

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 373**

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

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11 [Originating in the Committee on the Judiciary;
12 reported January 24, 2014.]
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16 A BILL to amend and reenact §22-26-2, §22-26-3, §22-26-5, §22-26-6,
17 §22-26-7 and §22-26-8 of the Code of West Virginia, 1931, as
18 amended; and to amend said code by adding thereto a new
19 article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4,
20 §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10,
21 §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-
22 16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21,
23 §22-30-22, §22-30-23, §22-30-24, §22-30-25 and §22-30-26, all
24 relating to water resources and water protection generally;
25 revising the Water Resources Protection and Management Act;
26 establishing the Aboveground Storage Tank Water Resources
27 Protection Act; making certain legislative findings;

1 clarifying definitions; amending definition of "large-quantity
2 user"; eliminating certain variance provisions; requiring
3 certain reports from the secretary; requiring cooperating
4 state agencies to continue funding levels for stream-gaging
5 network; requiring notification of inability to continue
6 funding of stream-gaging network; requiring information
7 regarding private wells and depth to groundwater; requiring
8 secretary to provide annual update on implementation of State
9 Water Resources Management Plan; adopting State Water
10 Resources Management Plan; requiring the Department of
11 Environmental Protection to report annually to commission
12 regarding implementation of plan and survey results; requiring
13 large-quantity users to submit reports annually; creating
14 certain requirement for aboveground storage tanks containing
15 fluids except water; providing certain exemptions; defining
16 terms; requiring registration and inventorying of certain
17 aboveground storage tanks; making it unlawful to construct,
18 maintain or use any aboveground storage tank without a permit;
19 setting forth regulatory framework for aboveground storage
20 tanks; requiring annual inspections of tanks; requiring
21 financial resources to take corrective action; requiring
22 corrective action for releases and corrective action in the
23 event of a release; authorizing the secretary to take
24 corrective action in certain circumstances; requiring of
25 certain facts spill prevention response plans; providing
26 notice to local governments, water companies and industrial

1 users; mandating signage and aboveground storage tanks sites
2 reflecting contents of the tanks and hazards associated
3 therewith; establishing registration fees and administrative
4 fund; creating Leaking Aboveground Storage Tank Response Fund
5 and setting forth mechanisms for funding and expenditure;
6 permitting public access to information subject to FOIA;
7 establishing requirements for inspections, monitoring and
8 testing; requiring secretary to perform mandatory annual
9 inspection; providing for administrative orders and injunctive
10 relief; providing for civil penalties and creating certain
11 criminal offenses and setting forth penalties therefore;
12 permitting appeals to Environmental Quality Board; prohibiting
13 certain duplicative enforcement; requiring reports to the
14 legislature; requiring interagency cooperation; permitting
15 civil action in case of imminent and substantial danger;
16 requiring source water protection plans from public water
17 systems; requiring annual fees by public water systems;
18 requiring Department of Health and Human Resources and
19 Department of Environmental Protection to jointly approve
20 protection plan; authorizing emergency rulemaking; requiring
21 legislative rulemaking for purposes of implementing the act;
22 and setting forth powers and duties of secretary.

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

24 That §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-
25 26-8 of the Code of West Virginia, 1931, as amended, be amended and
26 reenacted; and that said code be amended by adding thereto a new

1 article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4 §22-30-
2 5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11,
3 §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17,
4 §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23,
5 §22-30-24, §22-30-25 and §22-30-26, all to read as follows:

6 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

8 **22-26-2. Definitions.**

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

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

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

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

24 (d) "Community water system" means a public water system that
25 pipes water for human consumption to at least fifteen service
26 connections used by year-round residents or one that regularly

1 serves at least twenty-five residents.

2 (e) "Consumptive withdrawal" means any withdrawal of water
3 which returns less water to the water body than is withdrawn.

4 (f) "Department" means the West Virginia Department of
5 Environmental Protection.

