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Senate Bill No. 373

(By Senators Unger, Kessler (Mr. President), Palumbo, Plymale, Laird, Yost, Miller, Prezioso, Fitzsimmons, Wells, Cann, Chafin, Tucker, Stollings, Cookman and Snyder)

[Originating in the Committee on the Judiciary;
reported January 24, 2014.]

A BILL to amend and reenact §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §22-30-1, §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, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24, §22-30-25 and §22-30-26, all relating to water resources and water protection generally; revising the Water Resources Protection and Management Act; establishing the Aboveground Storage Tank Water Resources Protection Act; making certain legislative findings;
clarifying definitions; amending definition of “large-quantity user”; eliminating certain variance provisions; requiring certain reports from the secretary; requiring cooperating state agencies to continue funding levels for stream-gaging network; requiring notification of inability to continue funding of stream-gaging network; requiring information regarding private wells and depth to groundwater; requiring secretary to provide annual update on implementation of State Water Resources Management Plan; adopting State Water Resources Management Plan; requiring the Department of Environmental Protection to report annually to commission regarding implementation of plan and survey results; requiring large-quantity users to submit reports annually; creating certain requirement for aboveground storage tanks containing fluids except water; providing certain exemptions; defining terms; requiring registration and inventorying of certain aboveground storage tanks; making it unlawful to construct, maintain or use any aboveground storage tank without a permit; setting forth regulatory framework for aboveground storage tanks; requiring annual inspections of tanks; requiring financial resources to take corrective action; requiring corrective action for releases and corrective action in the event of a release; authorizing the secretary to take corrective action in certain circumstances; requiring of certain facts spill prevention response plans; providing notice to local governments, water companies and industrial
users; mandating signage and aboveground storage tanks sites reflecting contents of the tanks and hazards associated therewith; establishing registration fees and administrative fund; creating Leaking Aboveground Storage Tank Response Fund and setting forth mechanisms for funding and expenditure; permitting public access to information subject to FOIA; establishing requirements for inspections, monitoring and testing; requiring secretary to perform mandatory annual inspection; providing for administrative orders and injunctive relief; providing for civil penalties and creating certain criminal offenses and setting forth penalties therefore; permitting appeals to Environmental Quality Board; prohibiting certain duplicative enforcement; requiring reports to the legislature; requiring interagency cooperation; permitting civil action in case of imminent and substantial danger; requiring source water protection plans from public water systems; requiring annual fees by public water systems; requiring Department of Health and Human Resources and Department of Environmental Protection to jointly approve protection plan; authorizing emergency rulemaking; requiring legislative rulemaking for purposes of implementing the act; and setting forth powers and duties of secretary.

Be it enacted by the Legislature of West Virginia:

That §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new
article, designated §22-30-1, §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, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24, §22-30-25 and §22-30-26, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 26. WATER RESOURCES PROTECTION AND MANAGEMENT ACT.

22-26-2. Definitions.

For purposes of this article, the following words have the meanings assigned unless the context indicates otherwise:

(a) “Baseline average” means the average amount of water withdrawn by a large quantity user over a representative historical time period as defined by the secretary.

(b) “Beneficial use” means uses that include, but are not limited to, public or private water supplies, agriculture, tourism, commercial, industrial, coal, oil and gas and other mineral extraction, preservation of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation and preservation of cultural values.

(c) “Commercial well” means a well that serves small businesses and facilities in which water is the prime ingredient of the service rendered, including water wells drilled to support horizontal well operations.

(d) “Community water system” means a public water system that pipes water for human consumption to at least fifteen service connections used by year-round residents or one that regularly
serves at least twenty-five residents.

(e) “Consumptive withdrawal” means any withdrawal of water which returns less water to the water body than is withdrawn.

(f) “Department” means the West Virginia Department of Environmental Protection.

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

(h) “Industrial well” means a well used in industrial processing, fire protection, washing, packing or manufacturing of a product excluding food and beverages or similar nonpotable uses.

(i) “Interbasin transfer” means the permanent removal of water from the watershed from which it is withdrawn.

(j) “Large-quantity user” means any person who withdraws over seven three hundred fifty thousand gallons of water in a any calendar month thirty-day period from the state’s waters and any person who bottles water for resale regardless of quantity withdrawn. “Large-quantity user” excludes farms watering livestock or poultry, though farms may voluntarily report water withdrawals to assist with the accuracy of the survey.

