

ENGROSSED
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,

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§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 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

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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

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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, §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

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

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1 Emergency Management pursuant to section 312 of the federal
2 Emergency Planning and Community Right-to-Know Act, and
3 other information available to the agency.

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

9 **CHAPTER 22. ENVIRONMENTAL RESOURCES**

10 **ARTICLE 30. THE ABOVEGROUND STORAGE TANK**
11 **ACT.**

12 **§22-30-2. Legislative findings.**

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

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

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

18 (d) The Legislature further finds that large quantities of

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

9 **§22-30-3. Definitions.**

10 For purposes of this article:

11 (1) "Aboveground storage tank" or "tank" or "AST"
12 means a device made to contain an accumulation of more than
13 one thousand three hundred twenty gallons of fluids that are
14 ~~liquids~~ liquid at standard temperature and pressure, which is
15 constructed primarily of ~~noncarbon~~ nonearthen materials,
16 including ~~wood~~, concrete, steel, plastic or fiberglass reinforced
17 plastic, which provide structural support, more than ninety
18 percent of the capacity of which is above the surface of the

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1 ground, ~~but does not include any process vessel~~ and includes all
2 ancillary pipes and dispensing systems up to the first point of
3 isolation. The term includes stationary devices which are
4 permanently affixed, and mobile devices which remain in one
5 location on a continuous basis for three hundred sixty-five or
6 more days. A device meeting this definition containing
7 hazardous waste subject to regulation under 40 C. F. R. Parts
8 264 and 265, exclusive of tanks subject to regulation under 40 C.
9 F. R. § 265.201 is included in this definition but is not a
10 regulated tank. ~~and includes all ancillary aboveground pipes and~~
11 ~~dispensing systems up to the first point of isolation and all~~
12 ~~ancillary underground pipes and dispensing systems connected~~
13 ~~to the aboveground containers to the first point of isolation~~
14 Notwithstanding any other provision of this code to the contrary,
15 ~~shipping containers, including railroad freight cars,~~ the following
16 categories of devices are not subject to the provisions of this
17 article:

18 (A) Shipping containers that are subject to state or

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1 federal laws or regulations governing the transportation of
2 hazardous materials, including, but not limited to, railroad
3 freight cars subject to federal regulation under the Federal
4 Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended,
5 including, but not limited to, federal regulations promulgated
6 thereunder at ~~49 CFR 172, 173 or 174~~, or subject to other federal
7 law governing the transportation of hazardous materials are not
8 subject to any provision of this article or of article thirty-one of
9 this chapter. 49 C. F. R. Parts 172, 173 or 174;

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

18 (C) ~~Notwithstanding any other provision of this code to~~

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1 ~~the contrary, swimming pools are not subject to any provision of~~
2 ~~this article or article thirty-one of this chapter.~~ Swimming pools;

3 (D) Process vessels;

4 (E) Devices containing drinking water for human or
5 animal consumption, surface water or groundwater,
6 demineralized water, noncontact cooling water or water stored
7 for fire or emergency purposes;

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

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

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

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

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

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

12 (L) Electrical equipment such as transformers, circuit
13 breakers and voltage regulator transformers.

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

16 (3) "First point of isolation" means the valve, pump,
17 dispenser or other device or equipment on or nearest to the tank
18 where the flow of fluids into or out of the tank may be shut off

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1 manually or where it automatically shuts off in the event of a
2 pipe or tank failure.

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

7 (4) (5) "Operator" means any person in control of, or
8 having responsibility for, the daily operation of an aboveground
9 storage tank.

10 (5) (6) "Owner" means a person who holds title to,
11 controls or owns an interest in an aboveground storage tank,
12 including ~~owners of tanks~~ the owner immediately preceding the
13 discontinuation of ~~a tank's~~ its use. "Owner" does not mean a
14 person who holds an interest in a tank for financial security
15 unless the holder has taken possession of and operated the tank.

