

H. B. 2574

(By Delegates Ashley, Hanshaw, Anderson, Storch, Westfall,
Zatezalo, Ireland, Miley, Williams, Boggs and L. Phillips)

[Introduced February 3, 2015; referred to the
Committee on the Judiciary.]

A BILL to repeal §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10 and §22-31-11 of the Code of West Virginia, 1931, as amended; and 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; to amend said code by adding thereto two new sections, designated §22-30-26 and §22-30-27; and to amend and reenact §22-31-12; all relating to the protection of water resources and public health generally; amending the Aboveground Storage Tank Act; defining terms, requiring the secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; requiring secretary to develop regulatory program for the tanks; providing factors to be considered in a program; requiring inspection and certification of the 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 the

1 posting of signs at or near the tanks; creating an administrative fund; creating the Protect Our
2 Water Fund; authorizing public access to certain information; authorizing inspections,
3 monitoring and testing by secretary; authorizing secretary to issue administrative orders and
4 seek injunctive relief; providing for civil and criminal penalties; allowing appeals to
5 Environmental Quality Board; prohibiting duplicative enforcement; requiring secretary to
6 report to legislative entities; requiring interagency coordination; establishing duties of
7 secretary upon imminent and substantial danger; providing additional duties and powers of
8 secretary generally; providing for waiver of certain requirements; authorizing the secretary
9 to require individual NPDES permits; authorizing the secretary to inventory potential sources
10 of significant contamination; renumbering §22-31-12 of the Public Water Supply Protection
11 Act concerning the public water system supply study commission; membership of study
12 commission; scope of study; establishing reporting requirements; requiring the establishment
13 of advance warning, testing and monitoring at certain water utilities; requiring certain
14 information be filed with the Public Water Commission; and requiring utility to report back
15 to Legislature if technology is infeasible.

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

17 That §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9,
18 §22-31-10 and §22-31-11 of the Code of West Virginia, 1931, as amended, be repealed; that
19 §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,
20 §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18,
21 §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code be amended and reenacted;
22 that said code be amended by adding thereto two new sections, designated §22-30-26 and §22-30-27;

1 that said code be amended by amending §22-31-12, all to read as follows:

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

3 **§22-30-2. Legislative findings.**

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

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

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

19 (d) The Legislature further finds that large quantities of fluids are stored in aboveground
20 storage tanks located in zones of critical concern within the state and that emergency situations
21 involving these fluids can and will arise that may present a hazard to human health, safety, the water
22 resources, the environment and the economy of the state. The Legislature further recognizes that

1 some of these fluids have been stored in aboveground storage tanks in a ~~regulated~~ manner
 2 insufficient to protect human health, safety, water resources, the environment and the economy of
 3 the state.

4 **§22-30-3. Definitions.**

5 For purposes of this article:

6 (1) "Aboveground storage tank" or "tank" means a device that is located within a zone of
 7 critical concern as defined in this article and is made to contain an accumulation of more than ~~one~~
 8 ten thousand ~~three hundred twenty~~ gallons of fluids that are ~~liquids~~ liquid at standard temperature
 9 and pressure, which is constructed primarily of ~~noncarbon~~ nonearthen materials, including wood,
 10 concrete, steel, plastic or fiberglass reinforced plastic, which provide structural support, more than
 11 ninety percent of the capacity of which is above the surface of the ground, ~~but does not include any~~
 12 ~~process vessel~~ and includes all ancillary pipes and dispensing systems up to the first point of
 13 isolation. The term includes stationary devices which are permanently affixed, and mobile devices
 14 ~~which remain in one location on a continuous basis for sixty or more days, and includes all ancillary~~
 15 ~~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~~ do not move for three hundred sixty-five or more days. Notwithstanding any other
 18 provision of this code to the contrary, ~~shipping containers, including railroad freight cars, the~~
 19 following categories of devices are not subject to the provisions 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. §§20101-2015, as amended,

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, surface water or groundwater, demineralized water,
14 noncontact cooling water or water stored for fire or emergency purposes;

15 (F) Devices containing food or food-grade materials;

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

18 (H) Devices containing hazardous waste subject to regulation under 40 C.F.R. Parts 264 and
19 265, exclusive of tanks subject to regulation under 40 C.F.R. § 265.201;

20 (I) Devices that are used to store brines, crude oil, or any other fluids that are directly related
21 to the exploration, development, stimulation, completion, or production of crude oil or natural gas
22 regulated under article six or article six-a of this chapter;

1 (J) Empty tanks held in inventory or offered for sale;

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

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

9 (M) Electrical equipment such as transformers, circuit breakers, and voltage regulator
10 transformers.

