

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 373**

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

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

1 certain reports from the secretary; requiring cooperating
2 state agencies to continue funding levels for stream gaging
3 network; requiring notification of inability to continue
4 funding of stream gaging network; requiring information
5 regarding private wells and depth to groundwater; requiring
6 secretary to provide annual update on implementation of State
7 Water Resources Management Plan; adopting State Water
8 Resources Management Plan; requiring the Department of
9 Environmental Protection to report biennially to commission
10 regarding implementation of plan, survey results and act;
11 requiring large-quantity users to submit reports annually;
12 applying to aboveground storage tanks containing fluids except
13 water; providing exemptions; establishing definitions;
14 requiring registration and inventory of certain aboveground
15 storage tanks; making it unlawful to construct, maintain or
16 use any aboveground storage tank without a permit; requiring
17 annual inspections of tanks; requiring financial resources to
18 take corrective action; requiring corrective action for
19 releases; requiring a spill prevention response plan;
20 providing notice to local governments, water companies and
21 industrial users; mandating signage; establishing registration
22 fees and administrative fund; creating leaking response fund;
23 permitting public access to information; establishing
24 requirements for inspections monitoring and testing; providing
25 for administrative orders and injunctive relief; providing for
26 civil and criminal penalties; permitting appeals to

1 Environmental Quality Board; prohibiting duplicative
2 enforcement; reporting to Legislature; requiring interagency
3 cooperation; permitting action for imminent and substantial
4 danger; requiring source water protection plan; authorizing
5 rulemaking; and setting forth powers and duties of secretary.

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

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

15 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

17 **22-26-2. Definitions.**

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

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

23 (b) "Beneficial use" means uses that include, but are not
24 limited to, public or private water supplies, agriculture, tourism,
25 commercial, industrial, coal, oil and gas and other mineral
26 extraction, preservation of fish and wildlife habitat, maintenance

1 of waste assimilation, recreation, navigation and preservation of
2 cultural values.

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

7 (d) "Community water system" means a public water system that
8 pipes water for human consumption to at least fifteen service
9 connections used by year-round residents or one that regularly
10 serves at least twenty-five residents.

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

13 (f) "Department" means the West Virginia Department of
14 Environmental Protection.

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

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

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

24 ~~(i)~~ (j) "Large quantity user" means any person who withdraws
25 over ~~seven~~ three hundred ~~fifty~~ thousand gallons of water in ~~a~~ any
26 ~~calendar month~~ thirty-day period from the state's waters and any

1 person who bottles water for resale regardless of quantity
2 withdrawn. "Large quantity users" excludes farms watering livestock
3 or poultry, though farms may voluntarily report water withdrawals
4 to assist with the accuracy of the survey.

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

8 ~~(k)~~ (l) "Noncommunity nontransient water system" means a
9 public water system that serves at least twenty-five of the same
10 persons over six months per year.

11 ~~(l)~~ (m) "Nonconsumptive withdrawal" means any withdrawal of
12 water which is not a consumptive withdrawal as defined in this
13 section.

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

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

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

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

26 ~~(q)~~ (r) "Water resources", "water" or "waters" means any and

1 all water on or beneath the surface of the ground, whether
2 percolating, standing, diffused or flowing, wholly or partially
3 within this state, or bordering this state and within its
4 jurisdiction and includes, without limiting the generality of the
5 foregoing, natural or artificial lakes, rivers, streams, creeks,
6 branches, brooks, ponds, impounding reservoirs, springs, wells,
7 watercourses and wetlands: *Provided*, That farm ponds, industrial
8 settling basins and ponds and waste treatment facilities are
9 excluded from the waters of the state.

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

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

21 **§22-26-3. Waters claimed by state; water resources protection**
22 **survey; registration requirements; agency cooperation;**
23 **information gathering.**

24 (a) The waters of the State of West Virginia are hereby
25 claimed as valuable public natural resources held by the state for
26 the use and benefit of its citizens. The state shall manage ~~the~~

1 ~~quantity of~~ and protect its waters effectively for present and
2 future use and enjoyment and for the protection of the environment.
3 Therefore, it is necessary for the state to determine the nature
4 and extent of its water resources, the quantity of water being
5 withdrawn or otherwise used and the nature of the withdrawals or
6 other uses: *Provided*, That no provisions of this article may be
7 construed to amend or limit any other rights and remedies created
8 by statute or common law in existence on the date of the enactment
9 of this article.

