regulation under 40 C. F. R. Parts 264 and 265, exclusive of tanks subject to regulation
14 under 40 C. F. R. § 265.201 is included in this definition but is not a regulated tank, and includes all
15 ancillary aboveground pipes and dispensing systems up to the first point of isolation and all ancillary
16 underground pipes and dispensing systems connected to the aboveground containers to the first point
17 of isolation Notwithstanding any other provision of this code to the contrary, ~~shipping containers,~~
18 ~~including railroad freight cars,~~ the following categories of devices are not subject to the provisions
19 of this article:

20 (A) Shipping containers that are subject to state or federal laws or regulations governing the
21 transportation of hazardous materials, including, but not limited to, railroad freight cars subject to
22 federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-20115, as amended,

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1 including, but not limited to, federal regulations promulgated thereunder at ~~49 CFR 172, 173 or 174,~~
2 ~~or subject to other federal law governing the transportation of hazardous materials are not subject~~
3 ~~to any provision of this article or of article thirty-one of this chapter.~~ 49 C. F. R. Parts 172, 173 or
4 174;

5 ~~(B) Notwithstanding any other provision of this code to the contrary, barges~~ Barges or boats
6 subject to federal regulation under the United States Coast Guard, United States Department of
7 Homeland Security, including, but not limited to, federal regulations promulgated at ~~33 CFR 1, et~~
8 ~~seq.~~ 33 C. F. R. 1, et seq. or subject to other federal law governing the transportation of hazardous
9 materials. ~~are not subject to any provision of this article or of article thirty-one of this chapter;~~

10 ~~(C) Notwithstanding any other provision of this code to the contrary, swimming pools are~~
11 ~~not subject to any provision of this article or article thirty-one of this chapter.~~ Swimming pools;

12 (D) Process vessels;

13 (E) Devices containing drinking water for human or animal consumption, surface water or
14 groundwater, demineralized water, noncontact cooling water or water stored for fire or emergency
15 purposes;

16 (F) Devices containing food or food-grade materials used for human or animal consumption
17 and regulated under the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-392);

18 (G) Except when located in a zone of critical concern, a device located on a farm, the
19 contents of which are used exclusively for farm purposes and not for commercial distribution.

20 (H) Devices holding wastewater that is being actively treated or processed (e.g., clarifier,
21 chlorine contact chamber, batch reactor, etc.);

22 (I) Empty tanks held in inventory or offered for sale;

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1 (J) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline
2 Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline
3 facility regulated by the West Virginia Public Service Commission or otherwise regulated under any
4 state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the
5 Hazardous Liquid Pipeline Safety Act of 1979;

6 (K) Liquid traps, atmospheric and pressure vessels, or associated gathering lines related to
7 oil or gas production and gathering operations; and

8 (L) Electrical equipment such as transformers, circuit breakers and voltage regulator
9 transformers.

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

11 (3) "First point of isolation" means the valve, pump, dispenser or other device or equipment
12 on or nearest to the tank where the flow of fluids into or out of the tank may be shut off manually
13 or where it automatically shuts off in the event of a pipe or tank failure.

14 ~~(3)~~ (4) "Nonoperational storage tank" means an empty aboveground storage tank in which
15 fluids will not be deposited or from which fluids will not be dispensed on or after the effective date
16 of this article.

17 ~~(4)~~ (5) "Operator" means any person in control of, or having responsibility for, the daily
18 operation of an aboveground storage tank.

19 ~~(5)~~ (6) "Owner" means a person who holds title to, controls or owns an interest in an
20 aboveground storage tank, including ~~owners of tanks~~ the owner immediately preceding the
21 discontinuation of a tank's its use. "Owner" does not mean a person who holds an interest in a tank
22 for financial security unless the holder has taken possession of and operated the tank.

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1 ~~(6)~~ (7) "Person", "persons" or "people" means any individual, trust, firm, owner, operator,
2 corporation or other legal entity, including the United States government, an interstate commission
3 or other body, the state or any agency, board, bureau, office, department or political subdivision of
4 the state, but does not include the Department of Environmental Protection.

5 ~~(7)~~ (8) "Process vessel" means ~~tanks, containers or other vessels utilized in a facility in the~~
6 ~~manufacturing~~ a tank that forms an integral part of a production process through which there is a
7 steady, variable, recurring or intermittent flow of materials during the operation of the process or in
8 which a biological, chemical or physical change in the material occurs. This does not include tanks
9 used for storage of materials prior to their introduction into the production process or for the storage
10 of finished products or by-products of the production process.

11 (8) "Public groundwater supply source" means a primary source of water supply for a public
12 water system which is directly drawn from a well, underground stream, underground reservoir,
13 underground mine or other primary sources of water supplies which ~~is~~ are found underneath the
14 surface of the state.

15 (9) "Public surface water supply source" means a primary source of water supply for a public
16 water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or other
17 primary sources of water supplies which are found on the surface of the state.

