



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

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

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

25 That §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-  
26 26-8 of the Code of West Virginia, 1931, as amended, be amended and

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

7 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

9 **22-26-2. Definitions.**

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

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

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

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

25 (d) "Community water system" means a public water system that  
26 pipes water for human consumption to at least fifteen service

1 connections used by year-round residents or one that regularly  
2 serves at least twenty-five residents.

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

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

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

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

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

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

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

26 ~~(k)~~ (l) "Noncommunity nontransient water system" means a

1 public water system that serves at least twenty-five of the same  
2 persons over six months per year.

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

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

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

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

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

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

1 excluded from the waters of the state.

2 ~~(r)~~ (s) "Watershed" means a hydrologic unit utilized by the  
3 United States Department of Interior's geological survey, adopted  
4 in 1974, as a framework for detailed water and related land-  
5 resources planning.

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

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

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

1 of this article.

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

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

24 (d) Except as provided in subsection (f) of this section,  
25 large-quantity users who withdraw water from a West Virginia water  
26 resource shall comply with the survey and registration requirements



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

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

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

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

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

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

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

24 (k) The secretary shall report annually to the Joint  
25 Legislative Oversight Commission on State Water Resources on the  
26 survey results. The secretary shall also make a progress report

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

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

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

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

26 (o) The secretary is authorized to enter into cooperative

1 agreements with local, state and federal agencies and private  
2 policy or research groups to obtain federal matching funds, conduct  
3 research and analyze survey and registration data and other  
4 agreements as may be necessary to carry out his or her duties under  
5 this article.

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

15 **§22-26-5. Joint Legislative Oversight Commission on State Water**  
16 **Resources.**

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

1 (b) The expenses of the commission, including the cost of  
2 conducting the survey and monitoring any subsequent strategy and  
3 those incurred in the employment of legal, technical,  
4 investigative, clerical, stenographic, advisory and other  
5 personnel, are to be approved by the Joint Committee on Government  
6 and Finance and paid from legislative appropriations.

7 **§22-26-6. Mandatory survey and registration compliance.**

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

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

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

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

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

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

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

25        ~~(4)~~ (e) Any person who fails to notify the secretary prior to  
26 drilling a well or impedes collection of information by the

1 secretary under this section is in violation of the Water Resources  
2 Protection and Management Act and is subject to the civil  
3 administrative penalty authorized by section six of this article.

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

11 **§22-26-8. State Water Resources Management Plan; powers and duty**  
12 **of secretary.**

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

26 (b) The secretary shall develop definitions for use in the

1 State Water Resources Management Plan for terms that are defined  
2 differently by various state and federal governmental entities as  
3 well as other terms necessary for implementation of this article.

4 (c) The secretary shall continue to develop and obtain the  
5 following:

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

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

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

23 (4) After consulting with the appropriate state and federal  
24 agencies, assess and project the existing and future nonconsumptive  
25 use needs of the water resources required to serve areas with  
26 important or unique natural, scenic, environmental or recreational



1 values of national, regional, local or statewide significance,  
2 including national and state parks; designated wild, scenic and  
3 recreational rivers; national and state wildlife refuges; and the  
4 habitats of federal and state endangered or threatened species.

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

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

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

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

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

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

26 (9) An assessment of flood plain and stormwater management

1 problems.

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

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

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

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

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

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

26 ~~(15)~~ (16) Proposed methods of implementing various recommended

1 actions, programs, policies, projects or management activities.

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

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

5 (2) Regional or watershed water resources needs, objectives  
6 and priorities.

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

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

14 (5) The water quantity and quality necessary to support  
15 reasonable and beneficial uses.

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

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

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

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

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

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

23 **§22-30-1. Short title.**

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

26 **§22-30-2. Legislative findings.**

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

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

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

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

1 Legislature further recognizes that some of these fluids have been  
2 stored in aboveground storage tanks in a regulated manner  
3 insufficient to protect human health, safety, water resources, the  
4 environment and the economy of the state.

