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)

[Introduced January 16, 2014; referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.]

A BILL to amend and reenact §22-26-1, §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 six new sections, designated §22-26-10, §22-26-11, §22-26-12, §22-26-13, §22-26-14 and §22-26-15, all relating to the Water Resources Protection and Management Act; making certain legislative finding regarding storage of fluids in aboveground storage tanks; defining certain terms; eliminating certain variance provision; requiring certain progress report from the secretary; requiring certain cooperating state agencies to continue funding levels for stream gaging network; requiring notification of inability to continue funding of stream gaging network; requiring certain information regarding private wells be submitted to the secretary; requiring secretary to provide annual update on implementation of State Water Resources Management Plan; adopting State Water Resources Management
Plan; requiring DEP to report biennially to commission regarding implementation of plan and survey results; requiring large-quantity users to submit certain report annually; requiring registration and inventory of certain aboveground storage tanks; making it unlawful to construct, maintain or use any aboveground storage tank without secretary’s authorization; requiring secretary to develop a regulatory program and providing guidelines for new and existing aboveground storage tanks; requiring inspections, monitoring and testing; providing for administrative orders and reconsideration by secretary; providing for civil penalties and injunctive relief; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That §22-26-1, §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 six new sections, designated §22-26-10, §22-26-11, §22-26-12, §22-26-13, §22-26-14 and §22-26-15, all to read as follows:

ARTICLE 26. WATER RESOURCES PROTECTION ACT.

§22-26-1. Short title; legislative findings.

(a) Short title. -- This article may be known and cited as the Water Resources Protection and Management Act.

(b) Legislative findings. --

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

(2) The West Virginia Legislature further finds that it is the
public policy of the state that the water resources of the state be
available for the benefit of the citizens of West Virginia,
consistent with and preserving all other existing rights and
remedies recognized in common law or by statute, while also
preserving the resources within its sovereign powers for the common
good.

(3) The West Virginia Legislature further finds that the water
use survey conducted by the Department of Environmental Protection
is a valuable tool for water resources assessment, protection and
management.

(4) The West Virginia Legislature further finds that the water
resources of this state have not been fully measured or assessed
and that a program to accurately measure and assess the state’s
water resources is necessary to protect, conserve and better
utilize the water resources of this state.

(5) The West Virginia Legislature further finds that the
survey information collected and analyzed by the West Virginia
Department of Environmental Protection has identified the need for
a statewide water resources management plan.

(6) The West Virginia Legislature further finds that the
development of a state water resources management plan is in the
best interest of the state and its citizens and will promote the
protection of this valuable natural resource; promote its use for
the public good; and enhance its use and development for tourism,
industry and other economic development for the benefit of the
state and its citizens.

(7) The West Virginia Legislature further finds that
incomplete data collection from an inadequate groundwater
monitoring system continues to hamper efforts to study, develop and
protect the state’s water resources and will be a major obstacle in
the development of a water resources management plan.

(8) The Legislature further finds that large quantities of
fluids are stored in aboveground storage tanks within the State of
West Virginia and that emergency situations involving these
substances can and will arise which may present a hazard to human
health, safety or the environment. The Legislature also recognizes
that some of these fluids have been stored in aboveground storage
tanks in the state in a manner insufficient to protect human
health, safety or the state’s water resources.

§22-26-2. Definitions.

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

() "Aboveground storage tank" means any tank or container
where ninety percent or more of the tank volume is located above
the ground surface, but does not include farm or residential tanks
or containers with a capacity of eleven hundred gallons or less and
used for noncommercial purposes.

(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 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.

(1) "Interbasin transfer" means the permanent removal of water from the watershed from which it is withdrawn.

(2) "Large quantity user" means any person who withdraws over seven three hundred fifty thousand gallons of water in any calendar month thirty-day period from the state’s waters and any person who bottles water for resale regardless of quantity withdrawn.

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

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

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

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

(7) "Owner" means a person who owns an aboveground storage tank used for the storage of any fluid.

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

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

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

(s) “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.

(t) “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.

(u) “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.

(w) “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 two thousand six.
(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 such 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 sixteen.

(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.

(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
(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 administrative penalty authorized by section six of this article.

(5) (f) Any well contracted for construction by the secretary for groundwater or geological testing must be constructed at a minimum to well design standards as promulgated by the Division of Health. Any wells contracted for construction by the secretary for groundwater or geological testing that would at a later date be converted to a public use water well must be constructed to comport to state public water design standards.

§22-26-8. State Water Resources Management Plan; powers and duty
of secretary.

(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 well as other terms necessary for implementation of this article.

(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 recreational rivers; national and state wildlife refuges; and the habitats of federal and state endangered or threatened species.

(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.
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.

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

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.

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

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 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.

§22-26-10. 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 on the effective date of this section. To
develop the inventory, the secretary shall promulgate and propose
emergency and legislative rules for legislative approval in
accordance with the provisions of article three, chapter twenty-
nine-a of this code regarding registration requirements.

(b) Within thirty days of the effective date of the rules
referred to in subsection (a) of this section, owners or operators
shall register each aboveground storage tank and provide an
inventory of its contents to the secretary.

§22-26-11. 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, 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 such information as may be proscribed by the secretary;

(2) Performance standards for design, construction, installation, 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 and the environment;

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

(5) Requirements for reporting releases and corrective action taken in response to a release;

(6) Requirements for taking corrective action in response to a release from an aboveground storage tank;

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

(8) Requirements for certification of installation, removal, retrofit, testing and inspection of aboveground storage tanks and leak detection systems by a registered professional engineer or
other qualified person;

(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 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 general public or the environment;

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

(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.

§22-26-12. Inspections, monitoring and testing.

(a) Any owner or operator of an aboveground storage tank
shall, upon request of the director, furnish information relating
to such tanks, their associated equipment and contents, conduct
reasonable monitoring or testing, permit the secretary or his or
her authorized representative at all reasonable times to have
access to, and to copy all records relating to such tanks and
permit the secretary or his or her authorized representative to
have access to the aboveground storage tank for corrective action.

(b) The secretary or his or her authorized representative may:
(1) Enter at reasonable times any establishment or other place
where an aboveground storage tank is located;
(2) Inspect and obtain samples from any person of any fluids
contained in such tank;
(3) Conduct monitoring or testing of the tanks, associated
equipment, contents or surrounding soils, air, surface, water or
groundwater; and
(4) Take any necessary corrective action.


(a) Whenever on the basis of any information, the secretary
determines that any person is in violation of any requirement
related to the aboveground storage program or any rule 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. 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) Any person issued an order may file a notice of request for reconsideration with the secretary not more than seven days from the issuance of such order. The notice of request for reconsideration shall identify the order to be reconsidered and shall set forth in detail the reasons for which reconsideration is requested. The secretary shall grant or deny the request for reconsideration within twenty days of the filing of the notice of request of reconsideration.

§22-26-14. Civil penalties and injunctive relief.

(a) The secretary may commence a civil action for temporary and permanent injunctive relief to compel compliance with any provision or requirement of the aboveground storage tank program.

(b) The secretary may also commence a civil action for civil penalties for any violation of any provision or requirement of the aboveground storage tank program.

(c) Venue for the civil actions authorized by subsections (a) and (b) of this section shall be in the circuit court of Kanawha County or the circuit court of the county in which an aboveground storage tank is located.


The secretary may promulgate and propose emergency and legislative rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the aboveground storage tank program.

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, and underscoring indicates new language that would be added.