

Senate Bill No. 417

(By Senators Kessler (Mr. President) and M. Hall,

By Request of the Executive)

[Introduced January 22, 2014; referred to the Committee on
Natural Resources; and then to the Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as 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, §22-30-26, §22-30-27 and §22-30-28, all
relating to the protection of source water supplies and
systems generally through regulation of industrial aboveground
storage tanks; short title; applicability; legislative
findings and purposes; defining terms; authorizing a source
water protection program; requiring public water systems to
remit an annual fee and submit a source water protection plan

1 for joint approval by the Secretary of the Department of
2 Environmental Protection and the Secretary of the Department
3 of Health and Human Resources every three years; permitting
4 the Secretary of the Department of Environmental Protection to
5 request studies from public water systems regarding potential
6 contaminant sources; providing emergency and legislative
7 rule-making authority to the secretary to adopt and implement
8 an industrial aboveground storage tank program; setting forth
9 powers and duties of the secretary to implement an industrial
10 aboveground storage tank program; setting forth notification
11 requirements for owners and operators of industrial
12 aboveground storage tanks; providing emergency and legislative
13 rule-making authority; setting forth registration
14 requirements, including an annual registration fee, for
15 industrial aboveground storage tanks; prohibiting the
16 operation or use of an unregistered industrial aboveground
17 storage tank; prohibiting the delivery or deposit of regulated
18 material into an unregistered industrial aboveground storage
19 tank; requiring annual inspection and certification by a
20 registered professional engineer of minimum safety standards
21 for industrial aboveground storage tanks, associated
22 equipment, leak detection systems and secondary containment

1 structures; providing rule-making authority to ensure
2 financial responsibility for corrective action for releases of
3 regulated material from industrial aboveground storage tanks;
4 providing rule-making authority for performance standards for
5 new and existing industrial aboveground storage tanks;
6 authorizing the secretary to ensure corrective action be taken
7 regarding a release or threatened release of regulated
8 material from an industrial aboveground storage tank;
9 permitting the secretary to use funds from the Leaking
10 Industrial Aboveground Storage Tank Response Fund to pay for
11 the costs of corrective action to prevent contamination of a
12 source water supply; requiring written notice from the
13 secretary to a responsible party regarding liability for
14 reimbursement to the Leaking Industrial Aboveground Storage
15 Tank Response Fund; requiring spill prevention response plans
16 for each industrial aboveground storage tank to be submitted
17 for approval by the secretary; requiring owners or operators
18 of industrial aboveground storage tanks to provide public
19 notice to certain public water systems, the local municipality
20 and the local county regarding regulated material; requiring
21 signage on industrial aboveground storage tanks; providing
22 rule-making authority; creating a special revenue fund

1 entitled the Industrial Aboveground Storage Tank
2 Administrative Fund and authorizing the secretary to collect
3 an annual registration fee for deposit into this fund;
4 creating a special revenue fund entitled the Leaking
5 Industrial Aboveground Storage Tank Response Fund and
6 authorizing the secretary to collect an annual fee for deposit
7 into this fund; authorizing expenditures from the funds;
8 providing public access to information collected under this
9 article pursuant to the Freedom of Information Act; permitting
10 the secretary to require the owners or operators of industrial
11 aboveground storage tanks to furnish information, conduct
12 reasonable monitoring or testing and allow access to records
13 to facilitate implementation of the provisions of this
14 article; permitting the secretary to issue orders to enforce
15 this article, including temporary and permanent injunctions;
16 providing for civil and criminal penalties; providing for
17 appeals to the Environmental Quality Board; prohibiting
18 duplicative enforcement; requiring the secretary to report to
19 the Legislature every three years on the effectiveness of this
20 article and annually on the accounting of the funds; requiring
21 interagency coordination; permitting the secretary to bring a
22 civil action against an owner or operator of an industrial

1 aboveground storage tank upon receipt of evidence of imminent
2 and substantial endangerment to human health or the
3 environment; providing for immediate notice to appropriate
4 state and local agencies and public water systems; and
5 severability.

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

7 That the Code of West Virginia, 1931, as amended, be amended
8 by adding thereto a new article, designated §22-30-1, §22-30-2,
9 §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8,
10 §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14,
11 §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20,
12 §22-30-21, §22-30-22, §22-30-23, §22-30-24, §22-30-25, §22-30-26,
13 §22-30-27 and §22-30-28, all to read as follows:

14 **ARTICLE 30. WEST VIRGINIA SOURCE WATER PROTECTION ACT.**

15 **§22-30-1. Short title.**

16 This article shall be known and may be cited as the "West
17 Virginia Source Water Protection Act."

18 **§22-30-2. Applicability.**

19 This article applies to all new and existing industrial
20 aboveground storage tanks located within a zone of critical concern
21 and to all public water systems located within the state.