(k) “Maximum potential” means the maximum designed capacity of a facility to withdraw water under its physical and operational design.

(l) “Noncommunity nontransient water system” means a public water system that serves at least twenty-five of the same
persons over six months per year.

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

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

(o) "Secretary" means the Secretary of the Department of Environmental Protection or his or her designee.

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

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

(r) "Water resources", "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands: Provided, That farm ponds, industrial settling basins and ponds and waste treatment facilities are excluded from the waters of the state.
“Watershed” means a hydrologic unit utilized by the
United States Department of Interior’s geological survey, adopted
in one thousand nine hundred seventy-four, as a framework for
detailed water and related land-resources planning.

“Withdrawal” means the removal or capture of water
from water resources of the state regardless of whether it is
consumptive or nonconsumptive: Provided, That water encountered
during coal, oil, gas, water well drilling and initial testing of
water wells, or other mineral extraction and diverted, but not used
for any purpose and not a factor in low-flow conditions for any
surface water or groundwater, is not deemed a withdrawal.

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

(a) The waters of the State of West Virginia are hereby
claimed as valuable public natural resources held by the state for
the use and benefit of its citizens. The state shall manage the
quantity of and protect its waters effectively for present and
future use and enjoyment and for the protection of the environment.

Therefore, it is necessary for the state to determine the nature
and extent of its water resources, the quantity of water being
withdrawn or otherwise used and the nature of the withdrawals or
other uses: Provided, That no provisions of this article may be
construed to amend or limit any other rights and remedies created
by statute or common law in existence on the date of the enactment
of this article.
(b) The secretary shall conduct an ongoing water resources survey of consumptive and nonconsumptive surface water and groundwater withdrawals by large quantity users in this state. The secretary shall determine the form and format of the information submitted, including the use of electronic submissions. The secretary shall establish and maintain a statewide registration program to monitor large quantity users of water resources of this state beginning in 2006.

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

(d) Except as provided in subsection (f) of this section, large quantity users who withdraw water from a West Virginia water resource shall comply with the survey and registration requirements of this article. Registration shall be maintained annually by
every large-quantity user by certifying, on forms and in a manner prescribed by the secretary, that the amount withdrawn in the previous calendar year varies by no more than ten percent from the users’ baseline average or by certifying the change in usage.

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

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

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

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

(i) Persons required to participate in the survey and
registration shall provide the most accurate information available
on water withdrawal during seasonal conditions and future potential
maximum withdrawals or other information that the secretary
determines is necessary for the completion of the survey or
registration: Provided, That a coal-fired electric generating
facility shall also report the nominal design capacity of the
facility, which is the quantity of water withdrawn by the
facility’s intake pumps necessary to operate the facility during a
calendar day.

(j) The secretary shall, to the extent reliable water
withdrawal data is reasonably available from sources other than
persons required to provide data and participate in the survey and
registration, utilize that data to fulfill the requirements of this
section. If the data is not reasonably available to the secretary,
persons required to participate in the survey and registration are
required to provide the data. Altering locations of intakes and
discharge points that result in an impact to the withdrawal of the
water resources by an amount of ten percent or more from the
consecutive baseline average shall also be reported.

(k) The secretary shall report annually to the Joint
Legislative Oversight Commission on State Water Resources on the
survey results. The secretary shall also make a progress report
every three years annually on the development implementation of the
State Water Resources Management Plan and any significant changes that may have occurred since the survey report State Water Resources Management Plan was submitted in two thousand six 2013. This includes reporting on the implementation of the Aboveground Storage tank Water Protection Act in article thirty of this chapter.

(l) In addition to any requirements for completion of the survey established by the secretary, the survey must accurately reflect both actual and maximum potential water withdrawal. Actual withdrawal shall be established through metering, measuring or alternative accepted scientific methods to obtain a reasonable estimate or indirect calculation of actual use.

(m) The secretary shall make recommendations to the joint legislative oversight commission created in section five of this article relating to the implementation of a water quantity management strategy for the state or regions of the state where the quantity of water resources are found to be currently stressed or likely to be stressed due to emerging beneficial or other uses, ecological conditions or other factors requiring the development of a strategy for management of these water resources.