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

10 ~~(g)~~ (h) "Industrial well" means a well used in industrial
11 processing, fire protection, washing, packing or manufacturing of
12 a product excluding food and beverages or similar nonpotable uses.

13 ~~(h)~~ (i) "Interbasin transfer" means the permanent removal of
14 water from the watershed from which it is withdrawn.

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

22 ~~(j)~~ (k) "Maximum potential" means the maximum designed
23 capacity of a facility to withdraw water under its physical and
24 operational design.

25 ~~(k)~~ (l) "Noncommunity nontransient water system" means a
26 public water system that serves at least twenty-five of the same

1 persons over six months per year.

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

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

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

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

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

17 ~~(q)~~ (r) "Water resources", "water" or "waters" means any and
18 all water on or beneath the surface of the ground, whether
19 percolating, standing, diffused or flowing, wholly or partially
20 within this state, or bordering this state and within its
21 jurisdiction and includes, without limiting the generality of the
22 foregoing, natural or artificial lakes, rivers, streams, creeks,
23 branches, brooks, ponds, impounding reservoirs, springs, wells,
24 watercourses and wetlands: *Provided*, That farm ponds, industrial
25 settling basins and ponds and waste treatment facilities are
26 excluded from the waters of the state.

1 ~~(r)~~ (s) "Watershed" means a hydrologic unit utilized by the
2 United States Department of Interior's geological survey, adopted
3 in one thousand nine hundred seventy-four, as a framework for
4 detailed water and related land-resources planning.

5 ~~(s)~~ (t) "Withdrawal" means the removal or capture of water
6 from water resources of the state regardless of whether it is
7 consumptive or nonconsumptive: *Provided*, That water encountered
8 during coal, oil, gas, water well drilling and initial testing of
9 water wells, or other mineral extraction and diverted, but not used
10 for any purpose and not a factor in low-flow conditions for any
11 surface water or groundwater, is not deemed a withdrawal.

12 **§22-26-3. Waters claimed by state; water resources protection**
13 **survey; registration requirements; agency cooperation;**
14 **information gathering.**

15 (a) The waters of the State of West Virginia are hereby
16 claimed as valuable public natural resources held by the state for
17 the use and benefit of its citizens. The state shall manage ~~the~~
18 ~~quantity of~~ and protect its waters effectively for present and
19 future use and enjoyment and for the protection of the environment.
20 Therefore, it is necessary for the state to determine the nature
21 and extent of its water resources, the quantity of water being
22 withdrawn or otherwise used and the nature of the withdrawals or
23 other uses: *Provided*, That no provisions of this article may be
24 construed to amend or limit any other rights and remedies created
25 by statute or common law in existence on the date of the enactment
26 of this article.

1 (b) The secretary shall conduct an ongoing water resources
2 survey of consumptive and nonconsumptive surface water and
3 groundwater withdrawals by large quantity users in this state. The
4 secretary shall determine the form and format of the information
5 submitted, including the use of electronic submissions. The
6 secretary shall establish and maintain a statewide registration
7 program to monitor large quantity users of water resources of this
8 state beginning in 2006.

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

23 (d) Except as provided in subsection (f) of this section,
24 large quantity users who withdraw water from a West Virginia water
25 resource shall comply with the survey and registration requirements
26 of this article. Registration shall be maintained annually by

1 every large-quantity user ~~by certifying,~~ on forms and in a manner
2 prescribed by the secretary. ~~that the amount withdrawn in the~~
3 ~~previous calendar year varies by no more than ten percent from the~~
4 ~~users' baseline average or by certifying the change in usage.~~

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

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

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

26 (h) Persons required to participate in the survey and

1 registration shall provide any reasonably available information on
2 stream flow conditions that impact withdrawal rates.

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

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

23 (k) The secretary shall report annually to the Joint
24 Legislative Oversight Commission on State Water Resources on the
25 survey results. The secretary shall also make a progress report
26 ~~every three years~~ annually on the ~~development~~ implementation of the

1 State Water Resources Management Plan and any significant changes
2 that may have occurred since the ~~survey report~~ State Water
3 Resources Management Plan was submitted in ~~two thousand six~~ 2013.
4 This includes reporting on the implementation of the Aboveground
5 Storage tank Water Protection Act in article thirty of this
6 chapter.