22 **§22-30-3. Legislative findings and purpose.**

1 (a) The Legislature recognizes that industrial businesses are
2 vital to our economy, create good-paying jobs with benefits for our
3 citizens, and ensure that commerce will continue to flourish in
4 West Virginia. The Legislature also recognizes that many factors
5 go into an industrial facility's selection of a site to do
6 business, including, but not limited to, topography, proximity to
7 workforce, access to necessary infrastructure, access to
8 transportation modalities such as railroads, rivers and highways,
9 a state's regulatory environment, and proximity to raw materials.
10 In connection with the operation of industrial businesses, it is
11 often necessary to store large quantities of petroleum, chemicals,
12 solvents, and other hazardous substances and pollutants in
13 aboveground storage tanks. Recognizing the value that industrial
14 businesses add to our economy and the associated risks of potential
15 harm to human health and the environment posed by storage of
16 significant quantities of regulated material in aboveground storage
17 tanks, the Legislature finds it is necessary to regulate the
18 industrial storage of regulated material in aboveground storage
19 tanks located within zones of critical concern in the vicinity of
20 public water systems. Further, the Legislature finds that it is
21 also necessary to require public water systems to evaluate
22 potential risks to the water supply and to develop certain

1 contingency and emergency response plans to prepare for potential
2 releases of regulated material from industrial aboveground storage
3 tanks that jeopardize a public water system, human health, or the
4 environment.

5 (b) Therefore, it is the purpose of this article to:

6 (1) Implement reasonable regulations governing the storage of
7 specified volumes of regulated material in industrial aboveground
8 storage tanks within zones of critical concern in the vicinity of
9 public water systems;

10 (2) Assure that industrial aboveground storage tanks are
11 constructed and maintained in a manner consistent with acceptable
12 industry safety standards;

13 (3) Assure that public water systems properly plan for
14 contingencies and prepare appropriate emergency response plans to
15 implement in the event a leak from an industrial aboveground
16 storage tank jeopardizes one or more public water systems; and

17 (4) Otherwise protect human health and the environment from
18 the dangers posed by the storage of specified volumes of regulated
19 material in industrial aboveground storage tanks located within
20 zones of critical concern in the vicinity of public water systems.

21 **§22-30-4. Definitions.**

22 As used in this article, unless the context clearly requires

1 a different meaning, the term:

2 (a) "Aboveground storage tank" means a single stationary
3 aboveground container or a set of stationary aboveground containers
4 that are connected in such a manner that the contents thereof can
5 travel between containers. The term includes all ancillary
6 aboveground pipes and dispensing systems up to the first point of
7 isolation and all ancillary underground pipes and dispensing
8 systems connected to the aboveground containers. The term does not
9 include, however, any of the following:

10 (1) Farm or residential tanks with a capacity of 1,100 gallons
11 or less that are used for storing motor fuel for noncommercial
12 purposes;

13 (2) Tanks used for storing heating oil for consumptive use on
14 the premises where stored;

15 (3) Septic tanks;

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

- 1 (5) Liquid traps or associated gathering lines related to oil
2 or gas production and gathering operations;
- 3 (6) Surface impoundments, pits, ponds or lagoons;
- 4 (7) Stormwater or wastewater collection systems;
- 5 (8) Flow-through process tanks;
- 6 (9) Tanks used for the storage of products that are regulated
7 pursuant to the federal Food, Drug, and Cosmetic Act;
- 8 (10) Oil filled tanks regulated under section 1321 of the
9 federal Water Pollution Control Act (section 311 of the federal
10 Clean Water Act) and the regulations promulgated thereunder, 40
11 C.F.R. § 112, *et seq.*;
- 12 (11) Farm tanks with a capacity of 1,100 gallons or less used
13 solely to store or contain substances that are used to facilitate
14 the production of crops, livestock, and livestock products on such
15 farm;
- 16 (12) Tanks that are used to store propane gas;
- 17 (13) Tanks that are mobile in nature or that do not remain in
18 one location for more than thirty consecutive calendar days;
- 19 (14) Storage tank systems storing hazardous wastes regulated
20 under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C.
21 § 6921, *et seq.*, or substances regulated under the West Virginia
22 Hazardous Waste Management Act, W. Va. Code § 22-18-1, *et seq.*;

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

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

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

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

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

20 (16) Any other tank excluded by legislative rule promulgated
21 by the secretary pursuant to this article and article three,
22 chapter twenty-nine-a of this code.

1 (b) "Change in status" means an instance in which the reported
2 uses, contents, or ownership of an industrial aboveground storage
3 tank changes, including discontinuing the use of an industrial
4 aboveground storage tank.

5 (c) "Industrial aboveground storage tank" means an aboveground
6 storage tank located within a zone of critical concern that
7 contains a volume of regulated material in excess of the applicable
8 threshold established by the secretary by rule pursuant to section
9 six of this article.