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

18 (c) Large quantity users, except those who purchase water from
19 a public or private water utility or other service that is
20 reporting its total withdrawal, shall register with the Department
21 ~~of Environmental Protection~~ and provide all requested survey
22 information regarding withdrawals of the water resources. Multiple
23 withdrawals from state water resources that are made or controlled
24 by a single person and used at one facility or location shall be
25 considered a single withdrawal of water. Water withdrawals for
26 self-supplied farm use and private households will be estimated.

1 Water utilities regulated by the Public Service Commission pursuant
2 to article two, chapter twenty-four of this code are exempted from
3 providing information on interbasin transfers to the extent those
4 transfers are necessary to provide water utility services within
5 the state.

6 (d) Except as provided in subsection (f) of this section,
7 large quantity users who withdraw water from a West Virginia water
8 resource shall comply with the survey and registration requirements
9 of this article. Registration shall be maintained annually by
10 every large quantity user ~~by certifying,~~ on forms and in a manner
11 prescribed by the secretary. ~~that the amount withdrawn in the~~
12 ~~previous calendar year varies by no more than ten percent from the~~
13 ~~users' baseline average or by certifying the change in usage.~~

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

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

20 (g) All state agencies and local governmental entities that
21 have a regulatory, research, planning or other function relating to
22 water resources, including, but not limited to, the state
23 Geological and Economic Survey, the Division of Natural Resources,
24 the Public Service Commission, the Bureau for Public Health, the
25 Commissioner of the Department of Agriculture, the Division of
26 Homeland Security and Emergency Management, Marshall University,

1 West Virginia University and regional, county and municipal
2 planning authorities may enter into interagency agreements with the
3 secretary and shall cooperate by: (i) Providing information
4 relating to the water resources of the state; (ii) providing any
5 necessary assistance to the secretary in effectuating the purposes
6 of this article; and (iii) assisting in the development of a state
7 water resources management plan. The secretary shall determine the
8 form and format of the information submitted by these agencies.

9 (h) Persons required to participate in the survey and
10 registration shall provide any reasonably available information on
11 stream flow conditions that impact withdrawal rates.

12 (i) Persons required to participate in the survey and
13 registration shall provide the most accurate information available
14 on water withdrawal during seasonal conditions and future potential
15 maximum withdrawals or other information that the secretary
16 determines is necessary for the completion of the survey or
17 registration: *Provided*, That a coal-fired electric generating
18 facility shall also report the nominal design capacity of the
19 facility, which is the quantity of water withdrawn by the
20 facility's intake pumps necessary to operate the facility during a
21 calendar day.

22 (j) The secretary shall, to the extent reliable water
23 withdrawal data is reasonably available from sources other than
24 persons required to provide data and participate in the survey and
25 registration, utilize that data to fulfill the requirements of this
26 section. If the data is not reasonably available to the secretary,

1 persons required to participate in the survey and registration are
2 required to provide the data. Altering locations of intakes and
3 discharge points that result in an impact to the withdrawal of the
4 water resources ~~by an amount of ten percent or more from the~~
5 ~~consecutive baseline average~~ shall also be reported.

6 (k) The secretary shall report annually to the Joint
7 Legislative Oversight Commission on State Water Resources on the
8 survey results. The secretary shall also make a progress report
9 ~~every three years~~ annually on the ~~development~~ implementation of the
10 state water resources management plan and any significant changes
11 that may have occurred since the ~~survey report~~ State Water
12 Resources Management Plan was submitted in two thousand ~~six~~
13 thirteen. This includes reporting on the implementation of the
14 Aboveground Storage tank Water Protection Act in article thirty of
15 this chapter.

16 (l) In addition to any requirements for completion of the
17 survey established by the secretary, the survey must accurately
18 reflect both actual and maximum potential water withdrawal. Actual
19 withdrawal shall be established through metering, measuring or
20 alternative accepted scientific methods to obtain a reasonable
21 estimate or indirect calculation of actual use.

22 (m) The secretary shall make recommendations to the joint
23 Legislative Oversight commission created in section five of this
24 article relating to the implementation of a water quantity
25 management strategy for the state or regions of the state where the
26 quantity of water resources are found to be currently stressed or

1 likely to be stressed due to emerging beneficial or other uses,
2 ecological conditions or other factors requiring the development of
3 a strategy for management of these water resources.

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

7 (o) The secretary is authorized to enter into cooperative
8 agreements with local, state and federal agencies and private
9 policy or research groups to obtain federal matching funds, conduct
10 research and analyze survey and registration data and other
11 agreements as may be necessary to carry out his or her duties under
12 this article.