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

12 (3) ~~"Nonoperational storage tank" means an empty aboveground storage tank in which fluids~~
13 ~~will not be deposited or from which fluids will not be dispensed on or after the effective date of this~~
14 ~~article.~~ "First point of isolation" means the valve, pump, dispenser or other device or equipment on
15 or nearest to a tank where the flow of fluids into or out of the tank can be shut off.

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

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

22 (6) "Person", "persons" or "people" means any individual, trust, firm, owner, operator,

1 corporation or other legal entity, including the United States government, an interstate commission
2 or other body, the state or any agency, board, bureau, office, department or political subdivision of
3 the state, but does not include the Department of Environmental Protection.

4 (7) "Potential source of significant contamination" means a facility or activity designated by
5 the secretary that stores, uses or produces substances which, because of their composition, quantity
6 and location, pose a threat of significant adverse impact to public health or welfare if released into
7 the source water of a public water supply.

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

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

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

21 (10) "Public surface water influenced groundwater supply source" means a source of water
22 supply ~~from~~ for a public water system which is directly drawn from an underground well,

1 underground river or stream, underground reservoir or underground mine, and the quantity ~~or~~ and
2 quality of the water in that underground supply source is heavily influenced, directly or indirectly,
3 by the quantity and quality of surface water in the immediate area.

4 (11) "Public water system" means:

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

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

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

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

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

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

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

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

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

1 ~~(12)~~ (13) "Release" means any spilling, leaking, emitting, discharging, or leaching
2 ~~or disposing~~ of fluids from an aboveground storage tank into ~~groundwater, surface water or~~
3 ~~subsurface soils~~ waters of the state. The term ~~shall also~~ does not include spilling, leaking, emitting,
4 discharging, escaping, or leaching ~~or disposing~~ of fluids from an aboveground storage tank into a
5 secondary containment structure ~~or facility that poses an immediate threat of contamination of the~~
6 ~~soils, subsurface soils, surface water or groundwater~~: *Provided*, That the overflow or spillage of up
7 to twenty gallons of fluid during the loading or unloading of liquids shall not be required to be
8 reported if the overflow or spillage is wholly contained within a containment structure or facility,
9 it is promptly cleaned up and no portion of the overflow or spillage escapes onto the ground or into
10 adjacent surface water.

11 ~~(13)~~ (14) "Secondary containment" means a safeguard applied to one or more aboveground
12 storage tanks that prevents the discharge into the waters of the state of the entire capacity of the
13 largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary
14 containment, the barrier and containment field must be sufficiently impervious to contain fluids in
15 the event of a release, and may include double-walled tanks, dikes, containment curbs, pits or
16 drainage trench enclosures that safely confine the release from a tank in a facility catchment basin
17 or holding pond. Earthen dikes and similar containment structures must be designed and constructed
18 to contain fluid that escapes from a tank for a minimum of seventy-two hours.

19 ~~(14)~~ (15) "Secretary" means the Secretary of the Department of Environmental Protection,
20 or his or her designee.

21 ~~(15)~~ "Source water protection area" for a public groundwater supply source is the area within
22 an aquifer that supplies water to a public water supply well within a five-year time-of-travel, and is

1 ~~determined by the mathematical calculation of the locations from which a drop of water placed at~~
2 ~~the edge of the protection area would theoretically take five years to reach the well.~~

3 (16) "Zone of critical 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 ~~more~~ detailed scrutiny due to its proximity to the ~~surface~~ public water utility's intake
6 and the intake's susceptibility to potential contaminants within that corridor. The zone of critical
7 concern is determined using a mathematical model that accounts for stream flows, gradient and area
8 topography. The length of the zone of critical concern is based on a five-hour time of travel of water
9 in the streams to the ~~water intake, plus an additional one-fourth mile below the water~~ intake. The
10 width of the zone of critical concern is one thousand feet measured horizontally from each bank of
11 the principal stream and five hundred feet measured horizontally from each bank of the tributaries
12 draining directly into the principal stream. A zone of critical concern is established only for a public
13 water utility's primary drinking water intake, not secondary or alternative intakes.