10 (d) "Nonoperational storage tank" means an aboveground storage
11 tank in which regulated material will not be deposited or from
12 which regulated material will not be dispensed on or after the
13 effective date of this article.

14 (e) "Operator" means any person in control of or having
15 responsibility for the daily operation of an industrial aboveground
16 storage tank.

17 (f) "Owner" means a person who holds title to, owns or
18 controls an industrial aboveground storage tank. "Owner" does not
19 include any person who holds indicia of ownership of an industrial
20 aboveground storage tank only for the purpose of protecting the
21 person's security interest in the industrial aboveground storage
22 tank.

1 (g) "Person" means any individual, trust, firm, joint stock
2 company, corporation (including government corporations), limited
3 liability company, partnership, association, state, municipality,
4 commission, political subdivision of a state, interstate body,
5 consortium, joint venture, commercial entity and the United States
6 government.

7 (h) "Public water system" means the same in this article as
8 set forth in subsection (p), section two, article one, chapter
9 sixteen of this code.

10 (i) "Regulated material" means each substance having a health
11 hazard of two, three or four, as set forth on the material safety
12 data sheet applicable to each such substance, or any other
13 substance as determined by the National Fire Protection Association
14 or the secretary.

15 (j) "Release" means any spilling, leaking, emitting,
16 discharging, escaping, leaching or disposing of a regulated
17 material from an industrial aboveground storage tank into
18 groundwater, surface water or subsurface soils within a zone of
19 critical concern. The term shall also include spilling, leaking,
20 emitting, discharging, escaping, leaching or disposing of a
21 regulated material from an industrial aboveground storage tank into
22 a containment structure or facility that poses an immediate threat

1 of contamination of the soils, subsurface soils, surface water or
2 groundwater within a zone of critical concern.

3 (k) "Secondary containment" means an additional layer of
4 impervious material creating a space in which a release of a
5 regulated material from an industrial aboveground storage tank may
6 be detected before it enters the environment.

7 (l) "Secretary" means the Secretary of the Department of
8 Environmental Protection as designated in article one of this
9 chapter or his or her designee.

10 (m) "Zone of critical concern" means those areas identified as
11 a zone of critical concern in a Source Water Assessment Report, as
12 determined as of the effective date of this article by the
13 department of health and human resources in conjunction with the
14 State of West Virginia Source Water Assessment and Protection
15 Program, as such areas may be revised and as additional areas, if
16 any, may be added from time to time by promulgation of emergency
17 and legislative rule by the secretary in accordance with article
18 three, chapter twenty-nine-a of this code.

19 **§22-30-5. Source water protection.**

20 (a) In addition to all other powers and duties prescribed in
21 this chapter or otherwise by law, and unless otherwise specifically
22 set forth in this article, the secretary has the sole and exclusive

1 authority to perform any and all acts necessary to implement a
2 source water protection program designed to protect each public
3 water system in the state from contamination of its source water
4 supply caused by the release of regulated material from an
5 industrial aboveground storage tank consistent with the
6 requirements of this article.

7 (b) Within ninety days of the effective date of this article,
8 each existing public water system shall remit an annual fee in an
9 amount to be specified in an emergency and legislative rule
10 promulgated by the secretary pursuant to this article to be
11 deposited into the Industrial Aboveground Storage Tank
12 Administrative Fund created pursuant to this article and submit a
13 source water protection plan to protect its system from
14 contamination of its source water supply caused by release of
15 regulated material from an industrial aboveground storage tank,
16 which plan, at a minimum, shall include the following:

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

20 (2) Information pertaining to alternative water sources
21 focusing on long-term source replacement should such system be
22 required to develop a new source of water due to such

1 contamination;

2 (3) A management plan that identifies specific activities that
3 will be pursued by such system to protect its source water supply
4 from such contamination, including coordination with government
5 agencies and periodic surveys of the zone of critical concern
6 related to such system; and

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

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

14 (d) The secretary and the Secretary of the Department of
15 Health and Human Resources shall jointly approve any plan submitted
16 pursuant to this section or reject the plan and require such
17 modifications as may be necessary and reasonable to satisfy the
18 purposes of this article. Failure by a public water system to
19 comply with a plan approved pursuant to this section is a violation
20 of this article.

21 (e) The secretary may request a public water system to conduct
22 one or more studies to determine the actual risk and consequences

1 related to any potential contaminant sources identified by the
2 secretary.

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

5 **§22-30-6. Promulgation of rules and standards by the secretary.**

6 (a) The secretary shall promulgate emergency and legislative
7 rules in accordance with article three, chapter twenty-nine-a of
8 this code as may be necessary for the effective implementation and
9 administration of this article.