13 (p) The Department, the Division of Natural Resources, the
14 Division of Highways, and the Conservation Agency (cooperating
15 State agencies") shall continue providing matching funds for the
16 United States Geological Survey's (USGS) stream gaging network to
17 the maximum extent practicable. Should a cooperating State agency
18 become unable to maintain its contribution level, it should notify
19 the USGS and the commission of its inability to continue funding
20 for the subsequent federal fiscal year by July 1, in order to allow
21 for the possible identification of alternative funding resources.

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

24 (a) The President of the Senate and the Speaker of the House
25 of Delegates shall each designate five members of their respective
26 houses, at least one of whom shall be a member of the minority

1 party, to serve on a joint Legislative Oversight commission charged
2 with immediate and ongoing oversight of the water resources survey,
3 registration and development of a state water resources management
4 plan. This commission shall be known as the Joint Legislative
5 Oversight Commission on State Water Resources and shall regularly
6 investigate and monitor all matters relating to ~~the~~ water
7 resources, including the survey and plan.

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

14 **§22-26-6. Mandatory survey and registration compliance.**

15 (a) The water resources survey and subsequent registry will
16 provide critical information for protection of the state's water
17 resources and, thus, mandatory compliance with the survey and
18 registry is necessary.

19 (b) All large quantity users who withdraw water from a West
20 Virginia water resource shall complete the survey and register ~~such~~
21 use with the Department ~~of Environmental Protection~~. Any person
22 who fails to complete the survey or register, provides false or
23 misleading information on the survey or registration, or fails to
24 provide other information as required by this article may be
25 subject to a civil administrative penalty not to exceed \$5,000 to
26 be collected by the secretary consistent with the secretary's

1 authority pursuant to this chapter. Every thirty days after the
2 initial imposition of the civil administrative penalty, another
3 penalty may be assessed if the information is not provided. The
4 secretary shall provide written notice of failure to comply with
5 this section thirty days prior to assessing the first
6 administrative penalty.

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

8 (a) In order to obtain important information about the
9 state's surface and groundwater, the secretary is authorized to
10 collect scientific data on surface and groundwater and to enter
11 into agreements with local and state agencies, the federal
12 government and private entities to obtain this information.

13 ~~(1)~~ (b) Any person who installs a community water system,
14 noncommunity nontransient water system, transient water system,
15 commercial well, industrial or test well shall notify the secretary
16 of his or her intent to drill a water well no less than ten days
17 prior to commencement of drilling. The ten-day notice is the
18 responsibility of the owner, but may be given by the drilling
19 contractor.

20 ~~(2)~~ (c) The secretary has the authority to gather data,
21 including driller and geologist logs, run electric and other
22 remote-sensing logs and devices and perform physical
23 characteristics tests on nonresidential and multifamily water
24 wells.

25 ~~(3)~~ (d) The drilling contractor shall submit to the secretary
26 a copy of the well completion forms submitted to the Division of

1 Health for a community water system, noncommunity nontransient
2 water system, transient water system, commercial well, industrial
3 or test well. The drilling contractor shall also provide the well
4 GPS location and depth to groundwater on the well report submitted
5 to the secretary.

6 ~~(4)~~ (e) Any person who fails to notify the secretary prior to
7 drilling a well or impedes collection of information by the
8 secretary under this section is in violation of the Water Resources
9 Protection and Management Act and is subject to the civil
10 administrative penalty authorized by section six of this article.

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

18 **§22-26-8. State Water Resources Management Plan; powers and duty**
19 **of secretary.**

20 (a) The secretary ~~of the Department of Environmental~~
21 ~~Protection~~ shall oversee the development of a State Water Resources
22 Management Plan to be completed no later than November 30, 2013.
23 The plan shall be reviewed and revised as needed after its initial
24 adoption. The plan shall be developed with the cooperation and
25 involvement of local and state agencies with regulatory, research
26 or other functions relating to water resources including, but not

1 limited to, those agencies and institutions of higher education set
2 forth in section three of this article and a representative of
3 large quantity users. The State Water Resources Management Plan
4 shall be developed utilizing the information obtained pursuant to
5 said section and any other relevant information available to the
6 secretary.

7 (b) The secretary shall develop definitions for use in the
8 State Water Resources Management Plan for terms that are defined
9 differently by various state and federal governmental entities as
10 well as other terms necessary for implementation of this article.

11 (c) The secretary shall continue to develop and obtain the
12 following:

13 (1) An inventory of the surface water resources of each region
14 of this state, including an identification of the boundaries of
15 significant watersheds and an estimate of the safe yield of ~~such~~
16 sources for consumptive and nonconsumptive uses during periods of
17 normal conditions and drought.