18 (10) "Public surface water influenced groundwater supply source" means a source of water
19 supply ~~from~~ for a public water system which is directly drawn from an underground well,
20 underground river or stream, underground reservoir or underground mine, and the quantity ~~or~~ and
21 quality of the water in that underground supply source is heavily influenced, directly or indirectly,
22 by the quantity and quality of surface water in the immediate area.

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1 (11) "Public water system" means:

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

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

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

10 (B) A public water system does not include a bathhouse located on coal company property
11 solely for the use of its employees or a system which meets all of the following conditions:

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

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

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

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

18 ~~(12)~~(13) "Regulated level 1 aboveground storage tank" or "level 1 regulated tank" means:

19 (A) An AST located within a zone of critical concern, source water protection area, public
20 surface water influenced groundwater supply source area, or any AST system designated by the
21 Secretary as a level 1 regulated tank; or

22 (B) An AST that contains substances defined in section 101(14) of the Comprehensive

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1 Environmental Response, Compensation and Liability Act (CERCLA) as a “hazardous substance”
2 (42 U. S. C. § 9601(14)); or is on EPA’s “Consolidated List of Chemicals Subject to the Emergency
3 Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act
4 (CAA)” (known as “the List of Lists”) as provided by 40 C. F. R. §§ 355, 372, 302, and 68) in a
5 concentration of one percent or greater, regardless of the AST’s location, except ASTs containing
6 petroleum are not “level 1 regulated tanks” based solely upon containing constituents recorded on
7 the CERCLA lists; or,

8 (C) An AST with a capacity of 50,000 gallons or more, regardless of its contents or location.

9 (14) “Regulated level 2 aboveground storage tank” or “level 2 regulated tank” means an AST
10 that is located within a zone of peripheral concern that is not a level 1 regulated tank.

11 (15) “Regulated aboveground storage tank” or “regulated tank” means an AST that meets the
12 definition of a level 1 or level 2 regulated tank.

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

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1 ~~(13)~~ (17) "Secondary containment" means a safeguard applied to one or more aboveground
2 storage tanks that prevents the discharge into the waters of the state of the entire capacity of the
3 largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary
4 containment, the barrier and containment field must be sufficiently impervious to contain fluids in
5 the event of a release, and may include double-walled tanks, dikes, containment curbs, pits or
6 drainage trench enclosures that safely confine the release from a tank in a facility catchment basin or
7 holding pond. Earthen dikes and similar containment structures must be designed and constructed
8 to contain, for a minimum of seventy-two hours, fluid that escapes from a tank.

9 ~~(14)~~ (18) "Secretary" means the Secretary of the Department of Environmental Protection, or
10 his or her designee.

11 ~~(15)~~ (19) "Source water protection area" for a public groundwater supply source is the area
12 within an aquifer that supplies water to a public water supply well within a five-year time-of-travel,
13 and is determined by the mathematical calculation of the locations from which a drop of water placed
14 at the edge of the protection area would theoretically take five years to reach the well.

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

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1 principal stream and five hundred feet measured horizontally from each bank of the tributaries
2 draining into the principal stream.

3 (21) “Zone of peripheral concern” for a public surface water supply source and for a public
4 surface water influenced groundwater supply source is a corridor along streams within a watershed
5 that warrants scrutiny due to its proximity to the surface water intake and the intake’s susceptibility
6 to potential contaminants within that corridor. The zone of peripheral concern is determined using
7 a mathematical model that accounts for stream flows, gradient and area topography. The length of
8 the zone of peripheral concern is based on an additional five-hour time-of-travel of water in the
9 streams beyond the perimeter of the zone of critical concern, which creates a protection zone of ten
10 hours above the water intake. The width of the zone of peripheral concern is one thousand feet
11 measured horizontally from each bank of the principal stream and five hundred feet measured
12 horizontally from each bank of the tributaries draining into the principal stream.

13 **§22-30-4. Inventory and registration of existing aboveground storage tanks.**

14 (a) To assure protection of the water resources of the state, the secretary shall compile an
15 inventory of all aboveground storage tanks ~~in existence in this state, regardless of whether it is an~~
16 ~~operational or nonoperational storage tank on the effective date of this article.~~ The secretary shall
17 ~~prescribe an inventory and a registration form for this purpose within thirty days of the effective date~~
18 ~~of the enactment of this article.~~

19 (b) Each owner or operator of an aboveground storage tank shall complete and submit to the
20 secretary the registration form by July 1, 2015. The owner or operator of any aboveground storage
21 tank placed into service on or after the effective date of this section shall complete and submit a

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1 registration form to the secretary prior to storing fluids therein. Tank registrations previously
2 submitted to the secretary pursuant to this article shall constitute registration pursuant to this section.

3 (b) ~~(c)~~ At a minimum, the inventory registration form shall identify the ownership of the tank,
4 tank location, date of installation if known, type of construction, capacity and age of the tank, the type
5 and volume of fluid stored therein, ~~and the identity of and distance to the nearest groundwater public~~
6 ~~water supply intake and/or nearest surface water downstream public water supply intake. and the~~
7 circumstances under which the registration must be updated.

