

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-SECOND LEGISLATURE**  
**REGULAR SESSION, 2015**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 423**

(SENATORS M. HALL, BLAIR, CARMICHAEL, FACEMIRE, D. HALL,  
KIRKENDOLL, MULLINS, PLYMALE, ROMANO, TRUMP, WOELFEL,  
WILLIAMS AND STOLLINGS, *ORIGINAL SPONSORS*)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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AN ACT to repeal §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated, §16-1-9f; to amend and reenact §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code; to amend said code by adding thereto a new section, designated §22-30-26; and to amend and reenact §22-31-2 of said code, all relating to protection of water resources and public health generally; amending the Aboveground Storage Tank Act; defining terms; requiring secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; authorizing the Secretary of the

Department of Environmental Protection to propose emergency and legislative rules; creating alternative regulatory program to allow permitted and otherwise regulated entities to compel permits and plans to accomplish tank and secondary containment standards under existing programs; requiring secretary to develop regulatory program for tanks; creating a zone of peripheral concern for some; creating certain exemptions to regulation; providing factors to be considered in a program; requiring inspection and certification of tanks; requiring evidence of financial responsibility; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of type and quantity of fluids stored in tanks to local water utilities and governments; requiring posting of signs at or near tanks; creating an administrative fund; creating Protect Our Water Fund; authorizing public access to certain information; authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; providing for civil and criminal penalties; allowing appeals to Environmental Quality Board; prohibiting duplicative enforcement; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing for waiver of certain requirements; authorizing secretary to require individual NPDES permits; authorizing Secretary of Department of Health and Human Resources to inventory potential sources of significant contamination; membership of study commission; scope of study; and establishing reporting requirements.

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

That §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §16-1-9f; that §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6,

§22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-30-26; and that §22-31-2 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 16. PUBLIC HEALTH**

### **ARTICLE 1. STATE PUBLIC HEALTH SYSTEM**

#### **§16-1-9f. Inventory of potential sources of significant contamination.**

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

17 (b) The Department shall provide a copy of the compiled  
18 list of known potential sources of significant contamination  
19 in each zone of critical concern to the Department of  
20 Environmental Protection and the Division of Homeland  
21 Security and Emergency Management.

## CHAPTER 22. ENVIRONMENTAL RESOURCES

### ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

#### §22-30-2. Legislative findings.

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

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

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

24 (d) The Legislature further finds that large quantities of  
25 fluids are stored in aboveground storage tanks within the state  
26 and that emergency situations involving these fluids can and  
27 will arise that may present a hazard to human health, safety,

28 the water resources, the environment and the economy of the  
29 state. The Legislature further recognizes that some of these  
30 fluids have been stored in aboveground storage tanks in a  
31 manner insufficient to protect human health, safety, water  
32 resources, the environment and the economy of the state.

**§22-30-3. Definitions.**

1 For purposes of this article:

2 (1) “Aboveground storage tank” or “tank” or “AST”  
3 means a device made to contain an accumulation of more  
4 than one thousand three hundred twenty gallons of fluids that  
5 are liquid at standard temperature and pressure, which is  
6 constructed primarily of nonearthen materials, including  
7 concrete, steel, plastic or fiberglass reinforced plastic, which  
8 provide structural support, more than ninety percent of the  
9 capacity of which is above the surface of the ground, and  
10 includes all ancillary pipes and dispensing systems up to the  
11 first point of isolation. The term includes stationary devices  
12 which are permanently affixed, and mobile devices which  
13 remain in one location on a continuous basis for three  
14 hundred sixty-five or more days. A device meeting this  
15 definition containing hazardous waste subject to regulation  
16 under 40 C. F. R. Parts 264 and 265, exclusive of tanks  
17 subject to regulation under 40 C. F. R. § 265.201 is included  
18 in this definition but is not a regulated tank. Notwithstanding  
19 any other provision of this code to the contrary, the following  
20 categories of devices are not subject to the provisions of this  
21 article:

22 (A) Shipping containers that are subject to state or federal  
23 laws or regulations governing the transportation of hazardous  
24 materials, including, but not limited to, railroad freight cars  
25 subject to federal regulation under the Federal Railroad  
26 Safety Act, 49 U. S. C. §§20101-2015, as amended,

27 including, but not limited to, federal regulations promulgated  
28 thereunder at 49 C. F. R. Parts 172, 173 or 174;

