

E N G R O S S E D  
COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

**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)

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

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A BILL to amend and reenact §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-

30-21, §22-30-22, §22-30-23, §22-30-24, §22-30-25 and §22-30-26, all relating to water resources and water protection generally; revising the Water Resources Protection and Management Act; establishing the Aboveground Storage Tank Water Resources Protection Act; making certain legislative findings; clarifying definitions; amending definition of “large-quantity user”; eliminating certain variance provisions; requiring certain reports from the secretary; requiring cooperating state agencies to continue funding levels for stream-gaging network; requiring notification of inability to continue funding of stream-gaging network; requiring information regarding private wells and depth to groundwater; requiring secretary to provide annual update on implementation of State Water Resources Management Plan; adopting State Water Resources Management Plan; requiring the Department of Environmental Protection to report annually to commission regarding implementation of plan and survey results; requiring large-quantity users to submit reports annually; creating certain requirement for aboveground storage tanks containing fluids except water; providing certain exemptions; defining terms; requiring registration and inventorying of certain aboveground storage tanks; making it unlawful to construct, maintain or use

any aboveground storage tank without a permit; setting forth regulatory framework for aboveground storage tanks; requiring annual inspections of tanks; requiring financial resources to take corrective action; requiring corrective action for releases and corrective action in the event of a release; authorizing the secretary to take corrective action in certain circumstances; requiring of certain facts spill prevention response plans; providing notice to local governments, water companies and industrial users; mandating signage and aboveground storage tanks sites reflecting contents of the tanks and hazards associated therewith; establishing registration fees and administrative fund; creating Leaking Aboveground Storage Tank Response Fund and setting forth mechanisms for funding and expenditure; permitting public access to information subject to FOIA; establishing requirements for inspections, monitoring and testing; requiring secretary to perform mandatory annual inspection; providing for administrative orders and injunctive relief; providing for civil penalties and creating certain criminal offenses and setting forth penalties therefore; permitting appeals to Environmental Quality Board; prohibiting certain duplicative enforcement; requiring reports to the legislature; requiring interagency cooperation; permitting

civil action in case of imminent and substantial danger; requiring source water protection plans from public water systems; requiring annual fees by public water systems; requiring Department of Health and Human Resources and Department of Environmental Protection to jointly approve protection plan; authorizing emergency rulemaking; requiring legislative rulemaking for purposes of implementing the act; and setting forth powers and duties of secretary.

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

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

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

**ARTICLE 26. WATER RESOURCES PROTECTION AND  
MANAGEMENT ACT.**

**22-26-2. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

51       (l) (m) “Nonconsumptive withdrawal” means any  
52 withdrawal of water which is not a consumptive withdrawal  
53 as defined in this section.

54       (m) (n) “Person”, “persons” or “people” means an  
55 individual, public and private business or industry, public or  
56 private water service and governmental entity.

57       (n) (o) “Secretary” means the Secretary of the  
58 Department of Environmental Protection or his or her  
59 designee.

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

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

67       ~~(q)~~ (r) “Water resources”, “water” or “waters” means any  
68 and all water on or beneath the surface of the ground,  
69 whether percolating, standing, diffused or flowing, wholly or  
70 partially within this state, or bordering this state and within  
71 its jurisdiction and includes, without limiting the generality  
72 of the foregoing, natural or artificial lakes, rivers, streams,  
73 creeks, branches, brooks, ponds, impounding reservoirs,  
74 springs, wells, watercourses and wetlands: *Provided*, That  
75 farm ponds, industrial settling basins and ponds and waste  
76 treatment facilities are excluded from the waters of the state.

77       ~~(r)~~ (s) “Watershed” means a hydrologic unit utilized by  
78 the United States Department of Interior’s geological survey,  
79 adopted in 1974, as a framework for detailed water and  
80 related land-resources planning.