8 (c) If the inventoried registered tank is regulated under any existing state or federal regulatory
9 program, the owner of the tank shall be required to provide the identifying number of any license,
10 registration or permit issued for the tank ~~and identify the regulatory standards and requirements the~~
11 ~~tank is required to meet.~~

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

15 (e) Upon receipt of an inventory form, the secretary shall determine whether the storage tank
16 ~~is required to meet the minimum design, construction, inspection, secondary containment, leak~~
17 ~~reporting and performance standards equivalent to or greater than the standards and requirements~~
18 ~~established under an existing license or permit issued for the individual storage tank, storage tank~~
19 ~~farm or site on which the storage tank is located.~~

20 (f) ~~(d)~~ The secretary may charge a reasonable fee to cover the cost of maintaining and
21 overseeing the inventory and registration program. The fee may be set by emergency and legislative
22 ~~rules proposed for promulgation in accordance with the provisions of article three, chapter~~

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1 ~~twenty-nine-a of this code.~~ The Secretary shall charge a registration fee of \$40 per tank for all ASTs
2 in service prior to July 1, 2015. The registration fee for ASTs placed into service on or after July 1,
3 2015, shall be \$20 per tank. Registration fees for ASTs in service prior to July 1, 2015, shall be
4 deposited such that half the amount is placed into the AST Administrative Fund and half the amount
5 into the Protect Our Water Fund. Registration fees for ASTs placed into service on or after July 1,
6 2015, shall be deposited wholly into the AST Administrative Fund.

7 (1) The secretary shall propose emergency or legislative rules for legislative approval in
8 accordance with the provisions of article three, chapter twenty-nine-a of this code to set out the
9 process and procedure for registration fee assessment and collection.

10 (2) In recognition of the need to expeditiously capitalize the AST Administrative Fund and
11 the Protect Our Water Fund, the secretary may charge the fees provided for in this subsection by
12 sending invoices for the same to the owners or operators of ASTs prior to the promulgation of the
13 rules contemplated in subdivision (1) of this subsection.

14 ~~(g) (e) On and after October 1, 2014~~ After July 1, 2015, it shall be unlawful for any owner or
15 operator to operate or use an aboveground storage tank subject to this article which that has not been
16 properly registered or for which any applicable registration fee has not been paid. \\\

17 **§22-30-5. Aboveground Storage Tank Regulatory Program.**

18 (a) The secretary shall develop a regulatory program for new and existing regulated
19 aboveground storage tanks and secondary containment that takes into account the size, location and
20 contents of the tanks and sets out tiered requirements for regulated tanks. Level 1 tanks shall be
21 regulated to a higher standard of tank and secondary containment integrity based upon their proximity
22 to a public surface water supply source or public surface water influenced groundwater supply source.

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1 (b) The rules promulgated by the secretary for regulated tanks and secondary containment
2 shall, at a minimum, include the following:

3 (1) Criteria for the design, construction and maintenance of aboveground storage tanks;

4 (2) Criteria for the design, construction, maintenance or methods of secondary containment;

5 (3) Criteria for the design, operation, maintenance or methods of leak detection. Acceptable
6 leak detection shall include, but not be limited to, visual inspections, an inventory control system
7 together with tank testing, or a comparable system or method designed to identify leaks from
8 aboveground storage tanks;

9 (4) Requirements for recordkeeping;

10 (5) Requirements for the development of maintenance and corrosion prevention plans;

11 (6) Requirements for the closure of aboveground storage tanks and any remediation necessary
12 as a result of release from the aboveground storage tank;

13 (7) The assessment of a registration fee, and annual operation and response fees as determined
14 by the secretary;

15 (8) Certificate to operate issuance only after the application and any other supporting
16 documents have been submitted, reviewed and approved by the secretary;

17 (9) A procedure for the administrative resolution of violations including the assessment of
18 administrative civil penalties;

19 (c) For those entities that are otherwise regulated under those provisions of this chapter that
20 necessitate individual, site-specific permits or plans that require appropriate containment and
21 diversionary structures or equipment to prevent discharged or released materials from reaching the
22 waters of the state, the secretary may amend those permits or plans associated with those permits or

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1 both at the request of the permittee to include conditions pertaining to the management and control
2 of regulated tanks, so long as those conditions in the opinion of the secretary are sufficient in
3 combination with practices and protections already in place to protect the waters of the state. In its
4 application for permit or plan modification, the permittee shall advise the secretary whether, how and
5 to what extent the permittee adheres to other standards or plans with regard to tank and secondary
6 containment integrity, inspection and spill prevention and response, including, without limitation, API
7 653 standards for Tank Inspection, Repair, Alteration and Reconstruction or STI SP001 Standards
8 for Aboveground Storage Tanks or the requirements of the federal spill prevention and
9 countermeasures program governed by 40 C. F. R. Part 112. Inclusion of ASTs in amended permits
10 or plans would not relieve the owner or operator's responsibility to pay registration, certificate to
11 operate or Protect Our Water Fund fees. Specifically, the permits or plans the secretary may amend
12 include:

13 (1) Permits issued pursuant to the Surface Coal Mining and Reclamation Act, article three of
14 this chapter;

15 (2) Permits issued by the Office of Oil and Gas pursuant to article six or six-a of this chapter
16 or spill pollution and control measures plans required under 35 C. S. R. 1;

17 (3) Individual permits issued pursuant to the National Pollution Discharge Elimination
18 System, article eleven of this chapter;

19 (4) Permits issued pursuant to the Solid Waste Management Act, article fifteen of this chapter;
20 and

21 (5) Groundwater protection plans issued pursuant to article twelve of this chapter.

22 (d) Any entity whose permit or plan modification or amendment relating to tank integrity and

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1 secondary containment design operation and maintenance is approved by the secretary and so
2 maintained shall be deemed to be compliant with this article and entitles the entity to a certificate to
3 operate so long as the registration requirements of section four of this article are also met.

4 (e) The manner and time frames for implementation of the regulatory program required by this
5 section shall be established by the secretary through the proposal of emergency or legislative rules
6 in accordance with the provisions of article three, chapter twenty-nine-a of this code.

7 **§22-30-6. Evaluation and certification.**

8 (a) ~~Every owner or operator of an~~ Each regulated aboveground storage tank ~~regulated herein~~
9 ~~shall have an annual inspection of each tank performed~~ and its associated secondary containment
10 structure shall be evaluated by a qualified registered professional engineer or a qualified person
11 working under the direct supervision of a registered professional engineer, ~~regulated and licensed by~~
12 ~~the State Board of Registration for Professional Engineers~~, or by an individual certified to perform
13 tank inspections by the American Petroleum Institute or the Steel Tank Institute, or by a person
14 holding certification under another program approved by the secretary.

15 (b) ~~Every owner or operator shall submit on a form prescribed by the secretary~~, a certification
16 ~~from the engineer~~ that each regulated tank and its associated ~~equipment, leak detection system and~~
17 secondary containment structure have been evaluated by a qualified person as set forth in subsection
18 (a) of this section and meets the minimum standards established by in accordance with section five
19 of this article ~~or by the secretary by rule.~~

20 (b) ~~(c)~~ The certification form shall be submitted to the secretary ~~on or before January 1, 2015,~~
21 ~~and each year thereafter~~ within one hundred eighty days of the effective date of the rules establishing
22 standards that are adopted in accordance with section five of this article. Subsequent certifications

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1 shall be due at regular intervals thereafter as established by the secretary by legislative rule, but not
2 more frequently than once per calendar year.

3 (d) Any person who performs a tank evaluation in accordance with subsection (a) of this
4 section, a responsible person designated by the owner or operator and any other person designated
5 by the secretary by legislative rule may certify aboveground storage tanks in accordance with
6 subsection (b) of this section.

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

8 The secretary shall promulgate rules requiring owners and operators of regulated aboveground
9 storage tanks to provide evidence of adequate financial resources to undertake reasonable corrective
10 action for releases ~~of fluid~~ from regulated aboveground storage tanks based on factors including the
11 location, contents and size of the tanks. The means of demonstrating adequate financial responsibility
12 may include, but not be limited to, providing evidence of current insurance, guarantee, surety bond,
13 letter of credit, proof of assets, trust fund or qualification as a self insurer. The secretary may
14 determine which bonds and other guarantees of performance provided to the secretary pursuant to
15 other articles of this chapter shall satisfy the requirements of this section.

16 **§22-30-8. Corrective action.**

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

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

21 ~~(2)~~ (1) Require the owner or operator of an aboveground storage tank to undertake prompt
22 corrective action to protect human health, safety, water resources or the environment from

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1 contamination caused by a release; or

2 (3)(2) Undertake immediate corrective action with respect to any release or threatened release
3 of fluid from an aboveground storage tank when, in the judgment of the secretary, the action is
4 necessary to protect human health, safety, water resources or the environment from contamination
5 caused by a release.

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

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

21 (1) If no person can be found within thirty days, or a shorter period as may be necessary to
22 protect human health, safety, water resources and the environment, who is an owner or operator of

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1 the aboveground storage tank at issue and who is capable of carrying out the corrective action
2 properly;

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

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

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

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

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

20 (2) The owner or operator determined by the secretary to be responsible for the release ~~or~~
21 ~~threatened release~~ has been informed in writing of the secretary's determination and has been
22 requested by the secretary to take appropriate corrective action but is unable or unwilling to take

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1 proper action in a timely manner.