29 (B) Barges or boats subject to federal regulation under the  
30 United States Coast Guard, United States Department of  
31 Homeland Security, including, but not limited to, federal  
32 regulations promulgated at 33 C. F. R. 1, *et seq.* or subject to  
33 other federal law governing the transportation of hazardous  
34 materials;

35 (C) Swimming pools;

36 (D) Process vessels;

37 (E) Devices containing drinking water for human or  
38 animal consumption, surface water or groundwater,  
39 demineralized water, noncontact cooling water or water  
40 stored for fire or emergency purposes;

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

44 (G) Except when located in a zone of critical concern, a  
45 device located on a farm, the contents of which are used  
46 exclusively for farm purposes and not for commercial  
47 distribution;

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

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

52 (J) Pipeline facilities, including gathering lines, regulated  
53 under the Natural Gas Pipeline Safety Act of 1968 or the

54 Hazardous Liquid Pipeline Safety Act of 1979, or an  
55 intrastate pipeline facility regulated by the West Virginia  
56 Public Service Commission or otherwise regulated under any  
57 state law comparable to the provisions of either the Natural  
58 Gas Pipeline Safety Act of 1968 or the Hazardous Liquid  
59 Pipeline Safety Act of 1979;

60 (K) Liquid traps, atmospheric and pressure vessels, or  
61 associated gathering lines related to oil or gas production and  
62 gathering operations; and

63 (L) Electrical equipment such as transformers, circuit  
64 breakers and voltage regulator transformers.

65 (2) “Department” means the West Virginia Department  
66 of Environmental Protection.

67 (3) “First point of isolation” means the valve, pump,  
68 dispenser or other device or equipment on or nearest to the  
69 tank where the flow of fluids into or out of the tank may be  
70 shut off manually or where it automatically shuts off in the  
71 event of a pipe or tank failure.

72 (4) “Nonoperational storage tank” means an empty  
73 aboveground storage tank in which fluids will not be  
74 deposited or from which fluids will not be dispensed on or  
75 after the effective date of this article.

76 (5) “Operator” means any person in control of, or having  
77 responsibility for, the daily operation of an aboveground  
78 storage tank.

79 (6) “Owner” means a person who holds title to, controls  
80 or owns an interest in an aboveground storage tank, including  
81 the owner immediately preceding the discontinuation of its  
82 use. “Owner” does not mean a person who holds an interest

83 in a tank for financial security unless the holder has taken  
84 possession of and operated the tank.

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

92 (8) “Process vessel” means a tank that forms an integral  
93 part of a production process through which there is a steady,  
94 variable, recurring or intermittent flow of materials during the  
95 operation of the process or in which a biological, chemical or  
96 physical change in the material occurs. This does not include  
97 tanks used for storage of materials prior to their introduction  
98 into the production process or for the storage of finished  
99 products or by-products of the production process.

100 (9) “Public groundwater supply source” means a primary  
101 source of water supply for a public water system which is  
102 directly drawn from a well, underground stream, underground  
103 reservoir, underground mine or other primary sources of  
104 water supplies which are found underneath the surface of the  
105 state.

106 (10) “Public surface water supply source” means a  
107 primary source of water supply for a public water system  
108 which is directly drawn from rivers, streams, lakes, ponds,  
109 impoundments or other primary sources of water supplies  
110 which are found on the surface of the state.

111 (11) “Public surface water influenced groundwater supply  
112 source” means a source of water supply for a public water  
113 system which is directly drawn from an underground well,

114 underground river or stream, underground reservoir or  
115 underground mine, and the quantity and quality of the water  
116 in that underground supply source is heavily influenced,  
117 directly or indirectly, by the quantity and quality of surface  
118 water in the immediate area.

119 (12) “Public water system” means:

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

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

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

132 (B) A public water system does not include a bathhouse  
133 located on coal company property solely for the use of its  
134 employees or a system which meets all of the following  
135 conditions:

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

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

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

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

144 (13) “Regulated level 1 aboveground storage tank” or  
145 “level 1 regulated tank” means:

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

150 (B) An AST that contains substances defined in section  
151 101(14) of the Comprehensive Environmental Response,  
152 Compensation and Liability Act (CERCLA) as a “hazardous  
153 substance” (42 U. S. C. § 9601(14)); or is on EPA’s  
154 “Consolidated List of Chemicals Subject to the Emergency  
155 Planning and Community Right to Know Act (EPCRA),  
156 CERCLA, and §112(r) of the Clean Air Act (CAA)” (known  
157 as “the List of Lists”) as provided by 40 C. F. R. §§ 355, 372,  
158 302, and 68) in a concentration of one percent or greater,  
159 regardless of the AST’s location, except ASTs containing  
160 petroleum are not “level 1 regulated tanks” based solely upon  
161 containing constituents recorded on the CERCLA lists; or,

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

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

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

171 (16) “Release” means any spilling, leaking, emitting,  
172 discharging, escaping, or leaching of fluids from an  
173 aboveground storage tank into the waters of the state or  
174 escaping from secondary containment.