16 (6) (7) "Person", "persons" or "people" means any
17 individual, trust, firm, owner, operator, corporation or other legal
18 entity, including the United States government, an interstate

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1 commission or other body, the state or any agency, board,
2 bureau, office, department or political subdivision of the state,
3 but does not include the Department of Environmental
4 Protection.

5 (7) (8) "Process vessel" means ~~tanks, containers or other~~
6 ~~vessels utilized in a facility in the manufacturing~~ a tank that
7 forms an integral part of a production process through which
8 there is a steady, variable, recurring or intermittent flow of
9 materials during the operation of the process or in which a
10 biological, chemical or physical change in the material occurs.

11 This does not include tanks used for storage of materials prior to
12 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
15 source of water supply for a public water system which is
16 directly drawn from a well, underground stream, underground
17 reservoir, underground mine or other primary sources of water
18 supplies which ~~is~~ are found underneath the surface of the state.

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

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

14 (11) "Public water system" means:

15 (A) Any water supply or system which regularly supplies
16 or offers to supply water for human consumption through pipes
17 or other constructed conveyances, if serving at least an average
18 of twenty-five individuals per day for at least sixty days per year,

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1 or which has at least fifteen service connections, and shall
2 include:

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

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

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

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

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

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

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

3 ~~(12)~~(13) “Regulated level 1 aboveground storage tank”
4 or “level 1 regulated tank” means:

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

9 (B) An AST that contains substances defined in section
10 101(14) of the Comprehensive Environmental Response,
11 Compensation and Liability Act (CERCLA) as a “hazardous
12 substance” (42 U. S. C. § 9601(14)); or is on EPA’s
13 “Consolidated List of Chemicals Subject to the Emergency
14 Planning and Community Right to Know Act (EPCRA),
15 CERCLA, and §112(r) of the Clean Air Act (CAA)” (known as
16 “the List of Lists”) as provided by 40 C. F. R. §§ 355, 372, 302,
17 and 68) in a concentration of one percent or greater, regardless
18 of the AST’s location, except ASTs containing petroleum are not

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1 “level 1 regulated tanks” based solely upon containing
2 constituents recorded on the CERCLA lists; or,

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

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

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

11 ~~(12)~~ (16) "Release" means any spilling, leaking, emitting,
12 discharging, escaping, or leaching or disposing of fluids from an
13 aboveground storage tank into groundwater, surface water or the
14 waters of the state or escaping from secondary containment.
15 ~~subsurface soils. The term shall also include spilling, leaking,~~
16 ~~emitting, discharging, escaping, or leaching or disposing of~~
17 ~~fluids from an aboveground storage tank into a containment~~
18 ~~structure. or facility that poses an immediate threat of~~

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1 ~~contamination of the soils, subsurface soils, surface water or~~
2 ~~groundwater. *Provided*, That the overflow or spillage of up to~~
3 ~~twenty gallons of fluid during the loading or unloading of liquids~~
4 ~~shall not be required to be reported if the overflow or spillage is~~
5 ~~wholly contained within a containment structure or facility, it is~~
6 ~~promptly cleaned up and no portion of the overflow or spillage~~
7 ~~escapes onto the ground or into adjacent surface water.~~

8 (13) (17) "Secondary containment" means a safeguard
9 applied to one or more aboveground storage tanks that prevents
10 the discharge into the waters of the state of the entire capacity of
11 the largest single tank and sufficient freeboard to contain
12 precipitation. In order to qualify as secondary containment, the
13 barrier and containment field must be sufficiently impervious to
14 contain fluids in the event of a release, and may include
15 double-walled tanks, dikes, containment curbs, pits or drainage
16 trench enclosures that safely confine the release from a tank in
17 a facility catchment basin or holding pond. Earthen dikes and
18 similar containment structures must be designed and constructed

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1 to contain, for a minimum of seventy-two hours, fluid that
2 escapes from a tank.