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

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

1       (a) The waters of the State of West Virginia are hereby  
2 claimed as valuable public natural resources held by the state  
3 for the use and benefit of its citizens. The state shall manage  
4 ~~the quantity of~~ and protect its waters effectively for present  
5 and future use and enjoyment and for the protection of the  
6 environment. Therefore, it is necessary for the state to  
7 determine the nature and extent of its water resources, the  
8 quantity of water being withdrawn or otherwise used and the  
9 nature of the withdrawals or other uses: *Provided*, That no  
10 provisions of this article may be construed to amend or limit  
11 any other rights and remedies created by statute or common  
12 law in existence on the date of the enactment of this article.

13       (b) The secretary shall conduct an ongoing water  
14 resources survey of consumptive and nonconsumptive  
15 surface water and groundwater withdrawals by large quantity  
16 users in this state. The secretary shall determine the form and  
17 format of the information submitted, including the use of  
18 electronic submissions. The secretary shall establish and  
19 maintain a statewide registration program to monitor large

20 quantity users of water resources of this state beginning in  
21 2006.

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

37 (d) Except as provided in subsection (f) of this section,  
38 large-quantity users who withdraw water from a West  
39 Virginia water resource shall comply with the survey and  
40 registration requirements of this article. Registration shall be  
41 maintained annually by every large-quantity user by

11

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

42 ~~certifying~~, on forms and in a manner prescribed by the  
43 secretary, ~~that the amount withdrawn in the previous calendar~~  
44 ~~year varies by no more than ten percent from the users'~~  
45 ~~baseline average or by certifying the change in usage.~~

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

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

53 (g) All state agencies and local governmental entities that  
54 have a regulatory, research, planning or other function  
55 relating to water resources, including, but not limited to, the  
56 State Geological and Economic Survey, the Division of  
57 Natural Resources, the Public Service Commission, the  
58 Bureau for Public Health, the Commissioner of the  
59 Department of Agriculture, the Division of Homeland  
60 Security and Emergency Management, Marshall University,  
61 West Virginia University and regional, county and municipal  
62 planning authorities may enter into interagency agreements  
63 with the secretary and shall cooperate by: (i) Providing

64 information relating to the water resources of the state; (ii)  
65 providing any necessary assistance to the secretary in  
66 effectuating the purposes of this article; and (iii) assisting in  
67 the development of a state water resources management plan.  
68 The secretary shall determine the form and format of the  
69 information submitted by these agencies.

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

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

84 (j) The secretary shall, to the extent reliable water  
85 withdrawal data is reasonably available from sources other

13

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

86 than persons required to provide data and participate in the  
87 survey and registration, utilize that data to fulfill the  
88 requirements of this section. If the data is not reasonably  
89 available to the secretary, persons required to participate in  
90 the survey and registration are required to provide the data.  
91 Altering locations of intakes and discharge points that result  
92 in an impact to the withdrawal of the water resources ~~by an~~  
93 ~~amount of ten percent or more from the consecutive baseline~~  
94 ~~average~~ shall also be reported.

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

106 (l) In addition to any requirements for completion of the  
107 survey established by the secretary, the survey must

108 accurately reflect both actual and maximum potential water  
109 withdrawal. Actual withdrawal shall be established through  
110 metering, measuring or alternative accepted scientific  
111 methods to obtain a reasonable estimate or indirect  
112 calculation of actual use.

113 (m) The secretary shall make recommendations to the  
114 joint Legislative Oversight Commission on Water Resources  
115 created in section five of this article relating to the  
116 implementation of a water quantity management strategy for  
117 the state or regions of the state where the quantity of water  
118 resources are found to be currently stressed or likely to be  
119 stressed due to emerging beneficial or other uses, ecological  
120 conditions or other factors requiring the development of a  
121 strategy for management of these water resources.

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

126 (o) The secretary is authorized to enter into cooperative  
127 agreements with local, state and federal agencies and private  
128 policy or research groups to obtain federal matching funds,  
129 conduct research and analyze survey and registration data

15 [Eng. Com. Sub. for Com. Sub. for S. B. No. 373

130 and other agreements as may be necessary to carry out his or  
131 her duties under this article.