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

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

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

24 (o) The secretary is authorized to enter into cooperative
25 agreements with local, state and federal agencies and private
26 policy or research groups to obtain federal matching funds, conduct

1 research and analyze survey and registration data and other
2 agreements as may be necessary to carry out his or her duties under
3 this article.

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

13 **§22-26-5. Joint Legislative Oversight Commission on State Water**
14 **Resources.**

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

25 (b) The expenses of the commission, including the cost of
26 conducting the survey and monitoring any subsequent strategy and

1 those incurred in the employment of legal, technical,
2 investigative, clerical, stenographic, advisory and other
3 personnel, are to be approved by the Joint Committee on Government
4 and Finance and paid from legislative appropriations.

5 **§22-26-6. Mandatory survey and registration compliance.**

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

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

24 **§22-26-7. Secretary authorized to log wells; collect data.**

25 (a) In order to obtain important information about the
26 state's surface and groundwater, the secretary is authorized to

1 collect scientific data on surface and groundwater and to enter
2 into agreements with local and state agencies, the federal
3 government and private entities to obtain this information.

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

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

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

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

1 administrative penalty authorized by section six of this article.

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

9 **§22-26-8. State Water Resources Management Plan; powers and duty**
10 **of secretary.**

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

24 (b) The secretary shall develop definitions for use in the
25 State Water Resources Management Plan for terms that are defined
26 differently by various state and federal governmental entities as

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

2 (c) The secretary shall continue to develop and obtain the
3 following:

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

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

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

21 (4) After consulting with the appropriate state and federal
22 agencies, assess and project the existing and future nonconsumptive
23 use needs of the water resources required to serve areas with
24 important or unique natural, scenic, environmental or recreational
25 values of national, regional, local or statewide significance,
26 including national and state parks; designated wild, scenic and

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

3 (5) Assessment and projection of existing and future
4 consumptive use demands.

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

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

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

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

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

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

26 (10) Efforts to improve data collection, reporting and water

1 monitoring where prior reports have found deficiencies.

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

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

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

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

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

24 ~~(15)~~ (16) Proposed methods of implementing various recommended
25 actions, programs, policies, projects or management activities.

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

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

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

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

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

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

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

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

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

25 (e) In November of each year, the secretary shall report to
26 the Joint Legislative Oversight Commission on State Water Resources

1 on the implementation of the State Water Resources Management Plan.
2 ~~The report on the water resources plan shall include benchmarks for~~
3 ~~achieving the plan's goals and time frames for meeting them.~~

4 (f) ~~Upon adoption of the state Water Resources Management Plan~~
5 ~~by the Legislature, the report requirements of this article shall~~
6 ~~be superceded by the plan and subsequent reports shall be on the~~
7 ~~survey results and the water resources plan. If the plan is not~~
8 ~~adopted a detailed report discussing the provisions of this section~~
9 ~~as well as progress reports on the development of the plan shall be~~
10 ~~submitted every three years. The State Water Resources Management~~
11 ~~Plan is hereby adopted. Persons identified as large-quantity users~~
12 ~~prior to the effective date of this subsection shall report actual~~
13 ~~monthly water withdrawals, or monthly water withdrawals by a method~~
14 ~~approved by the secretary, for the previous calendar year by March~~
15 ~~31 of each succeeding year. Persons identified as large-quantity~~
16 ~~users on or after the effective date of this subsection shall~~
17 ~~submit their initial annual report no later than March 31, 2016,~~
18 ~~and subsequent annual reports by March 31 of each year thereafter.~~

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

21 **§22-30-1. Short title.**

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

24 **§22-30-2. Legislative findings.**

25 (a) The West Virginia Legislature finds that it is in the
26 public policy of the State of West Virginia to protect and conserve

1 the water resources for the state and its citizens. The state's
2 water resources are vital natural resources that are essential to
3 maintain, preserve and promote human health, quality of life and
4 economic vitality of the state.