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

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

(p) The department, the Division of Natural Resources, the
Division of Highways and the Conservation Agency (cooperating State
agencies) shall continue providing matching funds for the United
States Geological Survey’s (USGS) stream-gaging network to the
maximum extent practicable. Should a cooperating state agency
become unable to maintain its contribution level, it should notify
the USGS and the commission of its inability to continue funding
for the subsequent federal fiscal year by July 1, in order to allow
for the possible identification of alternative funding resources.

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

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

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

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

(a) The water resources survey and subsequent registry will provide critical information for protection of the state’s water resources and, thus, mandatory compliance with the survey and registry is necessary.

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

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

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

(1) (b) Any person who installs a community water system, noncommunity nontransient water system, transient water system, commercial well, industrial or test well shall notify the secretary of his or her intent to drill a water well no less than ten days prior to commencement of drilling. The ten-day notice is the responsibility of the owner, but may be given by the drilling contractor.

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

(3) (d) The drilling contractor shall submit to the secretary a copy of the well completion forms submitted to the Division of Health for a community water system, noncommunity nontransient water system, transient water system, commercial well, industrial or test well. The drilling contractor shall also provide the well GPS location and depth to groundwater on the well report submitted to the secretary.

(4) (e) Any person who fails to notify the secretary prior to drilling a well or impedes collection of information by the secretary under this section is in violation of the Water Resources Protection and Management Act and is subject to the civil

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

(b) The secretary shall develop definitions for use in the State Water Resources Management Plan for terms that are defined differently by various state and federal governmental entities as
(c) The secretary shall continue to develop and obtain the following:

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

(2) A listing of each consumptive or nonconsumptive withdrawal by a large-quantity user, including the amount of water used, location of the water resources, the nature of the use, location of each intake and discharge point by longitude and latitude where available and, if the use involves more than one watershed or basin, the watersheds or basins involved and the amount transferred.

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

(4) After consulting with the appropriate state and federal agencies, assess and project the existing and future nonconsumptive use needs of the water resources required to serve areas with important or unique natural, scenic, environmental or recreational values of national, regional, local or statewide significance, including national and state parks; designated wild, scenic and
(5) Assessment and projection of existing and future consumptive use demands.

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

(A) A discussion of any area of concern regarding historical or current conditions that indicate a low-flow condition or where a drought or flood has occurred or is likely to occur that threatens the beneficial use of the surface water or groundwater in the area; and

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

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

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

(9) An assessment of flood plain and stormwater management problems.

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

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

(12) An assessment of both structural and nonstructural alternatives to address identified water availability problems, adverse impacts on water uses or conflicts between water users, including potential actions to develop additional or alternative supplies, conservation measures and management techniques.

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

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

(15) A review of the implementation of the Aboveground Storage Tank Resources Water Protection Act and its effectiveness.

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

(d) The State Water Resources Management Plan shall consider:
(1) The interconnections and relationships between groundwater and surface water as components of a single hydrologic resource.

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

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

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

(5) The water quantity and quality necessary to support reasonable and beneficial uses.

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

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

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

(e) In November of each year, the secretary shall report to the Joint Legislative Oversight Commission on State Water Resources
on the implementation of the State Water Resources Management Plan. The report on the water resources plan shall include benchmarks for achieving the plan’s goals and time frames for meeting them.

(f) Upon adoption of the state Water Resources Management Plan by the Legislature, the report requirements of this article shall be superseded by the plan and subsequent reports shall be on the survey results and the water resources plan. If the plan is not adopted a detailed report discussing the provisions of this section as well as progress reports on the development of the plan shall be submitted every three years. The State Water Resources Management Plan is hereby adopted. Persons identified as large-quantity users prior to the effective date of this subsection shall report actual monthly water withdrawals, or monthly water withdrawals by a method approved by the secretary, for the previous calendar year by March 31 of each succeeding year. Persons identified as large-quantity users on or after the effective date of this subsection shall submit their initial annual report no later than March 31, 2016, and subsequent annual reports by March 31 of each year thereafter.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK WATER RESOURCES PROTECTION ACT.

§22-30-1. Short title.

This article may be known and cited as the Aboveground Storage Tank Water Resources Protection Act.

§22-30-2. Legislative findings.

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

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

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

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

22-30-3. Applicability; exclusions.

(a) This article applies to all new and existing aboveground
storage tanks located within the state that are used to store any
fluid except water that does not contain additives.