18 (2) A listing of each consumptive or nonconsumptive withdrawal
19 by a large quantity user, including the amount of water used,
20 location of the water resources, the nature of the use, location of
21 each intake and discharge point by longitude and latitude where
22 available and, if the use involves more than one watershed or
23 basin, the watersheds or basins involved and the amount
24 transferred.

25 (3) A plan for the development of the infrastructure necessary
26 to identify the groundwater resources of each region of this state,

1 including an identification of aquifers and groundwater basins and
2 an assessment of their safe yield, prime recharge areas, recharge
3 capacity, consumptive limits and relationship to stream base flows.

4 (4) After consulting with the appropriate state and federal
5 agencies, assess and project the existing and future nonconsumptive
6 use needs of the water resources required to serve areas with
7 important or unique natural, scenic, environmental or recreational
8 values of national, regional, local or statewide significance,
9 including national and state parks; designated wild, scenic and
10 recreational rivers; national and state wildlife refuges; and the
11 habitats of federal and state endangered or threatened species.

12 (5) Assessment and projection of existing and future
13 consumptive use demands.

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

17 (A) A discussion of any area of concern regarding historical
18 or current conditions that indicate a low-flow condition or where
19 a drought or flood has occurred or is likely to occur that
20 threatens the beneficial use of the surface water or groundwater in
21 the area; and

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

25 (7) Establish criteria for designation of critical water
26 planning areas comprising any significant hydrologic unit where

1 existing or future demands exceed or threaten to exceed the safe
2 yield of available water resources.

3 (8) An assessment of the current and future capabilities of
4 public water supply agencies and private water supply companies to
5 provide an adequate quantity and quality of water to their service
6 areas.

7 (9) An assessment of flood plain and stormwater management
8 problems.

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

11 (11) A process for identifying projects and practices that are
12 being, or have been, implemented by water users that reduce the
13 amount of consumptive use, improve efficiency in water use, provide
14 for reuse and recycling of water, increase the supply or storage of
15 water or preserve or increase groundwater recharge and a
16 recommended process for providing appropriate positive recognition
17 of ~~such~~ projects or practices in actions, programs, policies,
18 projects or management activities.

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

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

1 (14) A review and evaluation of water resources management
2 alternatives and recommended programs, policies, institutional
3 arrangements, projects and other provisions to meet the water
4 resources needs of each region and of this state.

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

7 ~~(15)~~ (16) Proposed methods of implementing various recommended
8 actions, programs, policies, projects or management activities.

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

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

12 (2) Regional or watershed water resources needs, objectives
13 and priorities.

14 (3) Federal, state and interstate water resource policies,
15 plans, objectives and priorities, including those identified in
16 statutes, rules, regulations, compacts, interstate agreements or
17 comprehensive plans adopted by federal and state agencies and
18 compact basin commissions.

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

21 (5) The water quantity and quality necessary to support
22 reasonable and beneficial uses.

23 (6) A balancing and encouragement of multiple uses of water
24 resources, recognizing that all water resources of this state are
25 capable of serving multiple uses and human needs, including
26 multiple uses of water resources for reasonable and beneficial

1 uses.

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

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

8 (e) In November of each year, the secretary shall report to
9 the Joint Legislative Oversight Commission on State Water Resources
10 on the implementation of the State Water Resources Management Plan.
11 ~~The report on the water resources plan shall include benchmarks for~~
12 ~~achieving the plan's goals and time frames for meeting them.~~

13 (f) ~~Upon adoption of the state Water Resources Management Plan~~
14 ~~by the Legislature, the report requirements of this article shall~~
15 ~~be superceded by the plan and subsequent reports shall be on the~~
16 ~~survey results and the water resources plan. If the plan is not~~
17 ~~adopted a detailed report discussing the provisions of this section~~
18 ~~as well as progress reports on the development of the plan shall be~~
19 ~~submitted every three years. The State Water Resources Management~~
20 ~~Plan is hereby adopted. Persons identified as large quantity users~~
21 ~~prior to the effective date of this subsection shall report actual~~
22 ~~monthly water withdrawals for the previous calendar year by March~~
23 ~~31 of each succeeding year. Persons identified as large quantity~~
24 ~~users on or after the effective date of this subsection shall~~
25 ~~submit their initial annual report no later than March 31, 2016,~~
26 ~~and subsequent annual reports by March 31 of each year thereafter.~~

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

3 **§22-30-1. Short title.**

4 (a) This article may be known and cited as the Aboveground
5 Storage Tank Water Resources Protection Act.