10 (b) As part of the emergency and legislative rules authorized
11 by subsection a of this section, the secretary shall promulgate
12 emergency and legislative rules in accordance with article three,
13 chapter twenty-nine-a of this code to adopt and implement an
14 industrial aboveground storage tank program that, at a minimum,
15 includes the following subjects:

16 (1) Payment of an annual registration fee to the department of
17 environmental protection by the owner or operator of each
18 industrial aboveground storage tank;

19 (2) Registration with the secretary of each industrial
20 aboveground storage tank and the filing of an annual report with
21 the secretary by the owner or operator of each industrial
22 aboveground storage tank regarding changes in status of any such

1 tank;

2 (3) Methods and procedures for inventory control measures, as
3 appropriate;

4 (4) The periodic inspection of leak detection systems, the
5 structural integrity of industrial aboveground storage tanks and
6 associated equipment, and release prevention measures;

7 (5) Corrective actions by owners, operators, or other
8 responsible parties, as applicable, in response to a release of a
9 regulated material from an industrial aboveground storage tank;

10 (6) The reporting of any release of a regulated material from
11 an industrial aboveground storage tank and corrective action taken
12 in response to a release of a regulated material from an industrial
13 aboveground storage tank;

14 (7) The maintenance of records, by owners or operators, as
15 applicable, of periodic inspections of leak detection systems;
16 inspections of structural integrity of the industrial aboveground
17 storage tanks, their associated equipment, and secondary
18 containment systems; and all release prevention measures as may be
19 necessary to protect human health and the environment from
20 contamination of a source water supply used by a public water
21 system caused by a release of a regulated material from an
22 industrial aboveground storage tank;

1 (8) Minimum standards for the construction, testing, corrosion
2 protection, maintenance, operation, release prevention, and repair
3 and reuse of industrial aboveground storage tanks, their associated
4 equipment, and leak detection systems as may be necessary to
5 protect human health or the environment;

6 (9) Methods and procedures for the removal of industrial
7 aboveground storage tanks from service;

8 (10) Requirements for reporting of the planned and completed
9 closure of any industrial aboveground storage tank;

10 (11) Procedures and amount of fees to be assessed for the
11 Industrial Aboveground Storage Tank Administrative Fund and the
12 Leaking Industrial Aboveground Storage Tank Response Fund
13 established pursuant to this article, which shall include a
14 capitalization fee to be assessed against all owners or operators
15 of industrial aboveground storage tanks to be used for initial
16 establishment of the Industrial Aboveground Storage Tank
17 Administrative Fund and the Leaking Industrial Aboveground Storage
18 Tank Response Fund;

19 (12) Procedures for making expenditures from the Industrial
20 Aboveground Storage Tank Administrative Fund and the Leaking
21 Industrial Aboveground Storage Tank Response Fund;

22 (13) Acceptable methods by which an owner or operator may

1 demonstrate financial responsibility;

2 (14) Procedures establishing when and how the secretary
3 determines if information obtained by the department under this
4 article is confidential;

5 (15) Standards of performance for new and existing industrial
6 aboveground storage tanks;

7 (16) Minimum standards for the construction, testing,
8 operation, maintenance, and repair of secondary containment
9 structures associated with industrial aboveground storage tanks, as
10 may be necessary to protect human health and the environment from
11 contamination of a source water supply used by a public water
12 system caused by a release of a regulated material from an
13 industrial aboveground storage tank; and

14 (17) The volume of regulated material that must be stored in
15 an industrial aboveground storage tank before such tank is subject
16 to regulation under this article, with such volume being
17 established by the secretary based on his or her assessment of the
18 risk posed by materials having a health hazard of two, three or
19 four, as set forth on the material safety data sheet applicable to
20 such material, or any other substance as determined by the National
21 Fire Protection Association or the secretary.

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

1 (a) In addition to all other powers and duties prescribed in
2 this chapter or otherwise provided by law, and unless otherwise
3 specifically set forth in this article, the secretary has the sole
4 and exclusive authority to perform any and all acts necessary to
5 implement an industrial aboveground storage tank program consistent
6 with the requirements of this article.

7 (b) The secretary may receive and expend money from the
8 federal government or any other sources to implement the industrial
9 aboveground storage tank program required by this article.

10 (c) The secretary may revoke any registration provided for in
11 this article for any violation of this article or the legislative
12 rules promulgated hereunder.

13 (d) The secretary, in accordance with this article, may issue
14 orders, assess civil penalties, institute enforcement proceedings,
15 and prosecute violations of this article as the secretary
16 determines to be necessary and appropriate.

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

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

1 the cost of routine inspection and administrative activities not
2 associated with a release or threatened release of a regulated
3 material from an industrial aboveground storage tank.