3 (14) (18) "Secretary" means the Secretary of the
4 Department of Environmental Protection, or his or her designee.

5 (15) (19) "Source water protection area" for a public
6 groundwater supply source is the area within an aquifer that
7 supplies water to a public water supply well within a five-year
8 time-of-travel, and is determined by the mathematical
9 calculation of the locations from which a drop of water placed at
10 the edge of the protection area would theoretically take five
11 years to reach the well.

12 (16)-(20) "Zone of critical concern" for a public surface
13 water supply source and for a public surface water influenced
14 groundwater supply source is a corridor along streams within a
15 watershed that warrants ~~more~~ detailed scrutiny due to its
16 proximity to the surface water intake and the intake's
17 susceptibility to potential contaminants within that corridor. The
18 zone of critical concern is determined using a mathematical

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1 model that accounts for stream flows, gradient and area
2 topography. The length of the zone of critical concern is based
3 on a five-hour time-of-travel of water in the streams to the ~~water~~
4 ~~intake, plus an additional one-fourth mile below the water intake.~~
5 The width of the zone of critical concern is one thousand feet
6 measured horizontally from each bank of the principal stream
7 and five hundred feet measured horizontally from each bank of
8 the tributaries draining into the principal stream.

9 (21) “Zone of peripheral concern” for a public surface
10 water supply source and for a public surface water influenced
11 groundwater supply source is a corridor along streams within a
12 watershed that warrants scrutiny due to its proximity to the
13 surface water intake and the intake’s susceptibility to potential
14 contaminants within that corridor. The zone of peripheral
15 concern is determined using a mathematical model that accounts
16 for stream flows, gradient and area topography. The length of
17 the zone of peripheral concern is based on an additional five-
18 hour time-of-travel of water in the streams beyond the perimeter

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1 of the zone of critical concern, which creates a protection zone
2 of ten hours above the water intake. The width of the zone of
3 peripheral concern is one thousand feet measured horizontally
4 from each bank of the principal stream and five hundred feet
5 measured horizontally from each bank of the tributaries draining
6 into the principal stream.

7 **§22-30-4. Inventory and registration of existing**
8 **aboveground storage tanks.**

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

16 (b) Each owner or operator of an aboveground storage
17 tank shall complete and submit to the secretary the registration
18 form by July 1, 2015. The owner or operator of any

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1 aboveground storage tank placed into service on or after the
2 effective date of this section shall complete and submit a
3 registration form to the secretary prior to storing fluids therein.
4 Tank registrations previously submitted to the secretary pursuant
5 to this article shall constitute registration pursuant to this section.

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

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

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1 ~~regulatory standards and requirements the tank is required to~~
2 ~~meet.~~

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

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

15 ~~(f) (d) The secretary may charge a reasonable fee to~~
16 ~~cover the cost of maintaining and overseeing the inventory and~~
17 ~~registration program. The fee may be set by emergency and~~
18 ~~legislative rules proposed for promulgation in accordance with~~

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

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

16 (2) In recognition of the need to expeditiously capitalize
17 the AST Administrative Fund and the Protect Our Water Fund,
18 the secretary may charge the fees provided for in this subsection

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1 by sending invoices for the same to the owners or operators of
2 ASTs prior to the promulgation of the rules contemplated in
3 subdivision (1) of this subsection.

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

9 **§22-30-5. Aboveground Storage Tank Regulatory Program.**

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

18 (b) The rules promulgated by the secretary for regulated

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1 tanks and secondary containment shall, at a minimum, include
2 the following:

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

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

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

13 (4) Requirements for recordkeeping;

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

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

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

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

6 (9) A procedure for the administrative resolution of
7 violations including the assessment of administrative civil
8 penalties;