6 **§22-30-2. Legislative findings.**

7 (a) The West Virginia Legislature finds that it is in the
8 public policy of the State of West Virginia to protect and conserve
9 the water resources for the state and its citizens. The state's
10 water resources are vital natural resources that are essential to
11 maintain, preserve and promote human health, quality of life and
12 economic vitality of the state.

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

18 (c) The West Virginia Legislature further finds that it is the
19 public policy of the state that clean, uncontaminated water be
20 available to its businesses and industries that rely on water for
21 their economic survival, and the well-being of their employees.
22 These include hospitals and the medical industry, schools and
23 educational institutions, the food and hospitality industries, the
24 tourism industry, manufacturing, coal, natural gas and other
25 industries. Businesses and industries searching for places to
26 locate or relocate consider the quality of life for their employees

1 as well as the quality of the raw materials such as clean water.

2 (d) The Legislature further finds that large quantities of
3 fluids are stored in aboveground storage tanks within the state and
4 that emergency situations involving these fluids can and will arise
5 that may present a hazard to human health, safety, the water
6 resources, the environment and the economy of the state. The
7 Legislature further recognizes that some of these fluids have been
8 stored in aboveground storage tanks in an regulated manner
9 insufficient to protect human health, safety, water resources,
10 environment and the economy of the state.

11 **22-30-3. Applicability; exclusions.**

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

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

17 (1) an aboveground storage tank containing drinking water,
18 filtered surface water, demineralized water, noncontact cooling
19 water, or water stored for fire or emergency purposes;

20 (2) an aboveground storage tank located on a farm, in which
21 the contents of the tank are used by the tank owner or operator for
22 farming purposes, and the contents are not being commercially
23 distributed;

24 (3) an aboveground storage tank located on residential
25 property of 1,100 gallons or less capacity used for storing motor
26 fuel for noncommercial purposes;

1 (4) an aboveground storage tank of 1,100 gallons or less
2 capacity used for storing heating oil for consumption on the
3 premises where stored;

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

6 (6) stormwater or wastewater collection systems;

7 (7) septic tanks;

8 (8) a pipeline facility, including gathering lines, regulated
9 under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous
10 Liquid Pipeline Safety Act of 1979, or an intrastate pipeline
11 facility regulated by the West Virginia Public Service Commission
12 or otherwise regulated under any state law comparable to the
13 provisions of either the Natural Gas Pipeline Safety Act of 1968 or
14 the Hazardous Liquid Pipeline Safety Act of 1979;

15 (9) equipment or machinery containing substances for
16 operational purposes, including integral hydraulic lift tanks,
17 lubricating oil reservoirs for pumps and motors, electrical
18 equipment, and heating and cooling equipment;

19 (10) an indoor tank located inside a building resting on or
20 elevated above an impermeable floor surface from which a release
21 would be entirely contained in a secondary containment structure or
22 not escape through other means;

23 (11) a mobile tank or truck that is 1,100 gallons or less in
24 capacity and is located on site for less than 30 consecutive
25 calendar days;

26 (12) an aboveground storage tank containing hazardous wastes

1 which are subject to a treatment or storage permits regulated
2 under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C.
3 §6921, *et seq.*, or substances regulated under the article eighteen
4 of this chapter;

5 (13) an aboveground storage tank containing agricultural
6 pesticides regulated under article sixteen-a, chapter nineteen of
7 this code;

8 (14) liquid traps or associated gathering lines related to oil
9 or gas production and gathering operations;

10 (15) a surface impoundment, pit, pond, or lagoon;

11 (16) tanks otherwise regulated under those provisions of this
12 chapter that necessitate individual site-specific permits that
13 require appropriate containment and diversionary structures or
14 equipment to prevent discharged materials from reaching the waters
15 of the state, including:

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

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

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

26 (D) Tanks regulated under the Solid Waste Management Act,

1 article fifteen of this chapter, including, but not limited to,
2 piping, tanks, collection, and treatment systems used for leachate,
3 methane gas, and methane gas condensate management; and

4 (17) any aboveground storage tank of 1,100 gallons or less
5 capacity, not otherwise exempt, unless that tank is greater than
6 500 gallons capacity and is located within 500 feet of surface or
7 source waters.

8 **§22-30-4. Definitions.**

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

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

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

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

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

26 (e) "Owner" means a person who holds title to, controls, or

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

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

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

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

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

1 land or water outside of the containment area.