4 **§22-30-8. Notification requirements.**

5 (a) Industrial aboveground storage tank owners and operators
6 shall notify the secretary of any industrial aboveground storage
7 tank placed into service on or after January 1, 2014, within thirty
8 days of such placement or by June 30, 2014, whichever is later, on
9 a form prescribed by the secretary. The notice shall specify the
10 date of tank installation, tank location, type of construction,
11 size and age of the tank, and the type and volume of regulated
12 material to be stored therein. If, at the time this information is
13 required to be submitted, the secretary has not prepared the form
14 required by this section, the owner shall nevertheless submit the
15 information in writing to the secretary.

16 (b) For an industrial aboveground storage tank that was in
17 existence, whether in service or out of service, prior to
18 January 1, 2014, the owner or operator shall notify the secretary
19 in writing by June 30, 2014, specifying the date of tank
20 installation, tank location, type of construction, size and age of
21 the tank, and the type and volume of regulated material stored
22 therein.

1 (c) A new owner of any industrial aboveground storage tank
2 shall notify the secretary in writing of the transfer of ownership
3 of any industrial aboveground storage tank. Upon the effective
4 date of the transfer, the new owner becomes subject to all
5 provisions of this article. The secretary may prescribe by
6 emergency and legislative rule the appropriate form and timing for
7 the notifications required by this section.

8 **§22-30-9. Registration.**

9 (a) Every owner of an industrial aboveground storage tank
10 shall register each industrial aboveground storage tank by
11 completing and submitting the form provided by the secretary and by
12 paying the annual registration fee prescribed by the secretary for
13 each industrial aboveground storage tank.

14 (b) It is unlawful for any owner or operator to operate or
15 use, in any way, any industrial aboveground storage tank which has
16 not been properly registered or for which the annual registration
17 fee has not been timely paid as required by this section.

18 (c) It is unlawful for any person to approve a delivery order,
19 or deliver or deposit a regulated material into an industrial
20 aboveground storage tank unless the industrial aboveground storage
21 tank owner or operator provides proof of valid registration of the
22 industrial aboveground storage tank into which the regulated

1 material is delivered or deposited.

2 **§22-30-10. Annual inspection and certification by registered**
3 **professional engineer.**

4 (a) Every owner or operator of an industrial aboveground
5 storage tank is required to have an annual inspection of each
6 industrial aboveground storage tank performed by a registered
7 professional engineer and is required to submit, on a form
8 prescribed by rule by the secretary, a certification from a
9 registered professional engineer certifying that the industrial
10 aboveground storage tank, associated equipment, leak detection
11 systems, and secondary containment structures associated therewith
12 meet the minimum standards established by the secretary by
13 emergency and legislative rule for such structures.

14 (b) This certification form must be submitted to the secretary
15 by January 1st of each year, beginning January 1, 2015.

16 **§22-30-11. Financial responsibility.**

17 The secretary shall promulgate rules, as provided in this
18 article, containing requirements for owners and operators to
19 provide evidence satisfactory to the secretary of adequate
20 financial resources to undertake reasonable corrective action for
21 releases of regulated material from industrial aboveground storage
22 tanks. The means of demonstrating adequate financial

1 responsibility may include, but not be limited to, providing
2 evidence of current insurance, guarantee, surety bond, letter of
3 credit, proof of assets, trust fund or qualification as a
4 self-insurer.

5 **§22-30-12. Performance standards.**

6 (a) The secretary shall propose legislative rules regarding
7 performance standards for new and existing industrial aboveground
8 storage tanks. The performance standards for new and existing
9 industrial aboveground storage tanks shall include, but not be
10 limited to, design, construction, installation, maintenance,
11 repair, release detection, and compatibility standards.

12 (b) New and existing industrial aboveground storage tank
13 construction standards must include at least the following
14 requirements:

15 (1) That an industrial aboveground storage tank will prevent
16 releases of regulated material stored therein that may occur as a
17 result of corrosion or structural failure for the operational life
18 of the tank;

19 (2) That an industrial aboveground storage tank will be
20 cathodically protected against corrosion, constructed of
21 noncorrosive material, steel clad with a noncorrosive material, or
22 designed in a manner to prevent the release or threatened release

1 of stored regulated material; and

2 (3) That materials used in the construction or lining of an
3 industrial aboveground storage tank are compatible with the
4 regulated material to be stored therein.

5 **§22-30-13. Corrective action.**

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

9 (1) Require the owner or operator, as applicable, of an
10 industrial aboveground storage tank to undertake corrective action
11 with respect to any release or threatened release of a regulated
12 material from the industrial aboveground storage tank when the
13 secretary determines that corrective action shall be undertaken
14 promptly by the owner or operator thereof to protect human health
15 or the environment from contamination of a source water supply used
16 by a public water system caused by a release of a regulated
17 material from an industrial aboveground storage tank; or

18 (2) Undertake corrective action with respect to any release or
19 threatened release of a regulated material from an industrial
20 aboveground storage tank when, in the judgment of the secretary,
21 the action is necessary to protect human health or the environment
22 from contamination of a source water supply used by a public water

1 system caused by a release of a regulated material from an
2 industrial aboveground storage tank.