175 (17) “Secondary containment” means a safeguard applied  
176 to one or more aboveground storage tanks that prevents the  
177 discharge into the waters of the state of the entire capacity of  
178 the largest single tank and sufficient freeboard to contain  
179 precipitation. In order to qualify as secondary containment,  
180 the barrier and containment field must be sufficiently  
181 impervious to contain fluids in the event of a release, and  
182 may include double-walled tanks, dikes, containment curbs,  
183 pits or drainage trench enclosures that safely confine the  
184 release from a tank in a facility catchment basin or holding  
185 pond. Earthen dikes and similar containment structures must  
186 be designed and constructed to contain, for a minimum of  
187 seventy-two hours, fluid that escapes from a tank.

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

190 (19) “Source water protection area” for a public  
191 groundwater supply source is the area within an aquifer that  
192 supplies water to a public water supply well within a  
193 five-year time-of-travel, and is determined by the  
194 mathematical calculation of the locations from which a drop  
195 of water placed at the edge of the protection area would  
196 theoretically take five years to reach the well.

197 (20) “Zone of critical concern” for a public surface water  
198 supply source and for a public surface water influenced  
199 groundwater supply source is a corridor along streams within  
200 a watershed that warrants detailed scrutiny due to its  
201 proximity to the surface water intake and the intake’s  
202 susceptibility to potential contaminants within that corridor.

203 The zone of critical concern is determined using a  
204 mathematical model that accounts for stream flows, gradient  
205 and area topography. The length of the zone of critical  
206 concern is based on a five-hour time-of-travel of water in the  
207 streams to the intake. The width of the zone of critical  
208 concern is one thousand feet measured horizontally from each  
209 bank of the principal stream and five hundred feet measured  
210 horizontally from each bank of the tributaries draining into  
211 the principal stream.

212 (21) “Zone of peripheral concern” for a public surface  
213 water supply source and for a public surface water influenced  
214 groundwater supply source is a corridor along streams within  
215 a watershed that warrants scrutiny due to its proximity to the  
216 surface water intake and the intake’s susceptibility to  
217 potential contaminants within that corridor. The zone of  
218 peripheral concern is determined using a mathematical model  
219 that accounts for stream flows, gradient and area topography.  
220 The length of the zone of peripheral concern is based on an  
221 additional five-hour time-of-travel of water in the streams  
222 beyond the perimeter of the zone of critical concern, which  
223 creates a protection zone of ten hours above the water intake.  
224 The width of the zone of peripheral concern is one thousand  
225 feet measured horizontally from each bank of the principal  
226 stream and five hundred feet measured horizontally from  
227 each bank of the tributaries draining into the principal stream.

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

1 (a) To assure protection of the water resources of the  
2 state, the secretary shall compile an inventory of all  
3 aboveground storage tanks. The secretary shall prescribe a  
4 registration form for this purpose.

5 (b) Each owner or operator of an aboveground storage  
6 tank shall complete and submit to the secretary the  
7 registration form by July 1, 2015. The owner or operator of  
8 any aboveground storage tank placed into service on or after  
9 the effective date of this section shall complete and submit a  
10 registration form to the secretary prior to storing fluids  
11 therein. Tank registrations previously submitted to the  
12 secretary pursuant to this article shall constitute registration  
13 pursuant to this section.

14 (c) At a minimum, the registration form shall identify the  
15 ownership of the tank, tank location, date of installation if  
16 known, type of construction, capacity and age of the tank, the  
17 type of fluid stored therein, and the circumstances under  
18 which the registration must be updated.

19 If the registered tank is regulated under any existing state  
20 or federal regulatory program, the owner of the tank shall be  
21 required to provide the identifying number of any license,  
22 registration or permit issued for the tank.