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

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

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

1 insufficient to protect human health, safety, water resources, the
2 environment and the economy of the state.

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

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

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

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

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

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

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

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

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

25 (7) Septic tanks;

26 (8) A pipeline facility, including gathering lines, regulated

1 under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous
2 Liquid Pipeline Safety Act of 1979, or an intrastate pipeline
3 facility regulated by the West Virginia Public Service Commission
4 or otherwise regulated under any state law comparable to the
5 provisions of either the Natural Gas Pipeline Safety Act of 1968 or
6 the Hazardous Liquid Pipeline Safety Act of 1979;

7 (9) Equipment or machinery containing substances for
8 operational purposes, including integral hydraulic lift tanks,
9 lubricating oil reservoirs for pumps and motors, electrical
10 equipment and heating and cooling equipment;

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

15 (11) A mobile tank or truck that is 1,100 gallons or less in
16 capacity and is located on site for less than sixty consecutive
17 calendar days;

18 (12) An aboveground storage tank containing hazardous wastes
19 which are subject to a treatment or storage permits regulated
20 under Subtitle C of the federal Solid Waste Disposal Act, 42 U. S.
21 C. §6921, *et seq.*, or substances regulated under the article
22 eighteen of this chapter;

23 (13) An aboveground storage tank containing agricultural
24 pesticides regulated under article sixteen-a, chapter nineteen of
25 this code;

26 (14) Liquid traps or associated gathering lines related to oil

1 or gas production and gathering operations;

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

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

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

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

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

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

22 (17) Any aboveground storage tank of 1,100 gallons or less
23 capacity, not otherwise exempt, unless that tank is greater than
24 500 gallons capacity and is located within 500 feet of surface or
25 source waters;

26 (18) Aboveground storage tanks used in connection with oil and

1 gas exploration, production, processing, gathering, treatment or
2 storage operations or transmission facilities that are addressed in
3 spill prevention, control, and countermeasure plans meeting the
4 federal regulations set out in 40 C. F. R. Part 112; and

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

9 **§22-30-4. Definitions.**

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

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

18 (b) "Department" means the West Virginia Department of
19 Environmental Protection.

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

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

1 (e) "Owner" means a person who holds title to, controls or
2 owns an interest in an aboveground storage tank, including owners
3 of tanks immediately preceding the discontinuation of a tank's use.
4 "Owner" does not mean a person who holds an interest in a tank for
5 financial security, unless the holder has taken possession of and
6 operated the tank.

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

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

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

24 (i) Secondary containment means a safeguard specifically
25 designed to be impermeable to stored substances and which will
26 contain a release from an aboveground storage tank, and prevent the

1 release from spreading vertically or horizontally contaminating the
2 land or water outside of the containment area.

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

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

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

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

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

26 (d) Any aboveground storage tank placed into service on and

1 after the effective date of this section, but prior to the
2 establishment of a permit program, shall register with the
3 secretary and request permission to place the tank into service
4 pending a permit application.

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

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

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

19 **§22-30-6. Permit required; Aboveground Storage Tank Regulatory**
20 **Program.**

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

26 (b) To assure further protection of the water resources of

1 the state, the secretary shall develop a regulatory program for
2 new and existing aboveground storage tanks. At a minimum, the
3 program shall include the following:

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

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

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

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

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

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

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

26 (8) Requirements for certification of installation, removal,

1 retrofit, corrosion and other testing and inspection of
2 aboveground storage tanks, leak detection systems and secondary
3 containment by a qualified registered professional engineer or a
4 qualified person working under the direct supervision of a
5 registered professional engineer, regulated and licensed by the
6 West Virginia Professional Engineers Board;