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

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

13 **§22-30-9. Spill prevention and response plan.**

14 (a) Within one hundred eighty days of the effective date of this article, each owner or operator
15 of an regulated aboveground storage tank shall submit to the secretary a spill prevention and response
16 plan for ~~each~~ all regulated aboveground storage ~~tank~~ tanks at a facility or location. Owners and
17 operators of regulated aboveground storage tanks shall file updated plans required to be submitted
18 by this section no less frequently than every ~~three~~ five years. ~~Each plan shall be site-specific,~~
19 ~~consistent with the requirements of this article, and developed in consultation with Bureau for Public~~
20 ~~Health, county and municipal emergency management agencies.~~ The spill prevention and response
21 plan shall at a minimum:

22 (1) ~~Identify and describe~~ Describe the activity that occurs at the site and ~~identify applicable~~

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1 ~~hazard and process information, including a specific listing and~~ provide an inventory of all the types
2 and amounts of fluids stored ~~amount of fluids stored and wastes generated that are stored in~~ regulated
3 aboveground storage tanks at the facility. The plan shall ~~include~~ provide a reference to the location
4 of the ~~material~~ safety data sheets (MSDS) required by the Occupational Safety and Health
5 Administration for all fluids ~~in use or~~ stored in regulated aboveground storage tanks at the facility.
6 ~~The material safety data sheets must include the health hazard number identified by the National Fire~~
7 ~~Protection Association. The plan shall also include drawings of the aboveground storage tank facility,~~
8 ~~including the locations of all drainage pipes and water outlets;~~

9 (2) Identify all facility-related positions with duties and responsibilities for ~~developing,~~
10 ~~implementing and maintaining the facility's plan. The plan shall describe in detail the chain of~~
11 ~~command at the aboveground storage tank facility~~ overseeing the implementation of the facility's plan
12 and list all facility emergency coordinators; ~~and all known emergency response contractors;~~

13 (3) ~~Provide~~ Describe a preventive maintenance program, ~~that includes~~ monitoring and
14 inspection procedures, ~~including identification of stress points, and~~ employee training programs and
15 security systems. The plan shall include a description of potential sources and areas where spills and
16 leaks may occur by drawings and plot plans and shall identify specific spill prevention measures for
17 those identified areas;

18 (4) ~~Details~~ Describe the ~~specific~~ general release response procedures that the aboveground
19 storage tank facility and contract emergency personnel shall ~~take~~ employ upon the occurrence of any
20 release; ~~of fluids from an aboveground storage tank at the facility,~~

21 (5) Provide contact information ~~obtained by the owner or operator of the aboveground storage~~
22 ~~tanks from~~ for the state, county and municipal emergency management agencies and the nearest

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1 downstream public water supply intake, and designate the person or persons to be notified in the event
2 of a release from an regulated aboveground storage tank that could reach waters of the state; and

3 (6) Provide the secretary with any ~~all~~ other ~~requested~~ information he or she may reasonably
4 request.

5 (b) Each owner of an regulated aboveground storage tank with an approved spill prevention
6 and response plan shall submit to the secretary a revised plan or addendum to the plan in accordance
7 with the requirements of this article if any of the following occur:

8 (1) There is a substantial modification in design, construction, operation or maintenance of
9 any regulated aboveground storage tank ~~or associated equipment~~, secondary containment or leak
10 detection equipment or methods, or there are other circumstances that increase the potential for fires,
11 explosions or releases of fluids;

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

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

15 (4) The plan fails in an emergency;

16 (5) The removal or the addition of any regulated aboveground storage tank; or

17 (6) Other circumstances occur ~~about~~ for which the secretary requests an update.

18 (c) The secretary shall approve the spill prevention and response plan or reject the plan and
19 require modifications as may be necessary and reasonable to assure the protection of the source water
20 of a public water system from a release of fluids from an regulated aboveground storage tank. If
21 rejected, the owner or operator of the regulated aboveground storage tank shall submit a revised plan
22 to the secretary for approval within thirty days of receipt of notification of the secretary's decision.

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1 Failure to comply with a plan approved by the secretary pursuant to this section is a violation of this
2 article.

3 (d) In lieu of a plan developed in accordance with the requirements of this section, the owner
4 or operator of a regulated aboveground storage tank may certify to the secretary that it is subject to:
5 (1) A groundwater protection plan approved by the secretary; or (2) a spill prevention control and
6 countermeasures plan that complies the requirements of 40 C. F. R. Part 112. Such plans shall be
7 made available for review or submitted to the secretary upon request.

8 ~~(d)~~ (e) Nothing contained in this section relieves the owner or operator of an aboveground
9 storage tank from his or her obligation to report any release ~~immediately to the department's~~
10 ~~emergency notification telephone number~~ in accordance with the provisions of this chapter and the
11 rules promulgated thereunder.