5 **22-30-3. Applicability; exclusions.**

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

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

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

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

18 (3) An aboveground storage tank located on residential  
19 property of one thousand one hundred gallons or less capacity used  
20 for storing motor fuel for noncommercial purposes;

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

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

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

1 (7) Septic tanks;

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

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

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

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

20 (12) Aboveground storage tanks, containing hazardous wastes,  
21 which are subject to a treatment or storage permits regulated under  
22 Subtitle C of the federal Solid Waste Disposal Act, 42 U. S. C.  
23 §6921, *et seq.*, or substances regulated under article eighteen of  
24 this chapter;

25 (13) An aboveground storage tank containing agricultural  
26 pesticides regulated under article sixteen-a, chapter nineteen of

1 this code;

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

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

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

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

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

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

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

24 (17) Any aboveground storage tank of 1,100 gallons or less  
25 capacity, not otherwise exempt, unless that tank is greater than  
26 500 gallons capacity and is located within 500 feet of surface or



1 source waters;

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

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

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

13 **§22-30-4. Definitions.**

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

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

22 (b) "Department" means the West Virginia Department of  
23 Environmental Protection.

24 (c) "Nonoperational storage tank" means an aboveground storage  
25 tank in which fluids will not be deposited or from which fluids  
26 will not be dispensed on or after the effective date of this

1 article.

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

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

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

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

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

1 soils, subsurface soils, surface water or groundwater.

2 (i) Secondary containment means a safeguard specifically  
3 designed to be impermeable to stored substances and which will  
4 contain a release from an aboveground storage tank, and prevent the  
5 release from spreading vertically or horizontally, contaminating  
6 the land or water outside of the containment area.

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

9 **§22-30-5. Registration of existing aboveground storage tanks.**

10 (a) To assure protection of the water resources of the state,  
11 the secretary shall compile an inventory of aboveground storage  
12 tanks in existence, regardless of whether they are operational or  
13 nonoperational storage tanks, on the effective date of this  
14 article. The secretary shall prescribe a registration form for  
15 this purpose within thirty days of the effective date of the  
16 enactment of this article. All aboveground storage tanks subject  
17 to this article shall be registered no later than sixty days from  
18 the effective date of the enactment of this article.

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

23 (c) If, at the time this registration is required to be  
24 submitted, the secretary has not prepared the form required by this  
25 section, the owner or operator shall nevertheless submit the  
26 information in writing to the secretary. The duty to provide

1 correct, up-to-date information about the location and contents of  
2 aboveground storage tanks is an ongoing requirement.

3 (d) Any aboveground storage tank placed into service on and  
4 after the effective date of this section, but prior to the  
5 establishment of a permit program, shall register with the  
6 secretary and request permission to place the tank into service  
7 pending a permit application.

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

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

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

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

24 (a) Without authorization from the secretary, it is unlawful  
25 for any person to construct, maintain or use any aboveground  
26 storage tank for the storage of any fluid other than water, which

1 has no additives, without first obtaining a permit from the  
2 secretary.

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

7 (1) A requirement to submit a verified application for a  
8 permit containing information as may be prescribed by the  
9 secretary;

10 (2) Performance standards for design, construction,  
11 installation, maintenance, corrosion detection and maintenance,  
12 release detection and prevention and secondary containment;

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

19 (4) Requirements for maintaining records of any monitoring or  
20 leak detection system, corrosion prevention, inventory control  
21 system or tank testing system;

22 (5) Requirements for early detection of releases and  
23 immediate reporting of releases;

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

26 (7) Requirements for the closure of aboveground storage tanks

1 and remediation to prevent future releases of fluids or materials  
2 to the state's water resources;

3 (8) Requirements for certification of installation, removal,  
4 retrofit, corrosion and other testing and inspection of  
5 aboveground storage tanks, leak detection systems and secondary  
6 containment by a qualified registered professional engineer or a  
7 qualified person working under the direct supervision of a  
8 registered professional engineer, regulated and licensed by the  
9 West Virginia Professional Engineers Board;

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

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

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

26 (12) A procedure for the administrative resolution of

1 violations including the assessment of administrative civil  
2 penalties;

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

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

15 **§22-30-7. Annual inspection and certification.**

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

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

3 **§22-30-8. Financial responsibility.**

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

12 **§22-30-9. Corrective action.**

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

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

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

23 (3) Undertake immediate corrective action with respect to any  
24 release or threatened release of fluid from an aboveground storage  
25 tank when, in the judgment of the secretary, the action is  
26 necessary to protect human health, safety, water resources or the



1 environment from contamination caused by a release.

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

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

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

1 out the corrective action properly;

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

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

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

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

25 (1) The secretary is unable to determine the identity of the  
26 owner or operator in a manner consistent with the need to take

1 timely corrective action; or

2 (2) The owner or operator determined by the secretary to be  
3 responsible for the release or threatened release has been  
4 informed in writing of the secretary's determination and has been  
5 requested by the secretary to take appropriate corrective action  
6 but is unable or unwilling to take proper action in a timely  
7 manner.