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

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

1 (a) The President of the Senate and the Speaker of the  
2 House of Delegates shall each designate five members of  
3 their respective houses, at least one of whom shall be a  
4 member of the minority party, to serve on a joint legislative  
5 oversight commission charged with immediate and ongoing  
6 oversight of the water resources survey, registration and  
7 development of a state water resources management plan.

8 This commission shall be known as the Joint Legislative  
9 Oversight Commission on State Water Resources and shall  
10 regularly investigate and monitor all matters relating to ~~the~~  
11 water resources, including the survey and plan.

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

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

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

5 (b) All large-quantity users who withdraw water from a  
6 West Virginia water resource shall complete the survey and  
7 register ~~such~~ use with the department of ~~Environmental~~  
8 ~~Protection~~. Any person who fails to complete the survey or  
9 register, provides false or misleading information on the  
10 survey or registration, or fails to provide other information as

17

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

11 required by this article may be subject to a civil  
12 administrative penalty not to exceed \$5,000 to be collected  
13 by the secretary consistent with the secretary's authority  
14 pursuant to this chapter. Every thirty days after the initial  
15 imposition of the civil administrative penalty, another penalty  
16 may be assessed if the information is not provided. The  
17 secretary shall provide written notice of failure to comply  
18 with this section thirty days prior to assessing the first  
19 administrative penalty.

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

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

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

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

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

26       ~~(4)~~ (e) Any person who fails to notify the secretary prior  
27 to drilling a well or impedes collection of information by the  
28 secretary under this section is in violation of the Water  
29 Resources Protection and Management Act and is subject to  
30 the civil administrative penalty authorized by section six of  
31 this article.

32       ~~(5)~~ (f) Any well contracted for construction by the  
33 secretary for groundwater or geological testing must be  
34 constructed at a minimum to well design standards as  
35 promulgated by the Division of Health. Any wells contracted

19 [Eng. Com. Sub. for Com. Sub. for S. B. No. 373  
36 for construction by the secretary for groundwater or  
37 geological testing that would at a later date be converted to  
38 a public use water well must be constructed to comport to  
39 state public water design standards.

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

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

15 (b) The secretary shall develop definitions for use in the  
16 State Water Resources Management Plan for terms that are

17 defined differently by various state and federal governmental  
18 entities as well as other terms necessary for implementation  
19 of this article.

20 (c) The secretary shall continue to develop and obtain the  
21 following:

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

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

35 (3) A plan for the development of the infrastructure  
36 necessary to identify the groundwater resources of each  
37 region of this state, including an identification of aquifers and  
38 groundwater basins and an assessment of their safe yield,

21

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

39 prime recharge areas, recharge capacity, consumptive limits  
40 and relationship to stream base flows.

41 (4) After consulting with the appropriate state and federal  
42 agencies, assess and project the existing and future  
43 nonconsumptive use needs of the water resources required to  
44 serve areas with important or unique natural, scenic,  
45 environmental or recreational values of national, regional,  
46 local or statewide significance, including national and state  
47 parks; designated wild, scenic and recreational rivers;  
48 national and state wildlife refuges; and the habitats of federal  
49 and state endangered or threatened species.

50 (5) Assessment and projection of existing and future  
51 consumptive use demands.

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

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

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

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

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

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

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

76 (11) A process for identifying projects and practices that  
77 are being, or have been, implemented by water users that  
78 reduce the amount of consumptive use, improve efficiency in  
79 water use, provide for reuse and recycling of water, increase  
80 the supply or storage of water or preserve or increase  
81 groundwater recharge and a recommended process for

23

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

82 providing appropriate positive recognition of ~~such~~ projects or  
83 practices in actions, programs, policies, projects or  
84 management activities.

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

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

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

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

103       ~~(15)~~ (16) Proposed methods of implementing various  
104 recommended actions, programs, policies, projects or  
105 management activities.

106       (d) The State Water Resources Management Plan shall  
107 consider:

108       (1) The interconnections and relationships between  
109 groundwater and surface water as components of a single  
110 hydrologic resource.