3 (b) The corrective action undertaken or required by this
4 section shall be such as may be necessary to protect human health
5 and the environment from contamination of a source water supply
6 used by a public water system caused by a release of a regulated
7 material from an industrial aboveground storage tank. The
8 secretary shall use funds in the Leaking Industrial Aboveground
9 Storage Tank Response Fund established pursuant to this article for
10 payment of costs incurred for corrective action taken by the
11 secretary in accordance with this article. In undertaking
12 corrective actions under this section and in issuing orders
13 requiring owners or operators to undertake such actions, the
14 secretary shall give priority to releases or threatened releases of
15 regulated material from industrial aboveground storage tanks that
16 pose the greatest threat to human health or the environment from
17 contamination of a source water supply used by a public water
18 system.

19 (c) Following the effective date of rules promulgated pursuant
20 to this article, all actions or orders of the secretary shall be in
21 conformity with those rules. Further, following the effective date
22 of such rules, the secretary may undertake corrective action with

1 respect to any release or threatened release of a regulated
2 material from an industrial aboveground storage tank only if, in
3 the judgment of the secretary, the action is necessary to protect
4 human health or environment from contamination of a source water
5 supply used by a public water system, and one or more of the
6 following situations exists:

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

12 (2) A situation exists that requires prompt action by the
13 secretary under this section to protect human health or the
14 environment;

15 (3) The cost of corrective action to be expended on an
16 industrial aboveground storage tank exceeds the amount of resources
17 that the owner or operator can reasonably be expected to possess
18 based on the information required to be submitted pursuant to this
19 article and, considering the regulated material being stored in the
20 industrial aboveground storage tank in question, expenditures from
21 the Leaking Industrial Aboveground Storage Tank Response Fund are
22 necessary to assure an effective corrective action; or

1 (4) The owner or operator of the tank has failed or refused to
2 comply with an order of the secretary under this article or of the
3 environmental quality board under article one, chapter twenty-two-b
4 of this code to comply with appropriate corrective action measures
5 ordered by the secretary or the environmental quality board.

6 (d) The secretary may draw upon the Leaking Industrial
7 Aboveground Storage Tank Response Fund in order to take action
8 under subdivision (1) or (2), subsection (c) of this section if the
9 secretary has made diligent good faith efforts to determine the
10 identity of the party or parties responsible for the release or
11 threatened release of regulated material and:

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

15 (2) The party or parties determined by the secretary to be
16 responsible for the release or threatened release have been
17 informed in writing of the secretary's determination and have been
18 requested by the secretary to take appropriate corrective action
19 but are unable or unwilling to take proper action in a timely
20 manner.

21 (e) The written notice to a responsible party must inform the
22 responsible party that if that party is subsequently found liable

1 for releases pursuant to this section, he or she will be required
2 to reimburse the Leaking Industrial Aboveground Storage Tank
3 Response Fund for the costs of the investigation, information
4 gathering, and corrective action taken by the secretary.

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

15 **§22-30-14. Spill prevention response plan.**

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

1 requirements of this article, and developed in consultation with
2 county and municipal emergency management agencies. The spill
3 prevention response plan shall contain, at a minimum, the
4 following:

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

19 (2) Description of the organizational structure for plan
20 implementation - The plan shall identify all facility-related
21 individuals and their duties and responsibilities for developing,
22 implementing, and maintaining the facility's plan. The plan shall

1 describe in detail the chain of command at the industrial
2 aboveground storage tank facility and list all facility emergency
3 coordinators and emergency response contractors;

4 (3) Spill leak prevention and response - The plan shall
5 provide a preventive maintenance program that includes monitoring
6 and inspection procedures, including identification of stress
7 points, employee training program(s), and security system(s). The
8 plan shall include a description of potential sources and areas
9 where spills and leaks may occur by drawings and plot plans and
10 shall identify specific spill prevention measures for those
11 identified areas;

12 (4) Countermeasures - The plan shall explain in detail the
13 specific response that industrial aboveground storage tank facility
14 and contract emergency personnel shall take upon the occurrence of
15 any release of a regulated material from an industrial aboveground
16 storage tank at the facility;

17 (5) Emergency spill control network - The plan shall include
18 pertinent information obtained by the owner or operator of the
19 industrial aboveground storage tank facility from the county and
20 municipal emergency management agencies and designate the person or
21 persons to be notified in the event of a release of a regulated
22 material from an industrial aboveground storage tank; and

1 (6) Other information - The owner or operator shall provide
2 the secretary with all other information requested by the secretary
3 to carry out his or her duties under this article.