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

4 **§22-30-5. Registration of existing aboveground storage tanks.**

5 (a) To assure protection of the water resources of the state,
6 the secretary shall compile an inventory of aboveground storage
7 tanks in existence, regardless of whether it is an operational or
8 nonoperational storage tank, on the effective date of this article.
9 The secretary shall prescribe a registration form for this purpose
10 within 30 days of the effective date of the enactment of this
11 article. All aboveground storage tanks subject to this article
12 shall be registered no later than 60 days from the effective date
13 of the enactment of this article during the 2014 regular session of
14 the 81st Legislature.

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

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

25 (d) Any aboveground storage tank placed into service on and
26 after the effective date of this section, but prior to the

1 establishment of a permit program, shall register with the
2 secretary and request permission to place the tank into service
3 pending a permit application.

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

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

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

18 **§22-30-6. Permit required; Aboveground Storage Tank Regulatory**
19 **Program.**

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

25 (b) To assure further protection of the water resources of
26 the state, the secretary shall develop a regulatory program for

1 new and existing aboveground storage tanks. At a minimum, the
2 program shall include the following:

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

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

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

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

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

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

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

25 (8) Requirements for certification of installation, removal,
26 retrofit, corrosion and other testing and inspection of

1 aboveground storage tanks, leak detection systems and secondary
2 containment by a registered professional engineer or other
3 qualified person;

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

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

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

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

23 (13) A procedure for any person adversely affected by a
24 decision or order of the secretary relating to the aboveground
25 storage tank program to appeal to the environmental quality board,
26 pursuant to the provisions of article one, chapter twenty-two-b of

1 this code.

2 **§22-30-7. Annual inspection and certification.**

3 (a) Every owner or operator of an aboveground storage tank
4 regulated herein shall have an annual inspection of each tank
5 performed by a registered engineer, qualified inspector or other
6 qualified inspector approved by the secretary in writing. Every
7 owner or operator shall submit, on a form prescribed by the
8 secretary, a certification from the engineer that each tank,
9 associated equipment, leak detection systems and secondary
10 containment structures meet the minimum standards established by
11 the secretary by rule.

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

14 **§22-30-8. Financial responsibility.**

15 The secretary shall promulgate rules requiring owners and
16 operators to provide evidence of adequate financial resources to
17 undertake reasonable corrective action for releases of fluid from
18 aboveground storage tanks. The means of demonstrating adequate
19 financial responsibility may include, but not be limited to,
20 providing evidence of current insurance, guarantee, surety bond,
21 letter of credit, proof of assets, trust fund or qualification as
22 a self-insurer.

23 **§22-30-9. Corrective action.**

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

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

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

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

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

25 (c) Following the effective date of rules promulgated pursuant
26 to this article, all actions or orders of the secretary shall be

1 in conformity with those rules. Further, following the effective
2 date of the rules, the secretary may undertake corrective action
3 with respect to any release or threatened release of fluid from an
4 aboveground storage tank only if, in the judgment of the
5 secretary, the action is necessary to protect human health, water
6 resources or the environment from contamination, and one or more
7 of the following situations exists:

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

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

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

24 (4) The owner or operator of the tank has failed or refused
25 to comply with an order of the secretary under this article or of
26 the Environmental Quality Board under article one, chapter

1 twenty-two-b of this code to comply with appropriate corrective
2 action measures ordered by the secretary or the Environmental
3 Quality Board.

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

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

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

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

25 (f) If the secretary determines that immediate response to an
26 imminent threat to human health, safety, water resources or the

1 environment is necessary to avoid substantial injury or damage
2 thereto, corrective action may be taken pursuant to this section
3 without the prior written notice required by subdivision (2),
4 subsection (d) of this section. In that case, the secretary must
5 give subsequent written notice to the owner or operator within
6 fifteen days after the action is taken describing the
7 circumstances that required the action to be taken and setting
8 forth the matters identified in subsection (e) of this section.

9 **§22-30-10. Spill prevention response plan.**

10 (a) Within ninety days of the effective date of this article,
11 each owner or operator of an aboveground storage tank shall submit
12 a spill prevention response plan for each aboveground storage
13 tank. Owners and operators of aboveground storage tanks shall
14 file updated plans required to be submitted by this section no
15 less frequently than every three years. Each plan shall be
16 site-specific, consistent with the requirements of this article,
17 and developed in consultation with county and municipal emergency
18 management agencies. The spill prevention response plan shall
19 contain, at a minimum, the following:

20 (1) Identify and describe the activity that occurs at the site
21 and identify applicable hazard and process information, including
22 a specific listing and inventory of all types of fluids stored,
23 amount of fluids stored, and wastes generated that are stored in
24 aboveground storage tanks at the facility. The plan shall include
25 the material safety data sheets (MSDS) for all fluids in use or
26 stored in aboveground storage tanks at the facility. The material