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

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

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

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

123       (6) A balancing and encouragement of multiple uses of  
124 water resources, recognizing that all water resources of this

25 [Eng. Com. Sub. for Com. Sub. for S. B. No. 373

125 state are capable of serving multiple uses and human needs,  
126 including multiple uses of water resources for reasonable and  
127 beneficial uses.

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

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

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

141 (f) ~~Upon adoption of the state Water Resources~~  
142 ~~Management Plan by the Legislature, the report requirements~~  
143 ~~of this article shall be superceded by the plan and subsequent~~  
144 ~~reports shall be on the survey results and the water resources~~  
145 ~~plan. If the plan is not adopted a detailed report discussing~~  
146 ~~the provisions of this section as well as progress reports on~~

147 ~~the development of the plan shall be submitted every three~~  
148 ~~years.~~ The State Water Resources Management Plan is  
149 hereby adopted. Persons identified as large-quantity users  
150 prior to the effective date of this subsection shall report  
151 actual monthly water withdrawals, or monthly water  
152 withdrawals by a method approved by the secretary, for the  
153 previous calendar year by March 31 of each succeeding year.  
154 Persons identified as large-quantity users on or after the  
155 effective date of this subsection shall submit their initial  
156 annual report no later than March 31, 2016, and subsequent  
157 annual reports by March 31 of each year thereafter.

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

**§22-30-1. Short title.**

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

**§22-30-2. Legislative findings.**

1 (a) The West Virginia Legislature finds that it is in the  
2 public policy of the State of West Virginia to protect and  
3 conserve the water resources for the state and its citizens.  
4 The state's water resources are vital natural resources that are

5 essential to maintain, preserve and promote human health,  
6 quality of life and economic vitality of the state.

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

24 (d) The Legislature further finds that large quantities of  
25 fluids are stored in aboveground storage tanks within the  
26 state and that emergency situations involving these fluids can

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

**§22-30-3. Applicability; exclusions.**

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

5 (b) *Exclusions.* – The following aboveground storage  
6 tanks are excluded from the requirements of this article:

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

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

14 (3) An aboveground storage tank located on residential  
15 property of one thousand one hundred gallons or less  
16 capacity used for storing motor fuel for noncommercial  
17 purposes;

18 (4) An aboveground storage tank of one thousand one  
19 hundred gallons or less capacity used for storing heating oil  
20 for consumption on the premises where stored;

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

23 (6) Stormwater or wastewater collection and treatment  
24 systems;

25 (7) Septic tanks;

26 (8) A pipeline facility, including gathering lines,  
27 regulated under the Natural Gas Pipeline Safety Act of 1968  
28 or the Hazardous Liquid Pipeline Safety Act of 1979, or an  
29 intrastate pipeline facility regulated by the West Virginia  
30 Public Service Commission or otherwise regulated under any  
31 state law comparable to the provisions of either the Natural  
32 Gas Pipeline Safety Act of 1968 or the Hazardous Liquid  
33 Pipeline Safety Act of 1979;

34 (9) Equipment or machinery containing substances for  
35 operational purposes, including integral hydraulic lift tanks,

36 lubricating oil reservoirs for pumps and motors, electrical  
37 equipment and heating and cooling equipment;

38 (10) An indoor tank located inside a building resting on  
39 or elevated above an impermeable floor surface from which  
40 a release would be entirely contained in a secondary  
41 containment structure or not escape through other means;

42 (11) A mobile tank or truck that is one thousand one  
43 hundred or less in capacity and is located on site for less than  
44 sixty consecutive calendar days;

45 (12) Aboveground storage tanks, containing hazardous  
46 wastes, which are subject to a treatment or storage permits  
47 regulated under Subtitle C of the federal Solid Waste  
48 Disposal Act, 42 U. S. C. §6921, *et seq.*, or substances  
49 regulated under article eighteen of this chapter;

50 (13) An aboveground storage tank containing agricultural  
51 pesticides regulated under article sixteen-a, chapter nineteen  
52 of this code;