14 **§22-30-4. Inventory and registration of existing aboveground storage tanks.**

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

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

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
5 type and volume of fluid generally stored therein, and the identity of and distance to the nearest
6 ~~groundwater public water supply intake and/or nearest surface water downstream public water supply~~
7 ~~intake.~~ and the circumstances under which the registration must be updated.

8 (e) 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~~ processing registrations. The fee may be set by
22 emergency and legislative rules proposed for promulgation in accordance with the provisions of

1 article three, chapter twenty-nine-a of this code.

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

5 **§22-30-5. Aboveground Storage Tank Regulatory Program; promulgation of appropriate**
6 **aboveground storage tank standards. ~~permitting procedures and waiver~~**
7 **~~requirements; rulemaking requirements.~~**

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

11 (b) ~~(a) To assure further protection of the water resources of the state, the~~ The secretary shall
12 develop a regulatory program for new and existing aboveground storage tanks and secondary
13 containment ~~incorporating nationally recognized tank standards such as those standards developed~~
14 ~~by the American Petroleum Institute (API), the Steel Tank Institute (STI) or comparable authorities,~~
15 ~~and taking that takes~~ into account the size, location and contents of the tanks: ~~At a minimum, the~~
16 ~~program shall include the following~~ Provided, That each tank or secondary containment which the
17 owner or operator certifies as being operated and maintained in accordance with any one of the
18 following standards or plans shall be subject to only such standards and/or plans in lieu of the
19 standards developed by the secretary in accordance with subsection (b) of this section:

20 (1) An API or STI tank operation and maintenance standard, including but not limited to API
21 653 standards for “Tank Inspection, Repair, Alteration, and Reconstruction” or STISP001 “Standard
22 for the Inspection of Aboveground Storage Tanks”; or

1 (2) A groundwater protection plan approved by the secretary in accordance with article
 2 twelve of this chapter; or

3 (3) The requirements of the federal spill prevention control and countermeasures program,
 4 40 C.F.R. Part 112.

5 (b) The standards promulgated by the secretary for tanks and secondary containment not
 6 regulated in accordance with subsection (a) of this section shall include the following:

7 ~~(1) A requirement to submit a verified application for a permit containing information as may~~
 8 ~~be prescribed by the secretary;~~

9 ~~(2) (1) Performance standards~~ Criteria ~~for the~~ design, construction, installation, and
 10 maintenance of aboveground storage tanks; corrosion detection and maintenance, release detection
 11 and prevention and secondary containment to ensure the structural integrity of the storage tank and
 12 the secondary containment;

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

14 ~~(3) Requirements for maintaining a leak detection system;~~ Criteria for the design, operation,
 15 maintenance, or methods of leak detection. Acceptable leak detection shall include visual
 16 inspections, an inventory control systems together with tank testing, or a comparable system or
 17 method designed to identify releases leaks from aboveground storage tanks; in a manner consistent
 18 with the protection of human health, safety, water resources and the environment;

19 ~~(4) Requirements for maintaining records of any monitoring or leak detection system,~~
 20 ~~corrosion prevention, inventory control system or tank testing system;~~ recordkeeping; and

21 ~~(5) Requirements for early detection of releases and immediate reporting of releases;~~
 22 Requirements for the development of maintenance and corrosion prevention plans.

1 ~~(6) Requirements for developing a corrective action plan to expeditiously respond to any~~
2 ~~releases;~~

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

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

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

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

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

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

20 ~~(ii) Cathodic protection experts for all aspects of corrosion prevention projects requiring~~
21 ~~knowledge of the design, installation, monitoring or maintenance of a cathodic protection system;~~

22 ~~and~~

1 (iii) Inspectors to ensure best practices and standards are adhered to on a corrosion prevention
2 and mitigation project;

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

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

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

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

16 (12) A requirement that any aboveground storage tank maintenance work shall commence
17 within six months from the date the permit was issued and must be completed within one year of
18 commencement. If the work has not started or is not completed during the stated time periods, the
19 permit shall expire and a new permit shall be required unless a written extension is granted by the
20 secretary. An extension may be granted only if the applicant can demonstrate that the delay was not
21 deliberate and that the delay will not present harm to human health, safety, water resources or the
22 environment;

1 ~~(13) A procedure for the administrative resolution of violations including the assessment of~~
2 ~~administrative civil penalties;~~