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

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

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

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

26 (13) A procedure for any person adversely affected by a

1 decision or order of the secretary relating to the aboveground
2 storage tank program to appeal to the Environmental Quality Board,
3 pursuant to the provisions of article one, chapter twenty-two-b of
4 this code; and

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

12 **§22-30-7. Annual inspection and certification.**

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

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

26 **§22-30-8. Financial responsibility.**

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

9 **§22-30-9. Corrective action.**

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

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

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

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

25 (b) The corrective action undertaken or required by this
26 section shall be what may be necessary to protect human health,

1 water resources and the environment from contamination caused by
2 a release. The secretary shall use funds in the Leaking
3 Aboveground Storage Tank Response Fund established pursuant to
4 this article for payment of costs incurred for corrective action
5 taken by the secretary in accordance with this article. In
6 undertaking corrective actions under this section and in issuing
7 orders requiring owners or operators to undertake the actions, the
8 secretary shall give priority to releases or threatened releases
9 of fluid from aboveground storage tanks that pose the greatest
10 threat to human health, water resources or the environment.

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

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

25 (2) A situation exists that requires immediate action by the
26 secretary under this section to protect human health, safety,

1 water resources or the environment;

2 (3) The cost of corrective action to be expended on an
3 aboveground storage tank exceeds the amount of resources that the
4 owner or operator can reasonably be expected to possess based on
5 the information required to be submitted pursuant to this article
6 and, considering the fluid being stored in the aboveground storage
7 tank in question, expenditures from the Leaking Aboveground
8 Storage Tank Response Fund are necessary to assure an effective
9 corrective action; or

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

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

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

25 (2) The owner or operator determined by the secretary to be
26 responsible for the release or threatened release have been

1 informed in writing of the secretary's determination and have been
2 requested by the secretary to take appropriate corrective action
3 but are unable or unwilling to take proper action in a timely
4 manner.

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

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

21 **§22-30-10. Spill prevention response plan.**

22 (a) Within ninety days of the effective date of this article,
23 each owner or operator of an aboveground storage tank shall submit
24 a spill prevention response plan for each aboveground storage
25 tank. Owners and operators of aboveground storage tanks shall
26 file updated plans required to be submitted by this section no

1 less frequently than every three years. Each plan shall be
2 site-specific, consistent with the requirements of this article,
3 and developed in consultation with county and municipal emergency
4 management agencies. The spill prevention response plan shall
5 contain, at a minimum, the following:

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

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

24 (3) Provide a preventive maintenance program that includes
25 monitoring and inspection procedures, including identification of
26 stress points, employee training programs and security systems.

1 The plan shall include a description of potential sources and
2 areas where spills and leaks may occur by drawings and plot plans
3 and shall identify specific spill prevention measures for those
4 identified areas;

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

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

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

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

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

25 (2) There is a substantial modification in emergency equipment
26 at the facility;

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

3 (4) The plan fails in an emergency;

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

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

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

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

23 **§22-30-11. Notice to local governments, water companies and other**
24 **industrial users.**

25 The owner or operator of an aboveground storage tank facility
26 shall annually provide public notice to public water systems

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

12 **§22-30-12. Required signage.**

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

21 **§22-30-13. Aboveground Storage Tank Administrative Fund.**

22 (a) The secretary shall collect annual registration fees from
23 owners or operators of each aboveground storage tank in an amount
24 sufficient to cover the regulatory oversight and services to be
25 provided by designated agencies, including necessary technical
26 and administrative personnel, as set forth by rule. All

1 registration and permit fees and the net proceeds of all fines,
2 penalties and forfeitures collected under this article, including
3 accrued interest, shall be paid into the State Treasury into a
4 special revenue fund designated the Aboveground Storage Tank
5 Administrative Fund, and shall be used solely to defray the cost
6 of administering this act.

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

12 **§22-30-14. Leaking Aboveground Storage Tank Response Fund.**

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

23 (b) Each owner or operator of an aboveground storage tank
24 subject to a fee assessment under subsection (a) of this section
25 shall pay a fee based on the number of aboveground storage tanks
26 he or she owns or operates, as applicable. The secretary shall

1 vary the fees annually to a level necessary to produce a
2 sufficient fund at the beginning of each calendar year.