(b) Exclusions.-- The following aboveground storage tanks are
excluded from the requirements of this article:

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

(2) An aboveground storage tank located on a farm, in which
the contents of the tank are used by the tank owner or operator for
farming purposes, and the contents are not being commercially
distributed;

(3) An aboveground storage tank located on residential
property of 1,100 gallons or less capacity used for storing motor
fuel for noncommercial purposes;

(4) An aboveground storage tank of 1,100 gallons or less
capacity used for storing heating oil for consumption on the
premises where stored;

(5) Any heating oil, natural gas or propane tanks regulated
under NFPA 58-30A or NFPA 58-30B;

(6) Stormwater or wastewater collection and treatment systems;

(7) Septic tanks;

(8) A pipeline facility, including gathering lines, regulated
under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous
Liquid Pipeline Safety Act of 1979, or an intrastate pipeline
facility regulated by the West Virginia Public Service Commission
or otherwise regulated under any state law comparable to the
provisions of either the Natural Gas Pipeline Safety Act of 1968 or
the Hazardous Liquid Pipeline Safety Act of 1979;
(9) Equipment or machinery containing substances for
operational purposes, including integral hydraulic lift tanks,
lubricating oil reservoirs for pumps and motors, electrical
equipment and heating and cooling equipment;
(10) An indoor tank located inside a building resting on or
elevated above an impermeable floor surface from which a release
would be entirely contained in a secondary containment structure or
not escape through other means;
(11) A mobile tank or truck that is 1,100 gallons or less in
capacity and is located on site for less than sixty consecutive
calendar days;
(12) An aboveground storage tank containing hazardous wastes
which are subject to a treatment or storage permits regulated
under Subtitle C of the federal Solid Waste Disposal Act, 42 U. S.
C. §6921, et seq., or substances regulated under the article
eighteen of this chapter;
(13) An aboveground storage tank containing agricultural
pesticides regulated under article sixteen-a, chapter nineteen of
this code;
(14) Liquid traps or associated gathering lines related to oil
or gas production and gathering operations;

(15) A surface impoundment, pit, pond or lagoon;

(16) Tanks otherwise regulated under those provisions of this chapter that necessitate individual site-specific permits that require appropriate containment and diversionary structures or equipment to prevent discharged materials from reaching the waters of the state, including:

(A) Tanks on sites regulated under the Surface Coal Mining and Reclamation Act, article three of this chapter;

(B) Tanks that are used to store brines, crude oil or any other liquid or similar substances or materials that are directly related to the exploration, development, stimulation, completion or production of crude oil or natural gas regulated under article six or article six-a of this chapter;

(C) Tanks that are located at establishments that have individual permits issued under the National Pollutant Discharge Elimination System, article eleven of this chapter; and

(D) Tanks regulated under the Solid Waste Management Act, article fifteen of this chapter, including, but not limited to, piping, tanks, collection and treatment systems used for leachate, methane gas and methane gas condensate management;

(17) Any aboveground storage tank of 1,100 gallons or less capacity, not otherwise exempt, unless that tank is greater than 500 gallons capacity and is located within 500 feet of surface or source waters;

(18) Aboveground storage tanks used in connection with oil and
gas exploration, production, processing, gathering, treatment or storage operations or transmission facilities that are addressed in spill prevention, control, and countermeasure plans meeting the federal regulations set out in 40 C. F. R. Part 112; and

(19) Oil-filled tanks regulated under section 1321 of the federal Water Pollution Control Act (section 311 of the federal Clean Water Act) and the regulations promulgated thereunder, 40 C. F. R. §112, et seq.

§22-30-4. Definitions.

For purposes of this article, the following words mean:

(a) "Aboveground storage tank," "tank", or the plural, means any container, or set of connected containers, designed to contain fluids and is constructed of materials including concrete, steel, plastic or fiberglass reinforced plastic. The term includes all ancillary aboveground pipes and dispensing systems up to the first point of isolation and all ancillary underground pipes and dispensing systems connected to the aboveground containers.

(b) “Department” means the West Virginia Department of Environmental Protection.

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

(d) “Operator” means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.
(e) “Owner” means a person who holds title to, controls or owns an interest in an aboveground storage tank, including owners of tanks immediately preceding the discontinuation of a tank’s use. “Owner” does not mean a person who holds an interest in a tank for financial security, unless the holder has taken possession of and operated the tank.