1 safety data sheets must include the health hazard number
2 identified by the National Fire Protection Association. The plan
3 shall also include drawings of the aboveground storage tank
4 facility, including the locations of all drainage pipes and water
5 outlets;

6 (2) Identify all facility-related individuals and their duties
7 and responsibilities for developing, implementing and maintaining
8 the facility's plan. The plan shall describe in detail the chain
9 of command at the aboveground storage tank facility and list all
10 facility emergency coordinators and emergency response
11 contractors;

12 (3) Provide a preventive maintenance program that includes
13 monitoring and inspection procedures, including identification of
14 stress points, employee training programs, and security systems.
15 The plan shall include a description of potential sources and
16 areas where spills and leaks may occur by drawings and plot plans
17 and shall identify specific spill prevention measures for those
18 identified areas;

19 (4) Detail the specific response that the aboveground storage
20 tank facility and contract emergency personnel shall take upon the
21 occurrence of any release of fluids from an aboveground storage
22 tank at the facility;

23 (5) Pertinent information obtained by the owner or operator of
24 the aboveground storage tanks from the county and municipal
25 emergency management agencies and designate the person or persons
26 to be notified in the event of a release from an aboveground

1 storage tank; and

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

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

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

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

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

17 (4) The plan fails in an emergency;

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

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

22 (c) The secretary shall approve the spill prevention response
23 plan or reject the plan and require modifications as may be
24 necessary and reasonable to assure the protection of the source
25 water of a public water system from a release of fluids from an
26 aboveground storage tank. If rejected, the owner of the

1 aboveground storage tank shall submit a revised plan to the
2 secretary for approval within thirty days of receipt of
3 notification of the secretary's decision. Failure to comply with
4 a plan approved by the secretary pursuant to this section is a
5 violation of this article.

6 (d) Nothing contained in this section relieves the owner or
7 operator of an aboveground storage tank from his or her obligation
8 to report any release immediately to the department of
9 environmental protection's emergency notification telephone
10 number, 1-800-642-3074.

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

13 The owner or operator of an aboveground storage tank facility
14 shall annually provide public notice to public water systems
15 located within a twenty-five mile radius of the aboveground
16 storage tank facility site and the local municipality, if any, and
17 county in which the facility is located. The notice shall
18 provide a detailed inventory of the type and quantity of fluid
19 stored in aboveground storage tanks at the facility and the
20 material safety data sheets associated with the fluid in storage.
21 The owner or operator shall also annually provide a copy of the
22 spill prevention response plan and any updates thereto, which
23 have been approved by the secretary pursuant to this act, to the
24 applicable public water systems and county and municipal
25 emergency management agencies.

26 **§22-30-12. Required signage.**

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

9 **§22-30-13. Aboveground storage tank administrative fund.**

10 (a) The secretary shall collect annual registration fees from
11 owners or operators of each aboveground storage tank in an amount
12 sufficient to cover the regulatory oversight and services to be
13 provided by designated agencies, including necessary technical
14 and administrative personnel, as set forth by rule. All
15 registration and permit fees and the net proceeds of all fines,
16 penalties, and forfeitures collected under this article, including
17 accrued interest, shall be paid into the State Treasury into a
18 special revenue fund designated the "Aboveground Storage Tank
19 Administrative Fund," and shall be used solely to defray the cost
20 of administering this act.

21 (b) At the end of each fiscal year, any unexpended balance,
22 including accrued interest, on deposit in the Aboveground Storage
23 Tank Administrative Fund shall not be transferred to the general
24 revenue fund, but shall remain in the Aboveground Storage Tank
25 Administrative Fund.

26 **§22-30-14. Leaking aboveground storage tank response fund.**

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

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

17 (c) At the end of each fiscal year, any unexpended balance,
18 including accrued interest, on deposit in the Leaking Aboveground
19 Storage Tank Response Fund shall not be transferred to the general
20 revenue fund, but shall remain in the Leaking Aboveground Storage
21 Tank Response Fund.

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

24 (1) Responding to aboveground storage tank releases when,
25 based on readily available information, the secretary determines
26 that immediate action is necessary to prevent or mitigate

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

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

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

15 (e) The secretary, through a cooperative agreement with
16 another state regulatory agency, in this or another state, may
17 use the fund to compensate the cooperating agency for expenses
18 the cooperating agency incurs in carrying out regulatory
19 responsibilities that agency may have pursuant to this article.