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

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

14 ~~(16) Requirements for maintaining written or electronic records that log at least the following~~
15 ~~information for each aboveground storage tank: Tank numbers, additives, verifiable content levels,~~
16 ~~deliveries, amounts and quantities, dispensing, repairs and maintenance; and including the~~
17 ~~requirement that such logs be signed by the owner or a designated responsible supervisor, and be~~
18 ~~available for inspection upon request of the secretary; and~~

19 ~~(17) Compliance with a nationally recognized tank standard as solely determined by the~~
20 ~~department shall be deemed compliance with the requirements that are developed in accordance~~
21 ~~with subsection (9) of this section.~~

22 ~~(c) The manner and time frames for implementation of the regulatory program required by~~

1 this section shall be established by the secretary through emergency or legislative rule-making in
2 accordance with the provisions of article three, chapter twenty-nine-a of this code.

3 **§22-30-6. Annual inspection Evaluation and certification.**

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

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

16 (b) ~~(c)~~ The certification form shall be submitted to the secretary ~~on or before January 1, 2015,~~
17 ~~and each year thereafter~~ within one hundred eighty days of the effective date of the rules establishing
18 standards that are adopted in accordance with section five of this article. Subsequent certifications
19 shall be due at regular intervals thereafter as established by the secretary by legislative rule, but not
20 more frequently than once per calendar year.

21 (d) Any person who performs a tank evaluation in accordance with subsection (a) of this
22 section, any person designated by the owner or operator of a tank, and any other person designated

1 by the secretary by legislative rule may certify aboveground storage tanks in accordance with
 2 subsection (b) of this section.

3 **§22-30-7. Financial responsibility.**

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

12 **§22-30-8. Corrective action.**

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

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

17 ~~(2)~~ (1) Require the owner or operator of an aboveground storage tank to undertake prompt
 18 corrective action to protect human health, safety, water resources or the environment from
 19 contamination caused by a release; or

20 ~~(3)~~ (2) Undertake immediate corrective action with respect to any release or threatened
 21 release of fluid from an aboveground storage tank when, in the judgment of the secretary, the action
 22 is necessary to protect human health, safety, water resources or the environment from contamination

1 caused by a release.

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

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

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

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

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

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

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

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

16 (2) The owner or operator determined by the secretary to be responsible for the release ~~or~~
17 ~~threatened release~~ has been informed in writing of the secretary's determination and has been
18 requested by the secretary to take appropriate corrective action but is unable or unwilling to take
19 proper action in a timely manner.

20 (e) The written notice to the owner or operator must inform the owner or operator that if it
21 is subsequently found liable by a court of competent jurisdiction for releases pursuant to this section,
22 the owner or operator will be required to reimburse the Protect Our Water Fund for the costs of the

1 investigation, information gathering, and corrective action taken by the secretary.

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

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

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

18 (1) ~~Identify and describe~~ Describe the activity that occurs at the site and ~~identify applicable~~
19 ~~hazard and process information, including a specific listing and~~ provide an inventory of ~~all the~~ types
20 and amounts of fluids stored, ~~amount of fluids stored and wastes generated that are stored in~~
21 aboveground storage tanks at the facility. The plan shall ~~include~~ provide a reference to the location
22 of the ~~material~~ safety data sheets (MSDS) required by the Occupational Safety and Health

1 Administration for all fluids ~~in use or~~ stored in aboveground storage tanks at the facility. The
2 material safety data sheets ~~must include the health hazard number identified by the National Fire~~
3 ~~Protection Association. The plan shall also include drawings of the aboveground storage tank~~
4 ~~facility, including the locations of all drainage pipes and water outlets;~~

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

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

14 (4) ~~Details~~ Describe the specific general release response procedures that the aboveground
15 storage tank facility and contract emergency personnel shall ~~take~~ employ upon the occurrence of any
16 ~~release~~ escape of fluids from an aboveground storage tank at the facility, regardless of whether such
17 fluids escape secondary containment;

18 (5) Provide contact information ~~obtained by the owner or operator of the aboveground storage~~
19 ~~tanks from~~ for the county and municipal emergency management agencies and the nearest
20 downstream public water supply intake, and designate the person or persons to be notified in the
21 event of a release from an aboveground storage tank that could reach waters of the state; and

22 (6) Provide the secretary with all other ~~requested~~ information required by legislative rule.

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

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

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

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

11 (4) The plan fails in an emergency; or

12 ~~(5) The removal or the addition of any aboveground storage tank; or~~

13 ~~(6)~~ (5) Other circumstances occur ~~about~~ for which the secretary requests an update.