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

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

10 (1) Responding to aboveground storage tank releases when,
11 based on readily available information, the secretary determines
12 that immediate action is necessary to prevent or mitigate
13 significant risk of harm to human health, water resources or the
14 environment from contamination caused by a release of fluid from
15 aboveground storage tanks in situations for which no federal funds
16 are immediately available for the response, cleanup or
17 containment: *Provided*, That the secretary shall apply for and
18 diligently pursue all available federal funds at the earliest
19 possible time.

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

23 (3) Reimbursing any nonresponsible parties for reasonable
24 costs incurred with the authorization of the secretary responding
25 to perceived, potential or threatened releases from aboveground
26 storage tanks;

1 (e) The secretary, through a cooperative agreement with
2 another state regulatory agency, in this or another state, may
3 use the fund to compensate the cooperating agency for expenses
4 the cooperating agency incurs in carrying out regulatory
5 responsibilities that agency may have pursuant to this article.

6 **§22-30-15. Public access to information.**

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

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

25 **§22-30-16. Inspections, monitoring and testing.**

26 (a) For the purposes of developing or assisting in the

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

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

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

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

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

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

22 Each inspection shall be commenced and completed with reasonable
23 promptness.

24 (c) To ensure protection of the water resources of the state
25 and compliance with any provision of this act or rule promulgated
26 thereunder, the secretary shall inspect at least annually any

1 aboveground storage tank facility located within twenty-five miles
2 upstream of a public water system intake in zones of critical
3 concern as determined by the secretary.

4 **§22-30-17. Administrative orders; injunctive relief.**

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

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

25 **§22-30-18. Civil and criminal penalties.**

26 (a) Any person who fails to comply with an order of the

1 secretary issued under subsection (a), section seventeen of this
2 article within the time specified in the order is liable for a
3 civil penalty of not more than \$25,000 for each day of continued
4 noncompliance.

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

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

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

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

24 **§22-30-19. Appeal to Environmental Quality Board.**

25 Any person aggrieved or adversely affected by an order of the
26 secretary made and entered in accordance with the provisions of

1 this article may appeal to the Environmental Quality Board,
2 pursuant to the provisions of article one, chapter twenty-two-b of
3 this code.

4 **§22-30-20. Duplicative enforcement prohibited.**

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

10 **§22-30-21. Reporting and accountability.**

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

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

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

7 **§22-30-22. Interagency cooperation.**

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

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

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

26 **§22-30-23. Imminent and substantial danger.**

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

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

21 **§22-30-24. Source water protection.**

22 (a) In addition to all other powers and duties prescribed in
23 this chapter or otherwise by law, and unless otherwise
24 specifically set forth in this article, the secretary has the sole
25 and exclusive authority to perform any and all acts necessary to
26 implement a aboveground storage tank regulatory program designed

1 to protect each public water system in the state from
2 contamination of its source water supply caused by the release of
3 fluid from an aboveground storage tank consistent with the
4 requirements of this article.

5 (b) Within ninety days of the effective date of this article,
6 each existing public water system shall remit an annual fee in an
7 amount to be specified in emergency and legislative rules
8 promulgated pursuant to this article and article three, chapter
9 29A of this code, to be deposited into the Aboveground Storage
10 Tank Administrative Fund created pursuant to this article and
11 submit a source water protection plan to protect its system from
12 contamination of its source water supply caused by release of
13 fluid from an aboveground storage tank, which plan, at a minimum,
14 shall include the following:

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

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

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

26 (4) A communications plan that documents the manner in which

1 the public shall be notified of information related to any
2 contamination of the source water supply.

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

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

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

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

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

26 **§22-30-25. Promulgation of rules.**

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

5 **§22-30-26. Powers and duties of secretary.**

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

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

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

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

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

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

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

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

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