9 (c) For those entities that are otherwise regulated under
10 those provisions of this chapter that necessitate individual, site-
11 specific permits or plans that require appropriate containment
12 and diversionary structures or equipment to prevent discharged
13 or released materials from reaching the waters of the state, the
14 secretary may amend those permits or plans associated with
15 those permits or both at the request of the permittee to include
16 conditions pertaining to the management and control of
17 regulated tanks, so long as those conditions in the opinion of the
18 secretary are sufficient in combination with practices and

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

- 16 (1) Permits issued pursuant to the Surface Coal Mining
17 and Reclamation Act, article three of this chapter;
- 18 (2) Permits issued by the Office of Oil and Gas pursuant

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1 to article six or six-a of this chapter or spill pollution and control
2 measures plans required under 35 C. S. R. 1;

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

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

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

10 (d) Any entity whose permit or plan modification or
11 amendment relating to tank integrity and secondary containment
12 design operation and maintenance is approved by the secretary
13 and so maintained shall be deemed to be compliant with this
14 article and entitles the entity to a certificate to operate so long as
15 the registration requirements of section four of this article are
16 also met.

17 (e) The manner and time frames for implementation of
18 the regulatory program required by this section shall be

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1 established by the secretary through the proposal of emergency
2 or legislative rules in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code.

4 **§22-30-6. Evaluation and certification.**

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

16 (b) Every owner or operator shall submit ~~on a form~~
17 ~~prescribed by the secretary~~, a certification ~~from the engineer~~ that
18 each regulated tank and its associated ~~equipment, leak detection~~

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1 ~~system and~~ secondary containment structure have been evaluated
2 by a qualified person as set forth in subsection (a) of this section
3 and meets the minimum standards established by in accordance
4 with section five of this article or by the secretary by rule.

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

13 (d) Any person who performs a tank evaluation in
14 accordance with subsection (a) of this section, a responsible
15 person designated by the owner or operator and any other person
16 designated by the secretary by legislative rule may certify
17 aboveground storage tanks in accordance with subsection (b) of
18 this section.

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1 **§22-30-7. Financial responsibility.**

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

15 **§22-30-8. Corrective action.**

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

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

4 ~~(2)~~ (1) Require the owner or operator of an aboveground
5 storage tank to undertake prompt corrective action to protect
6 human health, safety, water resources or the environment from
7 contamination caused by a release; or

8 ~~(3)~~ (2) Undertake immediate corrective action with
9 respect to any release or threatened release of fluid from an
10 aboveground storage tank when, in the judgment of the
11 secretary, the action is necessary to protect human health, safety,
12 water resources or the environment from contamination caused
13 by a release.

14 (b) The corrective action undertaken or required by this
15 section shall be what may be necessary to protect human health,
16 water resources and the environment from contamination caused
17 by a release, including the ordered cessation or closure of a
18 source of contamination and the ordered remediation of a

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

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

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1 following situations exists:

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

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

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

18 (4) The owner or operator of the tank has failed or

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1 refused to comply with an order of the secretary under this
2 article or of the Environmental Quality Board under article one,
3 chapter twenty-two-b of this code or of a court of competent
4 jurisdiction to comply with appropriate corrective action
5 measures. ~~ordered by the secretary or the Environmental Quality~~
6 ~~Board.~~

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

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

15 (2) The owner or operator determined by the secretary to
16 be responsible for the release ~~or threatened release~~ has been
17 informed in writing of the secretary's determination and has been
18 requested by the secretary to take appropriate corrective action

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1 but is unable or unwilling to take proper action in a timely
2 manner.

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

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

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1 identified in subsection (e) of this section.