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

(g) “Public water system” means the same in this article as set forth in subsection (p), section two, article one, chapter sixteen of this code.

(h) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of fluids from an aboveground storage tank into groundwater, surface water or subsurface soils. The term shall also include spilling, leaking, emitting, discharging, escaping, leaching or disposing of fluids from aboveground storage tank into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater.

(i) Secondary containment means a safeguard specifically designed to be impermeable to stored substances and which will contain a release from an aboveground storage tank, and prevent the
release from spreading vertically or horizontally contaminating the land or water outside of the containment area.

(j) “Secretary” means the Secretary of the Department of Environmental Protection, or his or her designee.

§22-30-5. Registration of existing aboveground storage tanks.

(a) To assure protection of the water resources of the state, the secretary shall compile an inventory of aboveground storage tanks in existence, regardless of whether it is an operational or nonoperational storage tank, on the effective date of this article. The secretary shall prescribe a registration form for this purpose within thirty days of the effective date of the enactment of this article. All aboveground storage tanks subject to this article shall be registered no later than sixty days from the effective date of the enactment of this article during the 2014 Regular Session of the 81st Legislature.

(b) At a minimum the registration shall include the date of tank installation, tank location, type of construction, size and age of the tank, the type and volume of fluid stored therein and the proximity to any water intake.

(c) If, at the time this registration is required to be submitted, the secretary has not prepared the form required by this section, the owner or operator shall nevertheless submit the information in writing to the secretary. The duty to provide correct, up-to-date information about the location and contents of aboveground storage tanks is an ongoing requirement.

(d) Any aboveground storage tank placed into service on and
after the effective date of this section, but prior to the establishment of a permit program, shall register with the secretary and request permission to place the tank into service pending a permit application.

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

(f) It is unlawful for any owner or operator to operate or use an aboveground storage tank subject to this article which has not been properly registered or for which any applicable registration fee has not been paid.

(g) It is unlawful for any person to approve a delivery order, or to deliver or deposit any fluid subject to this article into an aboveground storage tank unless the owner or operator provides proof of valid registration of the tank into which the fluid is to be delivered or deposited.

§22-30-6. Permit required; Aboveground Storage Tank Regulatory Program.

(a) Without authorization from the secretary, it is unlawful for any person to construct, maintain or use any aboveground storage tank for the storage of any fluid other than water, which has no additives, without first obtaining a permit from the secretary.

(b) To assure further protection of the water resources of
the state, the secretary shall develop a regulatory program for new and existing aboveground storage tanks. At a minimum, the program shall include the following:

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

(2) Performance standards for design, construction, installation, maintenance, corrosion detection and maintenance, release detection and prevention and secondary containment;

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

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

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

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

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

(8) Requirements for certification of installation, removal,
retool, corrosion and other testing and inspection of aboveground storage tanks, leak detection systems and secondary containment by a qualified registered professional engineer or a qualified person working under the direct supervision of a registered professional engineer, regulated and licensed by the West Virginia Professional Engineers Board;

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

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

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

(12) A procedure for the administrative resolution of violations including the assessment of administrative civil penalties;

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

(14) In consultation with the Bureau for Public Health,
establish specific standards and guidelines that provide increased
protection and scrutiny of public water system intakes located in
critical zones as determined by the secretary and develop a
registry of public water system intakes and provide the registry
to the State Division of Homeland Security and Emergency
Management.

§22-30-7. Annual inspection and certification.
(a) Every owner or operator of an aboveground storage tank
regulated herein shall have an annual inspection of each tank
performed by a qualified registered professional engineer or a
qualified person working under the direct supervision of a
registered professional engineer, regulated and licensed by the
West Virginia Professional Engineers Board. Every owner or
operator shall submit, on a form prescribed by the secretary, a
certification from the engineer that each tank, associated
equipment, leak detection systems and secondary containment
structures meet the minimum standards established by the secretary
by rule.

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

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


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

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

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

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

(b) The corrective action undertaken or required by this section shall be what may be necessary to protect human health,
water resources and the environment from contamination caused by a release. The secretary shall use funds in the Leaking Aboveground Storage Tank Response Fund established pursuant to this article for payment of costs incurred for corrective action taken by the secretary in accordance with this article. In undertaking corrective actions under this section and in issuing orders requiring owners or operators to undertake the actions, the secretary shall give priority to releases or threatened releases of fluid from aboveground storage tanks that pose the greatest threat to human health, water resources or the environment.