12 **§22-30-10. Notice to local governments and water companies.**

13 (a) The owner or operator of an regulated aboveground storage tank facility shall provide, as
14 required by the secretary public notice to any public water system where the facility is located within
15 the system's identified groundwater supply's or within the system's surface water supply's zone of
16 critical protection, to the local municipality, if any, and to the county in which the facility is located.
17 The notice shall provide a detailed inventory and subject to the protections afforded in section
18 fourteen of this article, notice to the applicable public water system and to state, county and municipal
19 emergency response organizations of the type and quantity of fluid stored in the regulated
20 aboveground storage tanks at the facility and the location of the material safety data sheets (MSDS)
21 associated with the fluids in storage. ~~The owner or operator shall also provide as required by the~~
22 secretary a copy of the spill prevention response plan and any updates thereto, which have been

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1 approved by the secretary pursuant to this act, to the applicable public water systems and county and
2 municipal emergency management agencies.

3 (b) In lieu of the information required in subsection (a) of this section, the tank owner or
4 operator may provide the inventory forms and applicable documents required by sections 311 and 312
5 of the Emergency Planning and Community Right-to-Know Act, subject to the protection of trade
6 secrets and site security information allowed by section fourteen of this article.

7 **§22-30-11. Required signage.**

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

15 **§22-30-12. Aboveground Storage Tank Administrative Fund.**

16 (a) The secretary shall collect ~~annual~~ a registration fees from owners or operators of each
17 aboveground storage tank as set forth in section four of this article and an annual operating fee for
18 each regulated aboveground tank in an amount to be promulgated in the legislative rules authorized
19 by this article, ~~to be used by the secretary~~ in an amount sufficient to defray the costs of administering
20 this article. All registration and operation permit fees and the net proceeds of all fines, penalties and
21 forfeitures collected under this article, including accrued interest, shall be paid into a special revenue
22 account, hereby created within the State Treasury, designated the Aboveground Storage Tank

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1 Administrative Fund.

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

6 **§22-30-13. Protect Our Water Fund.**

7 (a) Each owner or operator of ~~an~~ a regulated aboveground storage tank ~~located in this state~~
8 shall pay an annual fee to ~~establish a fund to~~ assure adequate response to leaking releases from
9 aboveground storage tanks. The amount of fees assessed pursuant to this section shall be set forth by
10 rule. ~~The fees must be sufficient to cover the regulatory oversight and services to be provided by~~
11 ~~designated agencies, including necessary technical and administrative personnel.~~ The proceeds of the
12 assessment shall be paid into a special revenue account, hereby created within the State Treasury,
13 designated the Protect Our Water Fund” The fund shall be administered by the secretary.
14 Expenditures from the fund shall be solely to respond to leaking releases from aboveground storage
15 tanks. ~~and are not authorized from collections but are to be made only in accordance with~~
16 ~~appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve~~
17 ~~of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this~~
18 ~~code. Provided, That for the fiscal years ending June 30, 2014 and 2015, expenditures are authorized~~
19 ~~from collections rather than pursuant to an explicit appropriation by the Legislature. At the end of~~
20 ~~each fiscal year, any unexpended balance, including accrued interest, on deposit in the Protect Our~~
21 ~~Water Fund shall not be transferred to the General Revenue Fund, but shall remain in the Protect Our~~
22 ~~Water Fund for expenditure pursuant to this section.~~

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1 (b) Each owner or operator of an regulated aboveground storage tank subject to a fee
2 assessment under subsection (a) of this section shall pay a fee based on the number, contents and
3 location of regulated aboveground storage tanks he or she owns or operates, as applicable. The
4 secretary shall vary the fees annually to a level necessary to produce a ~~sufficient~~ fund of no more than
5 \$1 million after three years from the effective date of this article, and to maintain an aggregate fund
6 of \$1 million at the beginning of each calendar year thereafter.

7 (c) At the end of each fiscal year, any unexpended balance, including accrued interest, on
8 deposit in the Protect Our Water Fund shall not be transferred to the General Revenue fund, but shall
9 remain in the Protect Our Water Fund for expenditure pursuant to this section.

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

12 (1) Responding to aboveground storage tank releases when, based on readily available
13 information, the secretary determines that immediate action is necessary to prevent or mitigate
14 significant risk of harm to human health, safety, water resources or the environment from
15 contamination caused by a release of fluid from aboveground storage tanks in situations for which
16 no federal funds are immediately available for the response, cleanup or containment: *Provided*, That
17 the secretary shall apply for and diligently pursue all available federal funds at the earliest possible
18 time;

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

21 (3) Reimbursing any nonresponsible parties for reasonable costs incurred with the
22 authorization of the secretary responding to perceived, potential or threatened releases from

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1 aboveground storage tanks.

2 (e) The secretary, through a cooperative agreement with another state regulatory agency, in
3 this or another state, may use the fund to compensate the cooperating agency for expenses the
4 cooperating agency incurs in carrying out ~~regulatory responsibilities that agency may have pursuant~~
5 ~~to this article~~ corrective actions pursuant to this article.