2 **§22-30-9. Spill prevention and response plan.**

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

15 (1) ~~Identify and describe~~ Describe the activity that occurs
16 at the site and ~~identify applicable hazard and process~~
17 ~~information, including a specific listing and~~ provide an inventory
18 of ~~all~~ the types and amounts of fluids stored ~~amount of fluids~~

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

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

18 (3) ~~Provide~~ Describe a preventive maintenance program,

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1 ~~that includes~~ monitoring and inspection procedures, ~~including~~
2 ~~identification of stress points, and~~ and employee training programs
3 ~~and security systems. The plan shall include a description of~~
4 ~~potential sources and areas where spills and leaks may occur by~~
5 ~~drawings and plot plans and shall identify specific spill~~
6 ~~prevention measures for those identified areas;~~

7 (4) ~~Details~~ Describe the ~~specific~~ general release response
8 procedures that the aboveground storage tank facility and
9 contract emergency personnel shall ~~take~~ employ upon the
10 occurrence of any release; ~~of fluids from an aboveground storage~~
11 ~~tank at the facility;~~

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

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

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

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

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

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

18 (4) The plan fails in an emergency;

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

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

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

15 (d) In lieu of a plan developed in accordance with the
16 requirements of this section, the owner or operator of a regulated
17 aboveground storage tank may certify to the secretary that it is
18 subject to: (1) A groundwater protection plan approved by the

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1 secretary; or (2) a spill prevention control and countermeasures
2 plan that complies the requirements of 40 C. F. R. Part 112.
3 Such plans shall be made available for review or submitted to the
4 secretary upon request.

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

11 **§22-30-10. Notice to local governments and water**
12 **companies.**

13 (a) The owner or operator of an regulated aboveground
14 storage tank ~~facility shall provide, as required by the secretary~~
15 ~~public notice to any public water system where the facility is~~
16 ~~located within the system's identified groundwater supply's or~~
17 ~~within the system's surface water supply's zone of critical~~
18 ~~protection, to the local municipality, if any, and to the county in~~

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

14 (b) In lieu of the information required in subsection (a)
15 of this section, the tank owner or operator may provide the
16 inventory forms and applicable documents required by sections
17 311 and 312 of the Emergency Planning and Community
18 Right-to-Know Act, subject to the protection of trade secrets and

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1 site security information allowed by section fourteen of this
2 article.

3 **§22-30-11. Required signage.**

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

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

17 (a) The secretary shall collect ~~annual~~ a registration fees
18 from owners or operators of each aboveground storage tank as

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1 set forth in section four of this article and an annual operating
2 fee for each regulated aboveground tank in an amount to be
3 promulgated in the legislative rules authorized by this article, ~~to~~
4 ~~be used by the secretary~~ in an amount sufficient to defray the
5 costs of administering this article. All registration and operation
6 permit fees and the net proceeds of all fines, penalties and
7 forfeitures collected under this article, including accrued interest,
8 shall be paid into a special revenue account, hereby created
9 within the State Treasury, designated the Aboveground Storage
10 Tank Administrative Fund.

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

17 **§22-30-13. Protect Our Water Fund.**

18 (a) Each owner or operator of ~~an~~ a regulated

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1 aboveground storage tank ~~located in this state~~ shall pay an
2 annual fee to ~~establish a fund to~~ assure adequate response to
3 leaking releases from aboveground storage tanks. The amount of
4 fees assessed pursuant to this section shall be set forth by rule.
5 ~~The fees must be sufficient to cover the regulatory oversight and~~
6 ~~services to be provided by designated agencies, including~~
7 ~~necessary technical and administrative personnel.~~ The proceeds
8 of the assessment shall be paid into a special revenue account,
9 hereby created within the State Treasury, designated the Protect
10 Our Water Fund. The fund shall be administered by the
11 secretary. Expenditures from the fund shall be solely to respond
12 to leaking releases from aboveground storage tanks. ~~and are not~~
13 ~~authorized from collections but are to be made only in~~
14 ~~accordance with appropriation by the Legislature and in~~
15 ~~accordance with the provisions of article three, chapter twelve of~~
16 ~~this code and upon the fulfillment of the provisions set forth in~~
17 ~~article two, chapter eleven-b of this code.~~ Provided, That for the
18 fiscal years ending June 30, 2014 and 2015, expenditures are

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1 ~~authorized from collections rather than pursuant to an explicit~~
2 ~~appropriation by the Legislature. At the end of each fiscal year,~~
3 ~~any unexpended balance, including accrued interest, on deposit~~
4 ~~in the Protect Our Water Fund shall not be transferred to the~~
5 ~~General Revenue Fund, but shall remain in the Protect Our~~
6 ~~Water Fund for expenditure pursuant to this section.~~

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

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

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1 fund, but shall remain in the Protect Our Water Fund for
2 expenditure pursuant to this section.