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

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

(2) A situation exists that requires immediate action by the secretary under this section to protect human health, safety,
(3) The cost of corrective action to be expended on an aboveground storage tank exceeds the amount of resources that the owner or operator can reasonably be expected to possess based on the information required to be submitted pursuant to this article and, considering the fluid being stored in the aboveground storage tank in question, expenditures from the Leaking Aboveground Storage Tank Response Fund are necessary to assure an effective corrective action; or

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

(d) The secretary may draw upon the Leaking Aboveground Storage Tank Response Fund in order to take action under subdivision (1) or (2), subsection (c) of this section if the secretary has made diligent good-faith efforts to determine the identity of the owner or operator responsible for the release or threatened release and:

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

(2) The owner or operator determined by the secretary to be responsible for the release or threatened release have been
informed in writing of the secretary’s determination and have been requested by the secretary to take appropriate corrective action but are unable or unwilling to take proper action in a timely manner.

(e) The written notice to the owner or operator must inform the owner or operator that if it is subsequently found liable for releases pursuant to this section, the owner or operator will be required to reimburse the Leaking Aboveground Storage Tank Response Fund for the costs of the investigation, information gathering, and corrective action taken by the secretary.

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

§22-30-10. Spill prevention response plan.

(a) Within ninety days of the effective date of this article, each owner or operator of an aboveground storage tank shall submit a spill prevention response plan for each aboveground storage tank. Owners and operators of aboveground storage tanks shall file updated plans required to be submitted by this section no
less frequently than every three years. Each plan shall be site-specific, consistent with the requirements of this article, and developed in consultation with county and municipal emergency management agencies. The spill prevention response plan shall contain, at a minimum, the following:

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

(2) Identify all facility-related individuals and their duties and responsibilities for developing, implementing and maintaining the facility’s plan. The plan shall describe in detail the chain of command at the aboveground storage tank facility and list all facility emergency coordinators and emergency response contractors;

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

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

(5) Pertinent information obtained by the owner or operator of the aboveground storage tanks from the county and municipal emergency management agencies and designate the person or persons to be notified in the event of a release from an aboveground storage tank; and

(6) The owner or operator shall provide the secretary with all other requested information.

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

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

(2) There is a substantial modification in emergency equipment at the facility;
(3) There are substantial changes in emergency response protocols at the aboveground storage tank facility;

(4) The plan fails in an emergency;

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

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

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

(d) Nothing contained in this section relieves the owner or operator of an aboveground storage tank from his or her obligation to report any release immediately to the Department of Environmental Protection’s emergency notification telephone number, 1-800-642-3074.

§22-30-11. Notice to local governments, water companies and other industrial users.

The owner or operator of an aboveground storage tank facility shall annually provide public notice to public water systems
located within a 25-mile radius of the aboveground storage tank facility site and the local municipality, if any, and county in which the facility is located. The notice shall provide a detailed inventory of the type and quantity of fluid stored in aboveground storage tanks at the facility and the material safety data sheets associated with the fluid in storage. The owner or operator shall also annually provide a copy of the spill prevention response plan and any updates thereto, which have been approved by the secretary pursuant to this act, to the applicable public water systems and county and municipal emergency management agencies.

§22-30-12. Required signage.

Every aboveground storage tank shall have prominently posted signage disclosing the contents of the tank and the hazards, if any, associated with the fluid stored therein. If the aboveground storage tank is empty, the signage shall so state. For the purposes of this section, the requirements for prominently posted signage shall be specified in the rules proposed for promulgation by the secretary pursuant to this article and article three, chapter twenty-nine-a of this code.


(a) The secretary shall collect annual registration fees from owners or operators of each aboveground storage tank in an amount sufficient to cover the regulatory oversight and services to be provided by designated agencies, including necessary technical and administrative personnel, as set forth by rule. All
registration and permit fees and the net proceeds of all fines, penalties and forfeitures collected under this article, including accrued interest, shall be paid into the State Treasury into a special revenue fund designated the Aboveground Storage Tank Administrative Fund, and shall be used solely to defray the cost of administering this act.