6 **§22-30-14. Public access to information.**

7 (a) The public shall have access to all documents and information submitted to the ~~agency~~
8 department pursuant to this article, subject to the limitations contained in the state Freedom of
9 Information Act, article one, chapter twenty-nine-b of this code, or any information designated by the
10 Division of Homeland Security and Emergency Management as restricted from public release. Trade
11 secrets, proprietary business information and information designated by the Division of Homeland
12 Security and Emergency Management as restricted from public release shall be secured and
13 safeguarded by the department. Such information or data shall not be disclosed to the public or to
14 any firm, individual or agency other than officials or authorized employees or Records, reports or
15 information obtained from any persons under this article may be disclosed to other officers,
16 employees or authorized representatives of this a state or federal agency implementing the provisions
17 of this article or any other applicable law related to releases of fluid from aboveground storage tanks
18 that impact the state's water resources. Any person who makes any unauthorized disclosure of such
19 confidential information or data is guilty of a misdemeanor and, upon conviction thereof, may be
20 fined not more than \$5,000 or confined in a correctional facility for not more than one year, or both.

21 (b) A list of the potential sources of significant contamination contained within the zone of
22 critical concern or zone of peripheral concern as provided by the ~~Department of Environmental~~

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1 ~~Protection, the Bureau for Public Health, working in conjunction with the department and the~~
2 ~~Division of Homeland Security and Emergency Management may only be disclosed to the extent~~
3 ~~consistent with the protection of trade secrets, confidential business information and information~~
4 ~~designated by the Division of Homeland Security and Emergency Management as described above.~~
5 The exact location of the contaminants within the zone of critical concern or zone of peripheral
6 concern is not subject to public disclosure in response to a Freedom of Information Act request under
7 article one, chapter twenty-nine-b of this code. However, the location, characteristics and approximate
8 quantities of potential sources of significant contamination within the zone of critical concern or zone
9 of peripheral concern shall be made known to one or more designees of the public water utility, and
10 shall be maintained in a confidential manner by the public water utility. In the event of a ~~chemical~~
11 ~~spill, release or related emergency~~ release to waters of the state that could affect a public water supply,
12 information ~~pertaining to any spill or~~ about the release ~~of contaminant~~ shall be immediately
13 ~~disseminated~~ promptly made available to any emergency responders responding to the site of a spill
14 or release and the general public shall be promptly notified in the event of a chemical spill, release
15 or related emergency by the Director of Homeland Security and Emergency Management.

16 (c) The Director of Homeland Security and Emergency Management may promulgate
17 emergency rules and shall propose legislative rules, pursuant to article three, chapter twenty-nine-a
18 of this code to effectuate the provisions of this section.

19 **§22-30-15. Inspections, monitoring and testing.**

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

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

3 (2) Conduct reasonable monitoring or testing;

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

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

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

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

11 (2) Inspect and obtain samples of any fluid contained in an aboveground storage tank ~~from~~
12 ~~any person~~;

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

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

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

17 (d) To ensure protection of the water resources of the state and compliance with any provision
18 of this article or rule promulgated thereunder, the secretary shall inspect level 1 regulated tanks at
19 least once every five years. The secretary shall develop an inspection protocol for level 2 regulated
20 tanks. annually any aboveground storage tank facility located within the zone of critical concern of
21 a public water system with a public surface water supply source or a public surface water influenced
22 groundwater supply source.

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1 **§22-30-16. Administrative orders; injunctive relief.**

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

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

15 **§22-30-17. Civil and criminal penalties.**

16 (a) Any person who fails to comply with an order of the secretary issued under subsection (a),
17 section sixteen of this article within the time specified in the order is liable for a civil penalty of not
18 more than \$25,000 for each day of continued noncompliance.

19 (b) Any owner or operator of an aboveground storage tank who knowingly fails to register or
20 obtain a ~~permit required by this article for an aboveground storage tank~~ certificate to operate a
21 regulated aboveground storage tank or submits false information pursuant to this article is liable for
22 a civil penalty not to exceed \$10,000 for each aboveground storage tank that is not registered or

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1 ~~permitted~~ for which a certificate to operate a regulated aboveground storage tank is not obtained or
2 for which false information is submitted.

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

6 (d) Any person who knowingly and intentionally violates any provision of this article, or any
7 rule or order issued under or subject to the provisions of this article, ~~shall be~~ is guilty of a
8 misdemeanor and, upon conviction thereof, shall be confined in a regional jail for a period of time
9 not exceeding one year, and be fined an amount not to exceed \$25,000.

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

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

20 (g) Where a person holding a permit is carrying out a program of pollution abatement or
21 remedial action in compliance with the conditions and terms of ~~the permit~~ a corrective action plan
22 approved by the secretary, the person is not subject to criminal prosecution for pollution recognized

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1 and authorized by the ~~permit~~ approved corrective action plan.