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

20 (d) In lieu of a plan developed in accordance with the requirements of this section, the owner
21 or operator of an aboveground storage tank may certify to the secretary that it is subject to (1) a
22 groundwater protection plan approved by the secretary, or (2) a spill prevention control and

1 countermeasures plan that complies the requirements of 40 C.F.R. Part 112. Such plans shall be
 2 made available for review by the secretary upon request.

3 ~~(d)~~ (e) Nothing contained in this section relieves the owner or operator of an aboveground
 4 storage tank from his or her obligation to report any release ~~immediately to the department's~~
 5 ~~emergency notification telephone number~~ in accordance with the law.

6 **§22-30-10. Notice to local governments and water companies.**

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

20 (b) In lieu of the information required in subsection (a) of this section, the tank owner or
 21 operator may provide the inventory forms and applicable documents required by sections 311 and
 22 312 of the Emergency Planning and Community Right-to-Know Act, subject to the protection of

1 trade secrets and site security information allowed by section fourteen of this article.

2 **§22-30-11. Required signage.**

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

10 **§22-30-12. Aboveground Storage Tank Administrative Fund.**

11 (a) The secretary shall collect ~~annual~~ a registration fees from owners or operators of each
 12 aboveground storage tank in an amount to be promulgated in the legislative rules authorized by this
 13 article, to be used by the secretary to defray the costs of administering this article. All registration
 14 ~~and permit~~ fees and the net proceeds of all fines, penalties and forfeitures collected under this article,
 15 including accrued interest, shall be paid into a special revenue account, hereby created within the
 16 State Treasury, designated the "Aboveground Storage Tank Administrative Fund."

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

21 **§22-30-13. Protect Our Water Fund.**

22 (a) Each owner or operator of an aboveground storage tank ~~located in this state~~ shall pay an

1 annual fee to establish a fund to assure adequate response to ~~leaking~~ releases from aboveground
2 storage tanks. The amount of fees assessed pursuant to this section shall be set forth by rule. ~~The fees~~
3 ~~must be sufficient to cover the regulatory oversight and services to be provided by designated~~
4 ~~agencies, including necessary technical and administrative personnel.~~ The proceeds of the assessment
5 shall be paid into a special revenue account, hereby created within the State Treasury, designated the
6 “Protect Our Water Fund.” The fund shall be administered by the secretary. Expenditures from the
7 fund shall be solely to respond to ~~leaking~~ releases from aboveground storage tanks, and are not
8 authorized from collections but are to be made only in accordance with appropriation by the
9 Legislature and in accordance with the provisions of article three, chapter twelve of this code and
10 upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided,*
11 That for the fiscal years ending June 30, ~~2014~~ 2015 and ~~2015~~ 2016, expenditures are authorized from
12 collections rather than pursuant to an explicit appropriation by the Legislature. ~~At the end of each~~
13 ~~fiscal year, any unexpended balance, including accrued interest, on deposit in the Protect Our Water~~
14 ~~Fund shall not be transferred to the General Revenue Fund, but shall remain in the Protect Our Water~~
15 ~~Fund for expenditure pursuant to this section.~~

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

22 (c) At the end of each fiscal year, any unexpended balance, including accrued interest, on

1 deposit in the Protect Our Water Fund shall not be transferred to the General Revenue fund, but shall
2 remain in the Protect Our Water Fund for expenditure pursuant to this section.

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

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

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

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

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

21 **§22-30-14. Public access to information.**

22 (a) The public shall have access to all documents and information submitted to the ~~agency~~

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

14 (b) A list of the potential sources of significant contamination contained within the zone of
15 critical concern as provided by the Department of Environmental Protection, the Bureau for Public
16 Health and the Division of Homeland Security and Emergency Management may only be disclosed
17 to the extent consistent with the protection of trade secrets, confidential business information and
18 information designated by the Division of Homeland Security and Emergency Management as
19 described above. The exact location of the contaminants within the zone of critical concern is not
20 subject to public disclosure in response to a Freedom of Information Act request under article one,
21 chapter twenty-nine-b of this code. However, the ~~location~~, characteristics and approximate quantities
22 of potential sources of significant contamination within the zone of critical concern shall be made