23 (d) The Secretary shall charge a registration fee of \$40  
24 per tank for all ASTs in service prior to July 1, 2015. The  
25 registration fee for ASTs placed into service on or after July  
26 1, 2015, shall be \$20 per tank. Registration fees for ASTs in  
27 service prior to July 1, 2015, shall be deposited such that half  
28 the amount is placed into the AST Administrative Fund and  
29 half the amount into the Protect Our Water Fund. Registration  
30 fees for ASTs placed into service on or after July 1, 2015,  
31 shall be deposited wholly into the AST Administrative Fund.

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

37 (2) In recognition of the need to expeditiously capitalize  
38 the AST Administrative Fund and the Protect Our Water  
39 Fund, the secretary may charge the fees provided for in this  
40 subsection by sending invoices for the same to the owners or  
41 operators of ASTs prior to the promulgation of the rules  
42 contemplated in subdivision (1) of this subsection.

43 (e) After July 1, 2015, it shall be unlawful for any owner  
44 or operator to operate or use an aboveground storage tank  
45 that has not been properly registered or for which any  
46 applicable registration fee has not been paid.

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

1 (a) The secretary shall develop a regulatory program for  
2 new and existing regulated aboveground storage tanks and  
3 secondary containment that takes into account the size,  
4 location and contents of the tanks and sets out tiered  
5 requirements for regulated tanks. Level 1 tanks shall be  
6 regulated to a higher standard of tank and secondary  
7 containment integrity based upon their proximity to a public  
8 surface water supply source or public surface water  
9 influenced groundwater supply source.

10 (b) The rules promulgated by the secretary for regulated  
11 tanks and secondary containment shall, at a minimum,  
12 include the following:

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

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

17 (3) Criteria for the design, operation, maintenance or  
18 methods of leak detection. Acceptable leak detection shall

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19 include, but not be limited to, visual inspections, an inventory  
20 control system together with tank testing, or a comparable  
21 system or method designed to identify leaks from  
22 aboveground storage tanks;

23 (4) Requirements for recordkeeping;

24 (5) Requirements for the development of maintenance  
25 and corrosion prevention plans;

26 (6) Requirements for the closure of aboveground storage  
27 tanks and any remediation necessary as a result of release  
28 from the aboveground storage tank;

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

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

34 (9) A procedure for the administrative resolution of  
35 violations including the assessment of administrative civil  
36 penalties.

37 (c) For those entities that are otherwise regulated under  
38 those provisions of this chapter that necessitate individual,  
39 site-specific permits or plans that require appropriate  
40 containment and diversionary structures or equipment to  
41 prevent discharged or released materials from reaching the  
42 waters of the state, the secretary may amend those permits or  
43 plans associated with those permits or both at the request of  
44 the permittee to include conditions pertaining to the  
45 management and control of regulated tanks, so long as those  
46 conditions in the opinion of the secretary are sufficient in  
47 combination with practices and protections already in place

48 to protect the waters of the state. In its application for permit  
49 or plan modification, the permittee shall advise the secretary  
50 whether, how and to what extent the permittee adheres to  
51 other standards or plans with regard to tank and secondary  
52 containment integrity, inspection and spill prevention and  
53 response, including, without limitation, API 653 standards for  
54 Tank Inspection, Repair, Alteration and Reconstruction or  
55 STI SP001 Standards for Aboveground Storage Tanks or the  
56 requirements of the federal spill prevention and  
57 countermeasures program governed by 40 C. F. R. Part 112.  
58 Inclusion of ASTs in amended permits or plans would not  
59 relieve the owner or operator's responsibility to pay  
60 registration, certificate to operate or Protect Our Water Fund  
61 fees. Specifically, the permits or plans the secretary may  
62 amend include:

63 (1) Permits issued pursuant to the Surface Coal Mining  
64 and Reclamation Act, article three of this chapter;

65 (2) Permits issued by the Office of Oil and Gas pursuant  
66 to article six or six-a of this chapter or spill pollution and  
67 control measures plans required under 35 C. S. R. 1;

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

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

73 (5) Groundwater protection plans issued pursuant to  
74 article twelve of this chapter.

75 (d) Any entity whose permit or plan modification or  
76 amendment relating to tank integrity and secondary  
77 containment design operation and maintenance is approved

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78 by the secretary and so maintained shall be deemed to be  
79 compliant with this article and entitles the entity to a  
80 certificate to operate so long as the registration requirements  
81 of section four of this article are also met.