2 (h) Civil penalties are payable to the secretary. All moneys collected under this section for
3 civil fines collected under this article shall be deposited into ~~a restricted account known as the~~ either
4 the AST Administrative Fund or the Protect Our Water Fund. All money deposited into ~~this account~~
5 these accounts shall be used by the secretary solely ~~to respond to leaking aboveground storage tanks~~
6 for the purposes described in sections twelve and thirteen of this article..

7 **§22-30-18. Appeal to Environmental Quality Board.**

8 Any person aggrieved or adversely affected by an action, decision or order of the secretary
9 made and entered in accordance with the provisions of this article may appeal to the Environmental
10 Quality Board, pursuant to the provisions of article one, chapter twenty-two-b of this code.

11 **§22-30-19. Duplicative enforcement prohibited.**

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

16 **§22-30-21. Interagency cooperation.**

17 (a) In implementation of this article, the secretary shall coordinate with the Department of
18 Health and Human Resources, the West Virginia Public Service Commission, the Division of
19 Homeland Security and Emergency Management and local health departments to ensure the
20 successful planning and implementation of this act, including consideration of the role of those
21 agencies in providing services to owners and operators of regulated aboveground storage tanks and
22 public water systems.

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1 (b) The ~~secretary~~ Division of Homeland Security and Emergency Management shall also
2 coordinate with state and local emergency response agencies to ~~prepare and issue appropriate~~
3 ~~emergency response plans to~~ facilitate a coordinated emergency response and incident command and
4 communication between the owner or operator of the regulated aboveground storage tank, the state
5 and local emergency response agencies, and the affected public water systems.

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

9 **§22-30-22. Imminent and substantial danger.**

10 (a) Notwithstanding any other provision of this ~~chapter~~ code to the contrary, upon receipt of
11 evidence that an aboveground storage tank may present an imminent and substantial danger to human
12 health, water resources or the environment, the secretary may bring suit on behalf of the State of West
13 Virginia in the circuit court of the county in which the imminent and substantial danger exists or in
14 the circuit court of Kanawha County against any owner or operator of an aboveground storage tank
15 who has contributed or who is contributing to imminent and substantial danger to public health,
16 safety, water resources or the environment to order the person to take action as may be necessary to
17 abate the situation and protect human health, safety, water resources and the environment from
18 contamination caused by a release of fluid from an aboveground storage tank.

19 (b) Upon receipt of information that there is any aboveground storage tank that presents an
20 imminent and substantial danger to human health, safety, water resources or the environment, the
21 secretary shall require the owner or operator of the tank to provide immediate notice to the
22 appropriate state and local government agencies and any affected public water systems. In addition,

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1 the secretary shall require notice of any danger to be promptly posted at the aboveground storage tank
2 facility containing the aboveground storage tank at issue.

3 **§22-30-24. Powers and duties of secretary.**

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

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

8 (c) The secretary may revoke any registration ~~authorization or permit~~ or certificate to operate
9 for a significant violation of this article or the rules promulgated hereunder.

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

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

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

17 **§22-30-25. Waiving certain requirements of this article for specified categories of aboveground**
18 **storage tanks as designated by the department by legislative rule.**

19 The secretary may designate, by rules proposed for legislative approval in accordance with
20 article three, chapter twenty-nine-a of this code, additional categories of aboveground storage tanks
21 for which one or more of the requirements of this article may be waived upon a determination that
22 such categories of aboveground storage tanks either do not represent a substantial threat of

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1 contamination or they are currently regulated under standards that are consistent with the protective
2 standards and requirements set forth in this article and rules promulgated thereunder.

3 **§22-30-26. Secretary's authority to require individual NPDES permits within a zone of critical**
4 **concern.**

5 Any person who holds a National Pollutant Discharge Elimination System general permit
6 pursuant to the federal Water Pollution Control Act or the West Virginia Water Pollution Control Act,
7 article eleven of this chapter, for a site that contains one or more regulated aboveground storage tanks
8 may be required by the secretary to apply for and hold an individual permit under those acts. Any
9 general NPDES permit in effect on the effective date of this act shall remain in effect until the
10 secretary either issues or denies the individual NPDES permit.

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

12 **§22-31-2. Public Water System Supply Study Commission.**

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

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

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

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1 (3) The extent of available financing and funding alternatives which are available to existing
2 public water systems to pursue projects which are designed to create alternate sources of supply or
3 increased stability of supply in the event of a spill, release or contamination event which impairs the
4 water system's primary source of supply;

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

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

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

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

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

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

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

21 (5) The Commissioner of the Bureau for Public Health or his or her designee who shall serve
22 as chair;

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

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

4 (8) ~~One nonvoting member appointed by the President of the Senate~~ Two representatives
5 designated by the Business Industry Council; and

6 (9) ~~One nonvoting member appointed by the Speaker of the House of Delegates.~~ One
7 representative designated by West Virginia Rivers Coalition.

8 (c) Reports by the Commission shall be submitted to the Joint Committee on Government
9 and Finance on or before December 15 of each year, beginning December 15, 2014.

10 (d) The study commission shall terminate on June 30, 2019.