(b) At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Aboveground Storage Tank Administrative Fund shall not be transferred to the General Revenue fund, but shall remain in the Aboveground Storage Tank Administrative Fund.


(a) Each owner or operator of an aboveground storage tank located in this state shall pay an annual fee to establish a fund to assure adequate response to leaking aboveground storage tanks. The amount of fees assessed pursuant to this section shall be as set forth by rule. The fees must be sufficient to cover the regulatory oversight and services to be provided by designated agencies, including necessary technical and administrative personnel. The proceeds of the assessment shall be paid into the State Treasury into a special fund designated the Leaking Aboveground Storage Tank Response Fund.

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

(c) At the end of each fiscal year, any unexpended balance,
including accrued interest, on deposit in the Leaking Aboveground
Storage Tank Response Fund shall not be transferred to the General
Revenue fund, but shall remain in the Leaking Aboveground Storage
Tank Response Fund.

(d) The secretary may enter into agreements and contracts and
to expend the moneys in the fund for the following purposes:
(1) Responding to aboveground storage tank releases when,
based on readily available information, the secretary determines
that immediate action is necessary to prevent or mitigate
significant risk of harm to human health, water resources or the
environment from contamination caused by a release of fluid from
aboveground storage tanks in situations for which no federal funds
are immediately available for the response, cleanup or
containment: Provided, That the secretary shall apply for and
diligently pursue all available federal funds at the earliest
possible time.

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

(3) Reimbursing any nonresponsible parties for reasonable
costs incurred with the authorization of the secretary responding
to perceived, potential or threatened releases from aboveground
storage tanks;
(e) The secretary, through a cooperative agreement with another state regulatory agency, in this or another state, may use the fund to compensate the cooperating agency for expenses the cooperating agency incurs in carrying out regulatory responsibilities that agency may have pursuant to this article.

§22-30-15. Public access to information.

(a) Subject to the exemptions listed in section four, article one, chapter twenty-nine-b of this code, the public shall have access to all documents and information submitted to the agency in accordance with this section pursuant to the state Freedom of Information Act. Records, reports or information obtained from any persons under this article may be disclosed to other officers, employees or authorized representatives of this state or the United States Environmental Protection Agency or of this state if the officers, employees or authorized representatives are implementing the provisions of this article or any other applicable law related to releases of fluid from aboveground storage tanks that impact the states water resources.

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

§22-30-16. Inspections, monitoring and testing.

(a) For the purposes of developing or assisting in the
development of any rule, conducting any study, taking any corrective action or enforcing any provision of this article, any owner or operator of an aboveground storage tank shall, upon request of the secretary, furnish information relating to the aboveground storage tanks; their associated equipment and contents; conduct reasonable monitoring or testing; permit the secretary, at all reasonable times, to have access to and to copy all records relating to the aboveground storage tanks; and permit the secretary to have access to the aboveground storage tank for corrective action.

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

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

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

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

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

Each inspection shall be commenced and completed with reasonable promptness.

(c) To ensure protection of the water resources of the state and compliance with any provision of this act or rule promulgated thereunder, the secretary shall inspect at least annually any
aboveground storage tank facility located within twenty-five miles upstream of a public water system intake in zones of critical concern as determined by the secretary.

§22-30-17. Administrative orders; injunctive relief.

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

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

§22-30-18. Civil and criminal penalties.

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

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

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

(d) Any person who fails to comply with any requirement of section twenty-four of this article is subject to a civil penalty not to exceed $10,000 for each day of violation.

(e) Any person who knowingly and intentionally violates any provision of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a regional jail for a period of time not exceeding six months, and be fined an amount not to exceed $25,000.

§22-30-19. Appeal to Environmental Quality Board.

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

§22-30-20. Duplicative enforcement prohibited.

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


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

(b) The secretary shall keep accurate accounts of all receipts and disbursements related to the administration of the Aboveground Storage Tank Administrative Fund and shall make a specific annual report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance addressing the administration of the fund.
(c) The secretary shall keep accurate accounts of all receipts and disbursements related to the administration of the Leaking Aboveground Storage Tank Response Fund and shall make a specific annual report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance addressing the administration of the fund.

§22-30-22. Interagency cooperation.

(a) In implementation of this article, the secretary shall coordinate with the State Department of Health and Human Resources, the West Virginia Public Service Commission and local health departments to ensure the successful planning and implementation of this act, including consideration of the role of those agencies in providing services to owners and operators of aboveground storage tanks and public water systems.