82 (e) The manner and time frames for implementation of  
83 the regulatory program required by this section shall be  
84 established by the secretary through the proposal of  
85 emergency or legislative rules in accordance with the  
86 provisions of article three, chapter twenty-nine-a of this code.

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

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

11 (b) Every owner or operator shall submit a certification  
12 that each regulated tank and its associated secondary  
13 containment structure have been evaluated by a qualified  
14 person as set forth in subsection (a) of this section and meets  
15 the standards established in accordance with section five of  
16 this article.

17 (c) The certification form shall be submitted to the  
18 secretary within one hundred eighty days of the effective date  
19 of the rules establishing standards that are adopted in  
20 accordance with section five of this article. Subsequent  
21 certifications shall be due at regular intervals thereafter as

22 established by the secretary by legislative rule, but not more  
23 frequently than once per calendar year.

24 (d) Any person who performs a tank evaluation in  
25 accordance with subsection (a) of this section, a responsible  
26 person designated by the owner or operator and any other  
27 person designated by the secretary by legislative rule may  
28 certify aboveground storage tanks in accordance with  
29 subsection (b) of this section.

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

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

**§22-30-8. Corrective action.**

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

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

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

14           (b) The corrective action undertaken or required by this  
15 section shall be what may be necessary to protect human  
16 health, water resources and the environment from  
17 contamination caused by a release, including the ordered  
18 cessation or closure of a source of contamination and the  
19 ordered remediation of a contaminated site. The secretary  
20 shall use funds in the Protect Our Water Fund established  
21 pursuant to this article for payment of costs incurred for  
22 corrective action taken by the secretary in accordance with  
23 this article. In undertaking corrective actions under this  
24 section and in issuing orders requiring owners or operators to  
25 undertake the actions, the secretary shall give priority to  
26 releases or threatened releases of fluid from aboveground  
27 storage tanks that pose the greatest threat to human health,  
28 water resources or the environment.

29           (c) Following the effective date of rules promulgated  
30 pursuant to this article, all actions or orders of the secretary  
31 shall be in conformity with those rules. Following the  
32 effective date of the rules, the secretary may utilize funds  
33 from the Protect Our Water Fund to undertake corrective  
34 action with respect to any release from an aboveground  
35 storage tank only if, in the judgment of the secretary, the  
36 action is necessary to protect human health, safety, water  
37 resources or the environment from contamination, and one or  
38 more of the following situations exists:

39           (1) If no person can be found within thirty days, or a  
40 shorter period as may be necessary to protect human health,

41 safety, water resources and the environment, who is an owner  
42 or operator of the aboveground storage tank at issue and who  
43 is capable of carrying out the corrective action properly;

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

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

55 (4) The owner or operator of the tank has failed or  
56 refused to comply with an order of the secretary under this  
57 article or of the Environmental Quality Board under article  
58 one, chapter twenty-two-b of this code or of a court of  
59 competent jurisdiction to comply with appropriate corrective  
60 action measures.

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

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

69 (2) The owner or operator determined by the secretary to  
70 be responsible for the release has been informed in writing of

71 the secretary's determination and has been requested by the  
72 secretary to take appropriate corrective action but is unable  
73 or unwilling to take proper action in a timely manner.

74 (e) The written notice to the owner or operator must  
75 inform the owner or operator that if it is subsequently found  
76 liable by a court of competent jurisdiction for releases  
77 pursuant to this section, the owner or operator will be  
78 required to reimburse the Protect Our Water Fund for the  
79 costs of the investigation, information gathering and  
80 corrective action taken by the secretary.

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

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

1 (a) Within one hundred eighty days of the effective date  
2 of this article, each owner or operator of a regulated  
3 aboveground storage tank shall submit to the secretary a spill  
4 prevention and response plan for all regulated aboveground  
5 storage tanks at a facility or location. Owners and operators  
6 of regulated aboveground storage tanks shall file updated  
7 plans required to be submitted by this section no less  
8 frequently than every five years. The spill prevention and  
9 response plan shall at a minimum:

10 (1) Describe the activity that occurs at the site and  
11 provide an inventory of the types and amounts of fluids  
12 stored in regulated aboveground storage tanks at the facility.  
13 The plan shall provide a reference to the location of the safety  
14 data sheets (SDS) required by the Occupational Safety and  
15 Health Administration for all fluids stored in regulated  
16 aboveground storage tanks at the facility;

17 (2) Identify all facility-related positions with duties and  
18 responsibilities for overseeing the implementation of the  
19 facility's plan and list all facility emergency coordinators;

20 (3) Describe a preventive maintenance program,  
21 monitoring and inspection procedures, and employee training  
22 programs;

23 (4) Describe the general release response procedures that  
24 the aboveground storage tank facility and contract emergency  
25 personnel shall employ upon the occurrence of any release;

26 (5) Provide contact information for the state, county and  
27 municipal emergency management agencies and the nearest  
28 downstream public water supply intake, and designate the  
29 person or persons to be notified in the event of a release from  
30 a regulated aboveground storage tank that could reach waters  
31 of the state; and

32 (6) Provide the secretary with any other information he or  
33 she may reasonably request.