53 (14) Liquid traps or associated gathering lines related to  
54 oil or gas production and gathering operations;

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

31

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

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

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

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

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

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

77 (17) Any aboveground storage tank of one thousand one  
78 hundred gallons or less capacity, not otherwise exempt,  
79 unless that tank is greater than 500 gallons capacity and is  
80 located within five hundred feet of surface or source waters;

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

87 (19) Tanks regulated under Section 1321 of the federal  
88 Water Pollution Control Act (Section 311 of the federal  
89 Clean Water Act) and the regulations promulgated  
90 thereunder, 40 C. F. R. §112, *et seq.*; and

91 (20) Tanks used for the storage of fluids that are gases at  
92 standard temperature and pressure.

**§22-30-4. Definitions.**

1 For purposes of this article, the following words mean:

2 (a) “Aboveground storage tank”, “tank”, or the plural,  
3 means any container, or set of connected containers, designed  
4 to contain fluids and is constructed of materials including

5 concrete, steel, plastic or fiberglass reinforced plastic. The  
6 term includes all ancillary aboveground pipes and dispensing  
7 systems up to the first point of isolation and all ancillary  
8 underground pipes and dispensing systems connected to the  
9 aboveground containers.

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

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

16 (d) “Operator” means any person in control of, or having  
17 responsibility for, the daily operation of an aboveground  
18 storage tank.

19 (e) “Owner” means a person who holds title to, controls  
20 or owns an interest in an aboveground storage tank, including  
21 owners of tanks immediately preceding the discontinuation  
22 of a tank’s use. “Owner” does not mean a person who holds  
23 an interest in a tank for financial security, unless the holder  
24 has taken possession of and operated the tank.

25 (f) “Person”, “persons” or “people” means any individual,  
26 trust, firm, owner, operator, corporation or other legal entity,

27 including the United States government, an interstate  
28 commission or other body, the state or any agency, board,  
29 bureau, office, department or political subdivision of the  
30 state, but does not include the Department of Environmental  
31 Protection.

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

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

44 (i) Secondary containment means a safeguard specifically  
45 designed to be impermeable to stored substances and which  
46 will contain a release from an aboveground storage tank, and  
47 prevent the release from spreading vertically or horizontally,

35

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

48 contaminating the land or water outside of the containment  
49 area.

50 (j) "Secretary" means the Secretary of the Department of  
51 Environmental Protection, or his or her designee.

**§22-30-5. 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  
3 aboveground storage tanks in existence, regardless of  
4 whether they are operational or nonoperational storage tanks,  
5 on the effective date of this article. The secretary shall  
6 prescribe a registration form for this purpose within thirty  
7 days of the effective date of the enactment of this article. All  
8 aboveground storage tanks subject to this article shall be  
9 registered no later than sixty days from the effective date of  
10 the enactment of this article.

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

15 (c) If, at the time this registration is required to be  
16 submitted, the secretary has not prepared the form required

17 by this section, the owner or operator shall nevertheless  
18 submit the information in writing to the secretary. The duty  
19 to provide correct, up-to-date information about the location  
20 and contents of aboveground storage tanks is an ongoing  
21 requirement.

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

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

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

36 (g) It is unlawful for any person to approve a delivery  
37 order, or to deliver or deposit any fluid subject to this article  
38 into an aboveground storage tank unless the owner or

37

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

39 operator provides proof of valid registration of the tank into  
40 which the fluid is to be delivered or deposited.