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

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

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

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1 or

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

6 (e) The secretary, through a cooperative agreement with
7 another state regulatory agency, in this or another state, may use
8 the fund to compensate the cooperating agency for expenses the
9 cooperating agency incurs in carrying out ~~regulatory~~
10 ~~responsibilities that agency may have pursuant to this article~~
11 corrective actions pursuant to this article.

12 **§22-30-14. Public access to information.**

13 (a) The public shall have access to all documents and
14 information submitted to the ~~agency department~~ pursuant to this
15 article, subject to the limitations contained in the state Freedom
16 of Information Act, article one, chapter twenty-nine-b of this
17 code, or any information designated by the Division of
18 Homeland Security and Emergency Management as restricted

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

18 (b) A list of the potential sources of significant

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1 contamination contained within the zone of critical concern or
2 zone of peripheral concern as provided by the ~~Department of~~
3 ~~Environmental Protection, the Bureau for Public Health, working~~
4 in conjunction with the department and the Division of
5 Homeland Security and Emergency Management may only be
6 disclosed to the extent consistent with the protection of trade
7 secrets, confidential business information and information
8 designated by the Division of Homeland Security and
9 Emergency Management as described above. The exact location
10 of the contaminants within the zone of critical concern or zone
11 of peripheral concern is not subject to public disclosure in
12 response to a Freedom of Information Act request under article
13 one, chapter twenty-nine-b of this code. However, the location,
14 characteristics and approximate quantities of potential sources of
15 significant contamination within the zone of critical concern or
16 zone of peripheral concern shall be made known to one or more
17 designees of the public water utility, and shall be maintained in
18 a confidential manner by the public water utility. In the event of

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1 a ~~chemical spill, release or related emergency~~ release to waters
2 of the state that could affect a public water supply, information
3 ~~pertaining to any spill or about the~~ release of contaminant shall
4 be ~~immediately disseminated~~ promptly made available to any
5 emergency responders responding to the site of a spill or release
6 and the general public shall be promptly notified in the event of
7 a chemical spill, release or related emergency by the Director of
8 Homeland Security and Emergency Management.

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

13 **§22-30-15. Inspections, monitoring and testing.**

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

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

3 (2) Conduct reasonable monitoring or testing;

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

6 and

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

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

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

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

17 (3) Conduct monitoring or testing of the aboveground
18 storage tanks, associated equipment, contents or surrounding

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1 soils, surface water or groundwater; and

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

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

5 (d) To ensure protection of the water resources of the
6 state and compliance with any provision of this article or rule
7 promulgated thereunder, the secretary shall inspect level 1
8 regulated tanks at least once every five years. The secretary
9 shall develop an inspection protocol for level 2 regulated tanks.
10 ~~annually any aboveground storage tank facility located within~~
11 ~~the zone of critical concern of a public water system with a~~
12 ~~public surface water supply source or a public surface water~~
13 ~~influenced groundwater supply source.~~

14 **§22-30-16. Administrative orders; injunctive relief.**

15 (a) When the secretary determines, on the basis of any
16 information, that a person is in violation of any requirement of
17 this article or the rules promulgated thereunder, the secretary
18 may issue an order stating with reasonable specificity the nature

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1 of the violation and requiring compliance within a reasonable
2 specified time period, or the secretary may commence a civil
3 action in the circuit court of the county in which the violation
4 occurred or in the circuit court of Kanawha County for
5 appropriate relief, including a temporary or permanent
6 injunction. The secretary or the Environmental Quality Board
7 ~~may except as provided in subsection (b) of this section,~~ stay any
8 ~~order he or she issues upon application,~~ issued by the secretary
9 until the order is reviewed by the Environmental Quality Board.