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

39 (1) There is a substantial modification in design,  
40 construction, operation or maintenance of any regulated  
41 aboveground storage tank, secondary containment or leak  
42 detection equipment or methods, or there are other  
43 circumstances that increase the potential for fires, explosions  
44 or releases of fluids;

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

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

49 (4) The plan fails in an emergency;

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

52 (6) Other circumstances occur for which the secretary  
53 requests an update.

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

64 (d) In lieu of a plan developed in accordance with the  
65 requirements of this section, the owner or operator of a  
66 regulated aboveground storage tank may certify to the  
67 secretary that it is subject to: (1) A groundwater protection

68 plan approved by the secretary; or (2) a spill prevention  
69 control and countermeasures plan that complies the  
70 requirements of 40 C. F. R. Part 112. Such plans shall be  
71 made available for review or submitted to the secretary upon  
72 request.

73 (e) Nothing contained in this section relieves the owner  
74 or operator of an aboveground storage tank from his or her  
75 obligation to report any release in accordance with the  
76 provisions of this chapter and the rules promulgated  
77 thereunder.

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

1 (a) The owner or operator of a regulated aboveground  
2 storage tank shall provide notice directly to the public water  
3 system and to state, county and municipal emergency  
4 response organizations of the type and quantity of fluid stored  
5 in the regulated aboveground storage tanks at the facility and  
6 the location of the safety data sheets (SDS) associated with  
7 the fluids in storage. Subject to the protections afforded in  
8 section fourteen of this article, the information required in  
9 this subsection shall be delivered to the specific public water  
10 system and to state, county and municipal emergency  
11 response organizations that are designated by the secretary to  
12 receive required notice.

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

**§22-30-11. Required signage.**

1 Every aboveground storage tank shall display, or have  
2 displayed nearby, the tank registration number, when issued  
3 by the secretary; the emergency contact number for the owner  
4 or operator of the tank; and the number for the Department of  
5 Environmental Protection's Spill Reporting Hotline.

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

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

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

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

1 (a) Each owner or operator of a regulated aboveground  
2 storage tank shall pay an annual fee to assure adequate  
3 response to releases from aboveground storage tanks. The  
4 amount of fees assessed pursuant to this section shall be set  
5 forth by rule. The proceeds of the assessment shall be paid  
6 into a special revenue account, hereby created within the

7 State Treasury, designated the Protect Our Water Fund. The  
8 fund shall be administered by the secretary. Expenditures  
9 from the fund shall be solely to respond to releases from  
10 aboveground storage tanks.

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

20 (c) At the end of each fiscal year, any unexpended  
21 balance, including accrued interest, on deposit in the Protect  
22 Our Water Fund shall not be transferred to the General  
23 Revenue fund, but shall remain in the Protect Our Water  
24 Fund for expenditure pursuant to this section.

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

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

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

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

46 (e) The secretary, through a cooperative agreement with  
47 another state regulatory agency, in this or another state, may  
48 use the fund to compensate the cooperating agency for  
49 expenses the cooperating agency incurs in carrying out  
50 corrective actions pursuant to this article.

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

1 (a) The public shall have access to all documents and  
2 information submitted to the department pursuant to this  
3 article, subject to the limitations contained in the state  
4 Freedom of Information Act, article one, chapter  
5 twenty-nine-b of this code, or any information designated by  
6 the Division of Homeland Security and Emergency  
7 Management as restricted from public release. Trade secrets,  
8 proprietary business information and information designated  
9 by the Division of Homeland Security and Emergency  
10 Management as restricted from public release shall be  
11 secured and safeguarded by the department. Such  
12 information or data shall not be disclosed to the public or to  
13 any firm, individual or agency other than officials or  
14 authorized employees or representatives of a state or federal  
15 agency implementing the provisions of this article or any  
16 other applicable law related to releases of fluid from  
17 aboveground storage tanks that impact the state's water  
18 resources. Any person who makes any unauthorized

19 disclosure of such confidential information or data is guilty  
20 of a misdemeanor and, upon conviction thereof, may be fined  
21 not more than \$1,000 or confined in a regional jail facility for  
22 not more than twenty days, or both.