20 **§22-30-15. Public Access to Information.**

21 (a) Subject to the exemptions listed in section four, article
22 one, chapter twenty-nine-b of this code, the public shall have
23 access to all documents and information submitted to the agency in
24 accordance with this section pursuant to the state Freedom of
25 Information Act. Records, reports or information obtained from
26 any persons under this article may be disclosed to other officers,

1 employees, or authorized representatives of this state or the
2 United States Environmental Protection Agency or of this state if
3 the officers, employees or authorized representatives are
4 implementing the provisions of this article or any other
5 applicable law related to releases of fluid from aboveground
6 storage tanks that impact the states water resources.

7 (c) In submitting data under this act, a person required to
8 provide the data may designate the data that he or she believes is
9 entitled to protection under this section and may submit the
10 designated data separately from other data submitted under this
11 article. A designation under this subsection shall be made in
12 writing and in a manner as the secretary may prescribe.

13 **§22-30-16. Inspections, monitoring and testing.**

14 (a) For the purposes of developing or assisting in the
15 development of any rule, conducting any study, taking any
16 corrective action or enforcing any provision of this article, any
17 owner or operator of an aboveground storage tank shall, upon
18 request of the secretary, furnish information relating to the
19 aboveground storage tanks; their associated equipment and
20 contents; conduct reasonable monitoring or testing; permit the
21 secretary, at all reasonable times, to have access to and to copy
22 all records relating to the aboveground storage tanks; and permit
23 the secretary to have access to the aboveground storage tank for
24 corrective action.

25 (b) For the purposes of developing or assisting in the
26 development of any rule, conducting any study, taking corrective

1 action or enforcing any provision of this act, the secretary may:

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

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

6 (3) Conduct monitoring or testing of the aboveground storage
7 tanks, associated equipment, contents or surrounding soils,
8 surface, water or groundwater; and

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

10 Each inspection shall be commenced and completed with reasonable
11 promptness.

12 **§22-30-17. Administrative orders; injunctive relief.**

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

25 (b) In addition to the powers and authority granted to the
26 secretary by this chapter to enter into consent agreements,

1 settlements, and otherwise enforce this chapter, the secretary
2 shall propose rules for legislative approval, in accordance with
3 article three, chapter twenty-nine-a of this code, to establish a
4 mechanism for the administrative resolution of violations set
5 forth in this article through consent order or agreement as an
6 alternative to instituting a civil action.

7 **§22-30-18. Civil and criminal penalties.**

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

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

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

24 (d) Any person who knowingly and intentionally violates any
25 provision of this article shall be guilty of a misdemeanor, and,
26 upon conviction thereof, shall be confined in a regional jail for

1 a period of time not exceeding six months, and be fined an amount
2 not to exceed \$25,000.

3 **§22-30-19. Appeal to Environmental Quality Board.**

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

9 **§22-30-20. Duplicative enforcement prohibited.**

10 No enforcement proceeding brought pursuant to this article may
11 be duplicated by an enforcement proceeding subsequently commenced
12 under some other article of this code with respect to the same
13 transaction or event, unless subsequent proceeding involves the
14 violation of a permit or permitting requirement of other article.

15 **§22-30-21. Reporting and accountability.**

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

26 (b) The secretary shall keep accurate accounts of all receipts

1 and disbursements related to the administration of the Aboveground
2 Storage Tank Administrative Fund and shall make a specific annual
3 report to the Joint Legislative Oversight Commission on State
4 Water Resources and the Joint Committee on Government and Finance
5 addressing the administration of the fund.

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

12 **§22-30-22. Interagency cooperation.**

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

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

26 (c) The secretary shall also coordinate with the state fire

1 marshal in addressing the periodic inspection of local fire
2 departments to include a requirement for inspectors to examine and
3 identify the status of National Incident Management System fire
4 department personnel training.

5 **§22-30-23. Imminent and substantial danger.**

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

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

26 **§22-30-24. Source water protection.**

1 (a) In addition to all other powers and duties prescribed in
2 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 to
5 implement a aboveground storage tank regulatory program designed
6 to protect each public water system in the state from
7 contamination of its source water supply caused by the release of
8 fluid from an aboveground storage tank consistent with the
9 requirements of this article.

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

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

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

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

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

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

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

19 (e) The secretary may request a public water system to conduct
20 one or more studies to determine the actual risk and consequences
21 related to any potential contaminant sources identified by the
22 secretary.

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

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

26 The secretary shall propose emergency and legislative rules as

1 necessary to implement the provisions of this article in
2 accordance with the provisions of article three, chapter twenty-
3 nine-a of this code.

4 **§22-30-26. Powers and duties of secretary.**

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

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

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

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

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

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