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

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

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

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

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

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

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

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

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

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

33       (8) Requirements for certification of installation,  
34 removal, retrofit, corrosion and other testing and inspection  
35 of aboveground storage tanks, leak detection systems and  
36 secondary containment by a qualified registered professional  
37 engineer or a qualified person working under the direct  
38 supervision of a registered professional engineer, regulated

39

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

39 and licensed by the West Virginia Professional Engineers  
40 Board;

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

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

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

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

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

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

**§22-30-7. Annual inspection and certification.**

1 (a) Every owner or operator of an aboveground storage  
2 tank regulated herein shall have an annual inspection of each  
3 tank performed by a qualified registered professional  
4 engineer or a qualified person working under the direct  
5 supervision of a registered professional engineer, regulated  
6 and licensed by the West Virginia Professional Engineers  
7 Board. Every owner or operator shall submit, on a form  
8 prescribed by the secretary, a certification from the engineer  
9 that each tank, associated equipment, leak detection systems

41 [Eng. Com. Sub. for Com. Sub. for S. B. No. 373

10 and secondary containment structures meet the minimum  
11 standards established by the secretary by rule.

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

**§22-30-8. Financial responsibility.**

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

**§22-30-9. 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 to develop a  
5 preliminary corrective action plan taking into consideration  
6 the types of fluids and types of tanks on the premises;

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

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

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

43

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

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

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

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

48 (3) The cost of corrective action to be expended on an  
49 aboveground storage tank exceeds the amount of resources  
50 that the owner or operator can reasonably be expected to  
51 possess based on the information required to be submitted

52 pursuant to this article and, considering the fluid being stored  
53 in the aboveground storage tank in question, expenditures  
54 from the Leaking Aboveground Storage Tank Response Fund  
55 are necessary to assure an effective corrective action; or

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

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

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

71 (2) The owner or operator determined by the secretary to  
72 be responsible for the release or threatened release has been  
73 informed in writing of the secretary's determination and has

45

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

74 been requested by the secretary to take appropriate corrective  
75 action but is unable or unwilling to take proper action in a  
76 timely manner.

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

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

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

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

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

47

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

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

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

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

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

45 (6) Provide the secretary with all other requested  
46 information.

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

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

57 (2) There is a substantial modification in emergency  
58 equipment at the facility;

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

61 (4) The plan fails in an emergency;

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

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

49

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

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

76 (d) Nothing contained in this section relieves the owner  
77 or operator of an aboveground storage tank from his or her  
78 obligation to report any release immediately to the  
79 Department of Environmental Protection's emergency  
80 notification telephone number.

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

1 The owner or operator of an aboveground storage tank  
2 facility shall annually provide public notice to public water  
3 systems located within a 25-mile radius of the aboveground  
4 storage tank facility site and the local municipality, if any,  
5 and county in which the facility is located. The notice shall

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

**§22-30-12. Required signage.**

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

**§22-30-13. Aboveground Storage Tank Administrative Fund.**

1 (a) The secretary shall collect annual registration fees  
2 from owners or operators of each aboveground storage tank  
3 in an amount sufficient to cover the regulatory oversight and  
4 services to be provided by designated agencies, including

51

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

5 necessary technical and administrative personnel, as set forth  
6 by rule. All registration and permit fees and the net proceeds  
7 of all fines, penalties and forfeitures collected under this  
8 article, including accrued interest, shall be paid into a special  
9 revenue account, hereby created within the State Treasury,  
10 designated the Aboveground Storage Tank Administrative  
11 Fund, and shall be used solely to defray the cost of  
12 administering this act.

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.

**§22-30-14. Leaking Aboveground Storage Tank Response Fund.**

1 (a) Each owner or operator of an aboveground storage  
2 tank located in this state shall pay an annual fee to establish  
3 a fund to assure adequate response to leaking aboveground  
4 storage tanks. The amount of fees assessed pursuant to this  
5 section shall be set forth by rule. The fees must be sufficient  
6 to cover the regulatory oversight and services to be provided  
7 by designated agencies, including necessary technical and  
8 administrative personnel. The proceeds of the assessment

9 shall be paid into a special revenue account, hereby created  
10 within the State Treasury, designated the Leaking  
11 Aboveground Storage Tank Response Fund, and shall be  
12 used solely to respond to leaking aboveground storage tanks.

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

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

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

53

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

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:

36 *Provided*, That the secretary shall apply for and diligently  
37 pursue all 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 regulatory responsibilities that agency may have pursuant to  
51 this article.