1 known to one or more designees of the public water utility, and shall be maintained in a confidential
 2 manner by the public water utility. In the event of a ~~chemical spill, release or related emergency~~
 3 release to waters of the state that could affect a public water supply, information ~~pertaining to any~~
 4 ~~spill or~~ about the release of contaminant shall be ~~immediately disseminated~~ promptly made available
 5 to any emergency responders responding to the site of a spill or release and ~~the general public shall~~
 6 ~~be promptly notified in the event of a chemical spill, release or related emergency.~~

7 **§22-30-15. Inspections, monitoring and testing.**

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

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

13 (2) Conduct reasonable monitoring or testing;

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

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

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

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

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

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

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

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

5 ~~(d) To ensure protection of the water resources of the state and compliance with any~~
6 ~~provision of this article or rule promulgated thereunder, the secretary shall inspect at least annually~~
7 ~~any aboveground storage tank facility located within the zone of critical concern of a public water~~
8 ~~system with a public surface water supply source or a public surface water influenced groundwater~~
9 ~~supply source.~~

10 **§22-30-16. Administrative orders; injunctive relief.**

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

20 (b) In addition to the powers and authority granted to the secretary by this chapter to enter
21 into consent agreements, settlements, and otherwise enforce this chapter, the secretary shall propose
22 rules for legislative approval to establish a mechanism for the administrative resolution of violations

1 set forth in this article through consent order or agreement as an alternative to instituting a civil
2 action.

3 **§22-30-17. Civil and criminal penalties.**

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

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

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

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

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

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

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

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

11 (h) Civil penalties are payable to the secretary. All moneys collected under this section for
12 civil fines collected under this article shall be deposited into a restricted account known as the
13 “Protect Our Water Fund.” All money deposited into this account shall be used by the secretary
14 solely to respond to ~~leaking~~ releases from aboveground storage tanks.

15 **§22-30-18. Appeal to Environmental Quality Board.**

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

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

20 No enforcement proceeding brought pursuant to this article may be duplicated by an
21 enforcement proceeding subsequently commenced under some other article of this code with respect
22 to the same transaction or event, unless the subsequent proceeding involves the violation of a permit

1 or permitting requirement of such other article.

2 **§22-30-21. Interagency cooperation.**

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

9 (b) The secretary shall also coordinate with state and local emergency response agencies to
10 prepare and issue appropriate emergency response plans to facilitate a coordinated emergency
11 response and incident command and communication between the owner or operator of the
12 aboveground storage tank, the state and local emergency response agencies and the affected public
13 water ~~system~~ utility.

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

17 **§22-30-22. Imminent and substantial danger.**

18 (a) Notwithstanding any other provision of this chapter to the contrary, upon receipt of
19 evidence that an aboveground storage tank may present an imminent and substantial danger to
20 human health, water resources or the environment, the secretary may bring suit on behalf of the State
21 of West Virginia in the Circuit Court of Kanawha County against any owner or operator of an
22 aboveground storage tank who has contributed or who is contributing to imminent and substantial

1 danger to public health, safety, water resources or the environment to order the person to take action
2 as may be necessary to abate the situation and protect human health, safety, water resources and the
3 environment from contamination caused by a release of fluid from an aboveground storage tank.

4 (b) Upon receipt of information that there is any aboveground storage tank that presents an
5 imminent and substantial danger to human health, safety, water resources or the environment, the
6 secretary shall provide immediate notice to the appropriate state and local government agencies and
7 any affected public water ~~system~~ utility. In addition, the secretary shall require notice of any danger
8 to be promptly posted at the aboveground storage tank facility containing the aboveground
9 storage tank at issue.

10 **§22-30-24. Powers and duties of secretary.**

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

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

15 (c) The secretary may revoke any registration ~~authorization or permit~~ for a significant
16 violation of this article or the rules promulgated hereunder.

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

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

21 (f) The secretary may recover the costs of taking corrective action, including costs associated
22 with authorizing third parties to perform corrective action. Costs may not include routine inspection

1 and administrative activities not associated with a release.