23 (b) A list of the potential sources of significant  
24 contamination contained within the zone of critical concern  
25 or zone of peripheral concern as provided by the Bureau for  
26 Public Health, working in conjunction with the department  
27 and the Division of Homeland Security and Emergency  
28 Management may only be disclosed to the extent consistent  
29 with the protection of trade secrets, confidential business  
30 information and information designated by the Division of  
31 Homeland Security and Emergency Management as  
32 described above. The exact location of the contaminants  
33 within the zone of critical concern or zone of peripheral  
34 concern is not subject to public disclosure in response to a  
35 Freedom of Information Act request under article one,  
36 chapter twenty-nine-b of this code. However, the location,  
37 characteristics and approximate quantities of potential  
38 sources of significant contamination within the zone of  
39 critical concern or zone of peripheral concern shall be made  
40 known to one or more designees of the public water utility,  
41 and shall be maintained in a confidential manner by the  
42 public water utility. In the event of a release to waters of the  
43 state that could affect a public water supply, information  
44 about the release shall be promptly made available to any  
45 emergency responders responding to the site of a spill or  
46 release and the general public shall be promptly notified in  
47 the event of a chemical spill, release or related emergency by  
48 the Director of Homeland Security and Emergency  
49 Management.

50 (c) The Director of Homeland Security and Emergency  
51 Management may promulgate emergency rules and shall  
52 propose legislative rules, pursuant to article three, chapter

53 twenty-nine-a of this code to effectuate the provisions of this  
54 section.

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

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

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

8 (2) Conduct reasonable monitoring or testing;

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

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

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

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

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

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

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

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

27 (d) To ensure protection of the water resources of the  
28 state and compliance with any provision of this article or rule  
29 promulgated thereunder, the secretary shall inspect level 1  
30 regulated tanks at least once every three years. The secretary  
31 shall develop an inspection protocol for level 2 regulated  
32 tanks.

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

1 (a) When the secretary determines, on the basis of any  
2 information, that a person is in violation of any requirement  
3 of this article or the rules promulgated thereunder, the  
4 secretary may issue an order stating with reasonable  
5 specificity the nature of the violation and requiring  
6 compliance within a reasonable specified time period, or the  
7 secretary may commence a civil action in the circuit court of  
8 the county in which the violation occurred or in the circuit  
9 court of Kanawha County for appropriate relief, including a  
10 temporary or permanent injunction. The secretary or the  
11 Environmental Quality Board may stay any order issued by  
12 the secretary until the order is reviewed by the Environmental  
13 Quality Board.

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

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

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

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

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

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

25 (e) Any person convicted of a second or subsequent  
26 willful violation as set forth in subsection (d) of this section  
27 is guilty of a felony and, upon conviction, may be imprisoned  
28 in a correctional facility not less than one nor more than three  
29 years, or fined not more than \$50,000 for each day of  
30 violation, or both fined and imprisoned.

31 (f) Any person may be prosecuted and convicted under  
32 the provisions of this section notwithstanding that none of the  
33 administrative remedies provided in this article have been  
34 pursued or invoked against said person and notwithstanding  
35 that civil action for the imposition and collection of a civil  
36 penalty or an application for an injunction under the  
37 provisions of this article has not been filed against such  
38 person.

39 (g) Where a person holding a permit is carrying out a  
40 program of pollution abatement or remedial action in  
41 compliance with the conditions and terms of a corrective  
42 action plan approved by the secretary, the person is not  
43 subject to criminal prosecution for pollution recognized and  
44 authorized by the approved corrective action plan.

45 (h) Civil penalties are payable to the secretary. All  
46 moneys collected under this section for civil fines collected  
47 under this article shall be deposited into either the AST  
48 Administrative Fund or the Protect Our Water Fund. All  
49 money deposited into these accounts shall be used by the  
50 secretary solely for the purposes described in sections twelve  
51 and thirteen of this article.

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

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

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

1 No enforcement proceeding brought pursuant to this  
2 article may be duplicated by an enforcement proceeding

3 subsequently commenced under some other article of this  
4 code with respect to the same transaction or event, unless the  
5 subsequent proceeding involves the violation of a permit or  
6 permitting requirement of the other article.