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

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

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

**§22-30-16. 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 from any person;

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 Each inspection shall be commenced and completed with  
26 reasonable promptness.

27 (c) 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 at least  
30 annually any aboveground storage tank facility located  
31 within twenty-five miles upstream of a public water system  
32 intake in zones of critical concern as determined by the  
33 secretary.

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

1 (a) Whenever the secretary determines, on the basis of  
2 any information, that any person is in violation of any  
3 requirement of this article or the rules promulgated  
4 thereunder, the secretary may issue an order stating with  
5 reasonable specificity the nature of the violation and  
6 requiring compliance within a reasonable specified time  
7 period, or the secretary may commence a civil action in the  
8 circuit court of the county in which the violation occurred or

9 in the circuit court of Kanawha County for appropriate relief,  
10 including a temporary or permanent injunction. The  
11 secretary may, except as provided in subsection (b) of this  
12 section, stay any order he or she issues upon application,  
13 until the order is reviewed by the Environmental Quality  
14 Board.

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

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

1 (a) Any person who fails to comply with an order of the  
2 secretary issued under subsection (a), section seventeen of  
3 this article within the time specified in the order is liable for  
4 a 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 permit for an

8 aboveground storage tank or submits false information  
9 pursuant to this article is liable for a civil penalty not to  
10 exceed \$10,000 for each aboveground storage tank that is not  
11 registered or permitted or for which false information is  
12 submitted.

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

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

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

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

1 Any person aggrieved or adversely affected by an order  
2 of the secretary made and entered in accordance with the  
3 provisions of this article may appeal to the Environmental

4 Quality Board, pursuant to the provisions of article one,  
5 chapter twenty-two-b of this code.

**§22-30-20. 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 other article.

**§22-30-21. Reporting and accountability.**

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

12 (b) The secretary shall keep accurate accounts of all  
13 receipts and disbursements related to the administration of  
14 the Aboveground Storage Tank Administrative Fund and  
15 shall make a detailed annual report to the Joint Legislative  
16 Oversight Commission on State Water Resources and the  
17 Joint Committee on Government and Finance addressing the  
18 administration of the fund.

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

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

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

61

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

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

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

**§22-30-23. Imminent and substantial danger.**

1 (a) Notwithstanding any other provision in this chapter,  
2 upon receipt of evidence that an aboveground storage tank  
3 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  
6 Circuit Court of Kanawha County against any owner or  
7 operator of an aboveground storage tank who has contributed  
8 or who is contributing to imminent and substantial danger to  
9 public health, safety, water resources or the environment to  
10 order the person to take action as may be necessary to abate

11 the situation and protect human health, safety, water  
12 resources and the environment from contamination caused by  
13 a release of fluid from an aboveground storage tank.

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

**§22-30-24. Source water protection.**

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

10 (b) By July 1, 2015, each existing public water system  
11 shall remit an annual fee in an amount to be specified in  
12 emergency and legislative rules promulgated pursuant to this  
13 article and article three, chapter twenty-nine-A of this code,  
14 to be deposited into the Aboveground Storage Tank  
15 Administrative Fund created pursuant to this article and  
16 submit a source water protection plan to protect its system  
17 from contamination of its source water supply caused by  
18 release of fluid from an aboveground storage tank, which  
19 plan, at a minimum, shall include the following:

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

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

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

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

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

39       (d) The Secretary of the Department of Health and  
40 Human Resources shall accept a plan submitted pursuant to  
41 this section and provide a copy to the secretary. Thereafter,  
42 within ninety days, the secretary and the Secretary of the  
43 Department of Health and Human Resources may reject the  
44 plan and require modifications as may be necessary and  
45 reasonable to satisfy the purposes of this article. Failure by  
46 a public water system to comply with a plan approved  
47 pursuant to this section is a violation of this article.

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

65

[Eng. Com. Sub. for Com. Sub. for S. B. No. 373

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

**§22-30-25. Promulgation of rules.**

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

**§22-30-26. 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,  
9 authorization or permit for a violation of this article or the  
10 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.