(b) The secretary shall also coordinate with state and local emergency response agencies to prepare and issue appropriate emergency response plans to address facility emergency response and incident command when the functions are provided by the owner or operator of the aboveground storage tank and the public water system.

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

§22-30-23. Imminent and substantial danger.
(a) Notwithstanding any other provision in this chapter, upon receipt of evidence that an aboveground storage tank may present an imminent and substantial danger to human health, water resources or the environment, the secretary may bring suit on behalf of the State of West Virginia in the Circuit Court of Kanawha County against any owner or operator of an aboveground storage tank who has contributed or who is contributing to imminent and substantial danger to public health, water resources or the environment to order the person to take action as may be necessary to abate the situation and protect public health, water resources and the environment from contamination caused by a release of fluid from an aboveground storage tank.

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


(a) In addition to all other powers and duties prescribed in this chapter or otherwise by law, and unless otherwise specifically set forth in this article, the secretary has the sole and exclusive authority to perform any and all acts necessary to implement a aboveground storage tank regulatory program designed
to protect each public water system in the state from contamination of its source water supply caused by the release of fluid from an aboveground storage tank consistent with the requirements of this article.

(b) Within ninety days of the effective date of this article, each existing public water system shall remit an annual fee in an amount to be specified in emergency and legislative rules promulgated pursuant to this article and article three, chapter 29A of this code, to be deposited into the Aboveground Storage Tank Administrative Fund created pursuant to this article and submit a source water protection plan to protect its system from contamination of its source water supply caused by release of fluid from an aboveground storage tank, which plan, at a minimum, shall include the following:

(1) A contingency plan that documents each public water system’s planned response to contamination of the source water supply;

(2) Alternative water source or intake, with particular emphasis on single-source intake systems, focusing on source replacement should the system be required to use a new or alternate source of water due to contamination;

(3) A management plan that identifies specific activities that will be pursued by the system to protect its source water supply from contamination, including coordination with government agencies and periodic surveys of the system; and

(4) A communications plan that documents the manner in which
the public shall be notified of information related to any contamination of the source water supply.

(c) Any public water system that comes into existence on or after the effective date of this article shall submit prior to the commencement of its operations a source water protection plan satisfying the requirements of subsection (a) of this section.

(d) The secretary and the Secretary of the Department of Health and Human Resources shall jointly accept any plan submitted pursuant to this section. Thereafter, within ninety days, the secretary and the Secretary of the Department of Health and Human Resources may reject the plan and require modifications as may be necessary and reasonable to satisfy the purposes of this article. Failure by a public water system to comply with a plan approved pursuant to this section is a violation of this article.

(e) The secretary may request a public water system to conduct one or more studies to determine the actual risk and consequences related to any potential contaminant sources identified by the secretary.

(f) A public water system shall submit an updated source water protection plan not less frequently than every three years.

(g) Small public water system, as determined by the secretary, the Department of Health and Human Resources, Bureau for Public Health and the Division of Homeland Security and Emergency Management, shall not be required to submit the plan required by this section until July 1, 2015.

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


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

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

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

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

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

(f) The secretary may recover the costs of taking corrective action, including costs associated with authorizing third parties to perform corrective action, not including. Costs may not include routine inspection and administrative activities not associated with a release.
(NOTE: The purpose of this bill is to amend the Water Resources Protection and Management Act to incorporate recommendations from the State Water Resources Management Plan (Plan). Those recommendations include: Changing the definition of a large quantity user to a person who uses at least 300,000 gallons of water in any thirty-day period; Requiring large quantity users to report actual water withdrawals or usage for a calendar year on an annual basis; Requiring any agency that contributes to funding the stream gage network to notify the Commission and the USGS if the agency cannot maintain its level of funding; Requiring drilling contractors or well owners to report the depth to groundwater of drilled wells; adopting the Plan; and Requiring the Department of Environmental Protection to report annually to the Commission on the implementation of the Plan and survey results. The bill also requires registration of existing aboveground storage tanks and directs the secretary of the department of environmental protection to develop a program to regulate new and existing aboveground storage tanks.

Strike-throughs indicate language that would be stricken from the present law.

Article 30 is new; therefore, strike-throughs and underlining have been omitted.)