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

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

10 (b) The Division of Homeland Security and Emergency  
11 Management shall also coordinate with state and local  
12 emergency response agencies to facilitate a coordinated  
13 emergency response and incident command and  
14 communication between the owner or operator of the  
15 regulated aboveground storage tank, the state and local  
16 emergency response agencies, and the affected public water  
17 systems.

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

1 (a) Notwithstanding any other provision of this code to the  
2 contrary, upon receipt of evidence that an aboveground storage  
3 tank may present an imminent and substantial danger to human  
4 health, water resources or the environment, the secretary may  
5 bring suit on behalf of the State of West Virginia in the circuit  
6 court of the county in which the imminent and substantial  
7 danger exists or in the circuit court of Kanawha County against  
8 any owner or operator of an aboveground storage tank who has

9 contributed or who is contributing to imminent and substantial  
10 danger to public health, safety, water resources or the  
11 environment to order the person to take action as may be  
12 necessary to abate the situation and protect human health,  
13 safety, water resources and the environment from contamination  
14 caused by a release of fluid from an aboveground storage tank.

15 (b) Upon receipt of information that there is any  
16 aboveground storage tank that presents an imminent and  
17 substantial danger to human health, safety, water resources or  
18 the environment, the secretary shall require the owner or  
19 operator of the tank to provide immediate notice to the  
20 appropriate state and local government agencies and any  
21 affected public water systems. In addition, the secretary shall  
22 require notice of any danger to be promptly posted at the  
23 aboveground storage tank facility containing the  
24 aboveground storage tank at issue.

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

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

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

8 (c) The secretary may revoke any registration or  
9 certificate to operate for a significant violation of this article  
10 or the rules promulgated hereunder.

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

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

17 (f) The secretary may recover the costs of taking  
18 corrective action, including costs associated with authorizing  
19 third parties to perform corrective action. Costs may not  
20 include routine inspection and administrative activities not  
21 associated with a release.

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

1 The secretary may designate, by rules proposed for  
2 legislative approval in accordance with article three, chapter  
3 twenty-nine-a of this code, additional categories of  
4 aboveground storage tanks for which one or more of the  
5 requirements of this article may be waived upon a  
6 determination that such categories of aboveground storage  
7 tanks either do not represent a substantial threat of  
8 contamination or they are currently regulated under standards  
9 that are consistent with the protective standards and  
10 requirements set forth in this article and rules promulgated  
11 thereunder.

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

1 Any person who holds a National Pollutant Discharge  
2 Elimination System general permit pursuant to the federal  
3 Water Pollution Control Act or the West Virginia Water  
4 Pollution Control Act, article eleven of this chapter, for a site  
5 that contains one or more regulated aboveground storage  
6 tanks may be required by the secretary to apply for and hold  
7 an individual permit under those acts. Any general NPDES

8 permit in effect on the effective date of this act shall remain  
9 in effect until the secretary either issues or denies the  
10 individual NPDES permit.

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

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

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

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

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

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

23 (4) A review and consideration of the recommendations  
24 of the U. S. Chemical Safety and Hazard and Investigation

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25 Board after its investigation of the Bayer Crop Science  
26 incident of 2008; and

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

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

35 (1) Four members appointed by the Governor, one of whom  
36 shall be a professional engineer experienced in the design and  
37 construction of public water systems; one of whom shall be a  
38 hydrologist or other expert experienced in determining the flow  
39 characteristics of rivers and streams; one of whom shall be an  
40 environmental toxicologist or other public health expert who is  
41 familiar with the impact of contaminants on the human body;  
42 and one citizen representative;

43 (2) One representative designated by the Rural Water  
44 Association;

45 (3) One representative designated by the Municipal  
46 League;

47 (4) The Secretary of the Department of Environmental  
48 Protection or his or her designee;

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

51 (6) The Director of the Division of Homeland Security  
52 and Emergency Management or his or her designee;

53       (7) The Chairman of the Public Service Commission or  
54 his or her designee;

55       (8) Two representatives designated by the Business  
56 Industry Council; and

57       (9) One representative designated by West Virginia  
58 Rivers Coalition.

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

62       (d) The study commission shall terminate on June 30,  
63 2019.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*President of the Senate*

.....  
*Speaker of the House of Delegates*

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The within ..... this the .....

Day of ....., 2015.

.....  
*Governor*