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

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

18 (a) Any person who fails to comply with an order of the

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1 secretary issued under subsection (a), section sixteen of this
2 article within the time specified in the order is liable for a civil
3 penalty of not more than \$25,000 for each day of continued
4 noncompliance.

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

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

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

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

15 (f) Any person may be prosecuted and convicted under
16 the provisions of this section notwithstanding that none of the
17 administrative remedies provided in this article have been
18 pursued or invoked against said person and notwithstanding that

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1 civil action for the imposition and collection of a civil penalty or
2 an application for an injunction under the provisions of this
3 article has not been filed against such person.

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

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

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

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

6 **§22-30-19. Duplicative enforcement prohibited.**

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

13 **§22-30-21. Interagency cooperation.**

14 (a) In implementation of this article, the secretary shall
15 coordinate with the Department of Health and Human
16 Resources, the West Virginia Public Service Commission, the
17 Division of Homeland Security and Emergency Management
18 and local health departments to ensure the successful planning

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1 and implementation of this act, including consideration of the
2 role of those agencies in providing services to owners and
3 operators of regulated aboveground storage tanks and public
4 water systems.

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

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

18 **§22-30-22. Imminent and substantial danger.**

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

16 (b) Upon receipt of information that there is any
17 aboveground storage tank that presents an imminent and
18 substantial danger to human health, safety, water resources or the

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1 environment, the secretary shall require the owner or operator of
2 the tank to provide immediate notice to the appropriate state and
3 local government agencies and any affected public water
4 systems. In addition, the secretary shall require notice of any
5 danger to be promptly posted at the aboveground storage tank
6 facility containing the aboveground storage tank at issue.

7 **§22-30-24. Powers and duties of secretary.**

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

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

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

18 (d) The secretary may issue orders, assess civil penalties,

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1 institute enforcement proceedings and prosecute violations of
2 this article as necessary.

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

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

11 **§22-30-25. Waiving certain requirements of this article for**
12 **specified categories of aboveground storage**
13 **tanks as designated by the department by**
14 **legislative rule.**

15 The secretary may designate, by rules proposed for
16 legislative approval in accordance with article three, chapter
17 twenty-nine-a of this code, additional categories of aboveground
18 storage tanks for which one or more of the requirements of this

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1 article may be waived upon a determination that such categories
2 of aboveground storage tanks either do not represent a
3 substantial threat of contamination or they are currently
4 regulated under standards that are consistent with the protective
5 standards and requirements set forth in this article and rules
6 promulgated thereunder.

7 **§22-30-26. Secretary's authority to require individual**
8 **NPDES permits within a zone of critical**
9 **concern.**

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

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1 **ARTICLE 31. THE PUBLIC WATER SUPPLY**
2 **PROTECTION ACT.**

3 **§22-31-2. Public Water System Supply Study Commission.**

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

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

13 (2) A review and assessment of the effectiveness of
14 legislation enacted during the 2014 Regular Session of the West
15 Virginia Legislature, as it pertains to assisting public water
16 systems in identifying and reacting or responding to identified
17 potential sources of significant contamination, and increasing
18 public awareness and public participation in the emergency

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1 planning and response process;

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

8 (4) A review and consideration of the recommendations
9 of the U. S. Chemical Safety and Hazard and Investigation Board
10 after its investigation of the Bayer Crop Science incident of
11 2008; and

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

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

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1 follows:

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

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

12 (3) One representative designated by the Municipal
13 League;

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

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

18 (6) The Director of the Division of Homeland Security

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1 and Emergency Management or his or her designee;

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

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

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

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

13 (d) The study commission shall terminate on June 30,
14 2019.