2 ~~§22-30-25. Scope of article; waiving additional permitting requirements for certain categories~~
 3 ~~of aboveground storage tanks; establishing a process for granting waivers for~~
 4 ~~additional categories of ground storage tanks, by legislative rule, upon~~
 5 ~~verification that the category of tanks are regulated under comparable or more~~
 6 ~~rigorous protective state or federal standards. Waiving certain requirements of~~
 7 ~~this article for specified categories of aboveground storage tanks as designated~~
 8 ~~by the department by legislative rule.~~

9 (a) ~~While all aboveground storage tanks shall be required to participate in the inventory and~~
 10 ~~registration process set forth in section four of this article, the following categories of containers and~~
 11 ~~tanks shall not be required to be permitted under section five of this article, either because they do~~
 12 ~~not represent a substantial threat of contamination, or they are currently regulated under standards~~
 13 ~~which meet or exceed the protective standards and requirements set forth in this article:~~

14 (1) ~~An aboveground storage tank containing drinking water, filtered surface water,~~
 15 ~~demineralized water, noncontact cooling water or water stored for fire or emergency purposes;~~

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

17 (3) ~~Septic tanks and home aeration systems;~~

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

1 ~~(5) Equipment or machinery containing substances for operational purposes, including~~
2 ~~integral hydraulic lift tanks, lubricating oil reservoirs for pumps and motors, electrical equipment~~
3 ~~and heating and cooling equipment;~~

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

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

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

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

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

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

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

21 ~~(3) Regular inspections and routine integrity testing requirements which are equally~~
22 ~~protective to the requirements established pursuant to this article or any rules promulgated~~

1 thereunder; and

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

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

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

14 The Department of Environmental Protection may designate, by rule, additional categories
15 of aboveground storage tanks for which one or more of the requirements of this article may be
16 waived upon a determination that such categories of aboveground storage tanks either do not
17 represent a substantial threat of contamination or they are currently regulated under standards that
18 are consistent with the protective standards and requirements set forth in this article.

19 **§22-30-26. Secretary's authority to require individual NPDES permits within a zone of critical**
20 **concern.**

21 Any permittee that holds a National Pollutant Discharge Elimination System general permit
22 pursuant to the federal Water Pollution Control Act for a site that contains one or more aboveground

1 storage tanks may be required by the secretary to apply for and hold an individual permit under that
 2 act. Any general NPDES permit held currently under that act shall remain in effect until the
 3 individual NPDES permit is either issued or denied.

4 **§22-30-27. Inventory of potential sources of significant contamination.**

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

14 (b) The Department shall provide a copy of the compiled list of known potential sources of
 15 significant contamination in each zone of critical concern to the affected public water utility, the
 16 Bureau for Public Health, and the Division of Homeland Security and Emergency Management.

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

18 ~~§22-31-12.~~ **§22-31-2. Public Water System Supply Study Commission.**

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

22 (1) A review and assessment of the effectiveness and the quality of information contained

1 in updated source water protection plans required for certain public water systems by the provisions
2 of section nine-c, article one, chapter sixteen of this code;

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

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

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

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

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

20 (1) Four members appointed by the Governor, one of whom shall be a professional engineer
21 experienced in the design and construction of public water systems; one of whom shall be a
22 hydrologist or other expert experienced in determining the flow characteristics of rivers and streams;

- 1 one of whom shall be an environmental toxicologist or other public health expert who is familiar
 2 with the impact of contaminants on the human body; and one citizen representative;
- 3 (2) One representative designated by the Rural Water Association;
- 4 (3) One representative designated by the Municipal League;
- 5 (4) The Secretary of the Department of Environmental Protection or his or her designee;
- 6 (5) The Commissioner of the Bureau for Public Health or his or her designee;
- 7 (6) The Director of the Division of Homeland Security and Emergency Management or his
 8 or her designee;
- 9 (7) The Chairman of the Public Service Commission or his or her designee;
- 10 (8) One nonvoting member appointed by the President of the Senate; and
- 11 (9) One nonvoting member appointed by the Speaker of the House of Delegates.
- 12 (c) Reports by the Commission shall be submitted to the Joint Committee on Government
 13 and Finance on or before December 15 of each year, beginning December 15, 2014.

NOTE: The purpose of this bill is to amend the Aboveground Storage Tank Act to address and correct certain unintended consequences of the original enactment. The program is now focused on tanks with a capacity of 10,000 gallons or above within zones of critical concern of public water utilities. Definitions are amended and added. The owner or operator of a tank will certify its compliance with an approved industry standard or program, or to the standards developed by the DEP by rule. Releases are defined in the same way as in other programs administered by the Department of Environmental Protection. Spill prevention and response plans are required. Much of article 31 has been deleted although key provisions have been moved into article 30.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§22-30-26 and §22-30-27 are new; therefore, it has been completely underscored.