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

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

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

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

18 (4) The plan fails in an emergency;

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

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

1 (c) The secretary shall approve the spill prevention response
2 plan or reject the plan and require such modifications as may be
3 necessary and reasonable to assure the protection of the source
4 water of a public water system from a release of a regulated
5 material from an industrial aboveground storage tank. If rejected,
6 the owner of the industrial aboveground storage tank shall submit
7 a revised plan to the secretary for approval within thirty days of
8 receipt of notification of the secretary's decision.

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

11 (d) Nothing contained in this section relieves the owner or
12 operator of an industrial aboveground storage tank from his or her
13 obligation to report any release immediately to the department of
14 environmental protection's emergency notification telephone number,
15 1-800-642-3074.

16 **§22-30-15. Notice to local governments, water companies, and other**
17 **industrial users.**

18 The owner or operator of an industrial aboveground storage
19 tank facility shall annually provide public notice to public water
20 systems located within a twenty-five mile radius of the industrial
21 aboveground storage tank facility site and the local municipality,
22 if any, and county in which the facility is located. The notice

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

9 **§22-30-16. Required signage.**

10 Every industrial aboveground storage tank shall have
11 prominently posted signage thereupon disclosing the contents of the
12 tank and the hazards, if any, associated with the regulated
13 material stored therein. If the industrial aboveground storage
14 tank is empty, the signage shall so state. For the purposes of
15 this section, the requirements for prominently posted signage shall
16 be specified in the rules promulgated by the secretary pursuant to
17 this article and article three, chapter twenty-nine-a of this code.

18 **§22-30-17. Industrial aboveground storage tank administrative**
19 **fund.**

20 (a) The secretary shall collect annual registration fees from
21 owners or operators of each industrial aboveground storage tanks in
22 an amount sufficient to cover the regulatory oversight and services

1 to be provided by designated agencies, including necessary
2 technical and administrative personnel, as provided in legislative
3 rules promulgated by the secretary pursuant to this article. All
4 registration fees and the net proceeds of all fines, penalties, and
5 forfeitures collected under this article, including accrued
6 interest, shall be paid into the State Treasury into a special
7 revenue fund designated the "Industrial Aboveground Storage Tank
8 Administrative Fund," and shall be used solely to defray the cost
9 of administering this article.

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

15 **§22-30-18. Leaking industrial aboveground storage tank response**
16 **fund.**

17 (a) Each industrial aboveground storage tank owner or operator
18 within this state shall pay an annual fee to establish a fund to
19 assure adequate response to leaking industrial aboveground storage
20 tanks. The amount of fees assessed pursuant to this section shall
21 be specified in legislative rules promulgated in pursuant to this
22 article. The fees must be sufficient to cover the regulatory

1 oversight and services to be provided by designated agencies,
2 including necessary technical and administrative personnel. The
3 proceeds of the assessment shall be paid into the State Treasury
4 into a special fund designated the "Leaking Industrial Aboveground
5 Storage Tank Response Fund."

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

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

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

20 (1) Responding to industrial aboveground storage tank releases
21 when, based on readily available information, the secretary
22 determines that immediate action is necessary to prevent or

1 mitigate significant risk of harm to human health or the
2 environment from contamination of a source water supply used by a
3 public water system caused by a release of regulated material from
4 industrial aboveground storage tanks in situations for which no
5 federal funds are immediately available for the response, cleanup
6 or containment: *Provided*, That the secretary shall apply for and
7 diligently pursue all available federal funds at the earliest
8 possible time.

9 (2) Reimbursing any non-responsible parties for reasonable
10 cleanup costs incurred with the authorization of the secretary in
11 responding to an industrial aboveground storage tank release of
12 regulated material.

13 (3) Reimbursing any non-responsible parties for reasonable
14 costs incurred with the authorization of the secretary responding
15 to perceived, potential or threatened releases of regulated
16 material from industrial aboveground storage tanks.

17 (e) The secretary, through a cooperative agreement with
18 another state regulatory agency, in this or another state, may use
19 the fund to compensate the cooperating agency for expenses the
20 cooperating agency incurs in carrying out regulatory
21 responsibilities that agency may have over an industrial
22 aboveground storage tank facility regulated pursuant to this

1 article.

2 **§22-30-19. Public access to information.**

3 (a) Subject to the exemptions listed in section four, article
4 one, chapter twenty-nine-b of this code, the public shall have
5 access to all documents and information submitted to the agency in
6 accordance with this section pursuant to the state Freedom of
7 Information Act.

8 (b) Any records, reports or information obtained from any
9 persons under this article may be disclosed to other officers,
10 employees, or authorized representatives of this state or the
11 United States environmental protection agency or of this state if
12 the officers, employees or authorized representatives are
13 implementing the provisions of this article or any other applicable
14 law related to releases of regulated material from industrial
15 aboveground storage tanks that impact the source water supply used
16 by a public water system.

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

1 **§22-30-20. Inspections, monitoring and testing.**

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

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

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

19 (2) Inspect and obtain samples of any regulated material
20 contained in an industrial aboveground storage tank from any
21 person;

22 (3) Conduct monitoring or testing of the industrial

1 aboveground storage tanks, associated equipment, contents or
2 surrounding soils, surface, water or groundwater; and

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

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

6 **§22-30-21. Administrative orders; injunctive relief.**

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

19 (b) In addition to the powers and authority granted to the
20 secretary by this chapter to enter into consent agreements,
21 settlements, and otherwise enforce this chapter, the secretary
22 shall propose rules for legislative approval, in accordance with

1 article three, chapter twenty-nine-a of this code, to establish a
2 mechanism for the administrative resolution of violations set forth
3 in this article through consent order or agreement as an
4 alternative to instituting a civil action.

5 **§22-30-22. Civil and criminal penalties.**

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

11 (b) Any owner or operator of an industrial aboveground storage
12 tank who knowingly fails to register an industrial aboveground
13 storage tank or submits false information pursuant to this article
14 is liable for a civil penalty not to exceed \$10,000 for each
15 industrial aboveground storage tank that is not registered or for
16 which false information is submitted.

17 (c) Any owner or operator of an Industrial Aboveground Storage
18 Tank who fails to comply with any requirement of this article or
19 any standard promulgated by the secretary pursuant to this article
20 is subject to a civil penalty not to exceed \$10,000 for each day of
21 violation.

22 (d) Any person who fails to comply with any requirement of

1 section five of this article or any standard promulgated by the
2 secretary pursuant to that section is subject to a civil penalty
3 not to exceed \$10,000.

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

9 **§22-30-23. Appeal to environmental quality board.**

10 Any person aggrieved or adversely affected by an order of the
11 secretary made and entered in accordance with the provisions of
12 this article may appeal to the environmental quality board,
13 pursuant to the provisions of article one, chapter twenty-two-b of
14 this code.

15 **§22-30-24. Duplicative enforcement prohibited.**

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

22 **§22-30-25. Reporting and accountability.**

1 (a) Every three years, the secretary shall submit a report to
2 the Legislature which assesses the effectiveness of this article
3 and provides such other information as may be requested by the
4 Legislature to allow it to assess the effectiveness of this
5 article, including without limitation the secretary's observations
6 concerning all aspects of compliance with this article and any
7 legislative rules promulgated pursuant hereto, the regulatory
8 process, and any pertinent changes to federal rules or regulations.

9 (b) The secretary shall keep accurate accounts of all receipts
10 and disbursements related to the administration of the Industrial
11 Aboveground Storage Tank Administrative Fund and shall make a
12 specific annual report addressing the administration of the fund.

13 (c) The secretary shall keep accurate accounts of all receipts
14 and disbursements related to the administration of the Leaking
15 Industrial Aboveground Storage Tank Response Fund and shall make a
16 specific annual report addressing the administration of the fund.

17 **§22-30-26. Interagency cooperation.**

18 (a) In implementation of this article, the secretary shall
19 coordinate with the Department of Health and Human Resources, the
20 Public Service Commission, and local health departments to ensure
21 the successful planning, implementation, emergency notification and
22 response, corrective action, and enforcement relating to this

1 article, including consideration of the role of those agencies in
2 providing services to owners and operators of industrial
3 aboveground storage tanks and public water systems.

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

10 (c) The secretary shall also coordinate with the state fire
11 marshal in addressing the periodic inspection of local fire
12 departments to include a requirement for inspectors to examine and
13 identify the status of National Incident Management System fire
14 department personnel training.

15 **§22-30-27. Imminent and substantial endangerment.**

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

1 and substantial endangerment to public health or the environment to
2 order such person to take such action as may be necessary to abate
3 the situation and protect public health and the environment from
4 contamination of a source water supply of a public water system
5 caused by a release of a regulated material from an industrial
6 aboveground storage tank.

7 (b) Upon receipt of information that there is any industrial
8 aboveground storage tank that presents an imminent and substantial
9 endangerment to human health or the environment, the secretary
10 shall provide immediate notice to the appropriate state and local
11 government agencies and public water system. In addition, the
12 secretary shall require notice of such endangerment to be promptly
13 posted at the industrial aboveground storage tank facility
14 containing the industrial aboveground storage tank at issue.

15 **§22-30-28. Severability.**

16 If any provision of this article or its application to any
17 person or circumstance is held invalid, the invalidity does not
18 affect the other provisions or applications of this article which
19 can be given effect without the invalid provision or application,
20 and to this end the provisions of this article are severable.

NOTE: The purpose of this bill is to create a source water protection program and an industrial aboveground storage tank program to protect source water supplies and systems.

This article is completely new; therefore, underscoring has been omitted.