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

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

24 **§22-30-10. Spill prevention response plan.**

25 (a) Within ninety days of the effective date of this article,  
26 each owner or operator of an aboveground storage tank shall submit

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

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

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

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

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

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

17 (6) Provide the secretary with all other requested  
18 information.

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

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

1 fluids;

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

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

6 (4) The plan fails in an emergency;

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

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

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

21 (d) Nothing contained in this section relieves the owner or  
22 operator of an aboveground storage tank from his or her obligation  
23 to report any release immediately to the Department of  
24 Environmental Protection's emergency notification telephone  
25 number.

26 **§22-30-11. Notice to local governments, water companies and other**

1           **industrial users.**

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

15 **§22-30-12. Required signage.**

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

24 **§22-30-13. Aboveground Storage Tank Administrative Fund.**

25           (a) The secretary shall collect annual registration fees from  
26 owners or operators of each aboveground storage tank in an amount

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

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

15 **§22-30-14. Leaking Aboveground Storage Tank Response Fund.**

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



1 tanks.

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

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

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

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

25 (2) Reimbursing any nonresponsible parties for reasonable  
26 cleanup costs incurred with the authorization of the secretary in

1 responding to an aboveground storage tank release; or

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

6 (e) The secretary, through a cooperative agreement with  
7 another state regulatory agency, in this or another state, may use  
8 the fund to compensate the cooperating agency for expenses the  
9 cooperating agency incurs in carrying out regulatory  
10 responsibilities that agency may have pursuant to this article.

11 **§22-30-15. Public access to information.**

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

24 (b) In submitting data under this act, a person required to  
25 provide the data may designate the data that he or she believes is  
26 entitled to protection under this section and may submit the

1 designated data separately from other data submitted under this  
2 article. A designation under this subsection shall be made in  
3 writing and in a manner as the secretary may prescribe.

4 **§22-30-16. Inspections, monitoring and testing.**

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

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

12 (2) Conduct reasonable monitoring or testing;

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

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

17 (b) For the purposes of developing or assisting in the  
18 development of any rule, conducting any study, taking corrective  
19 action or enforcing any provision of this article, the secretary  
20 may:

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

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

25 (3) Conduct monitoring or testing of the aboveground storage  
26 tanks, associated equipment, contents or surrounding soils,

1 surface, water or groundwater; and

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

3 Each inspection shall be commenced and completed with reasonable  
4 promptness.

5 (c) To ensure protection of the water resources of the state  
6 and compliance with any provision of this article or rule  
7 promulgated thereunder, the secretary shall inspect at least  
8 annually any aboveground storage tank facility located within  
9 twenty-five miles upstream of a public water system intake in  
10 zones of critical concern as determined by the secretary.

11 **§22-30-17. Administrative orders; injunctive relief.**

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

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

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

6 **§22-30-18. Civil and criminal penalties.**

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

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

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

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

26 (e) Any person who knowingly and intentionally violates any

1 provision of this article shall be guilty of a misdemeanor, and,  
2 upon conviction thereof, shall be confined in a regional jail for  
3 a period of time not exceeding six months, and be fined an amount  
4 not to exceed \$25,000.

5 **§22-30-19. Appeal to Environmental Quality Board.**

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

11 **§22-30-20. Duplicative enforcement prohibited.**

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

18 **§22-30-21. Reporting and accountability.**

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

1 pursuant hereto, the regulatory process, and any pertinent changes  
2 to federal rules or regulations.

3 (b) The secretary shall keep accurate accounts of all receipts  
4 and disbursements related to the administration of the Aboveground  
5 Storage Tank Administrative Fund and shall make a detailed annual  
6 report to the Joint Legislative Oversight Commission on State  
7 Water Resources and the Joint Committee on Government and Finance  
8 addressing the administration of the fund.

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

15 **§22-30-22. Interagency cooperation.**

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

23 (b) The secretary shall also coordinate with state and local  
24 emergency response agencies to prepare and issue appropriate  
25 emergency response plans to address facility emergency response  
26 and incident command when the functions are provided by the owner

1 or operator of the aboveground storage tank and the public water  
2 system.

3 (c) The secretary shall also coordinate with the State Fire  
4 Marshal in addressing the periodic inspection of local fire  
5 departments to include a requirement for inspectors to examine and  
6 identify the status of National Incident Management System fire  
7 department personnel training.

8 **§22-30-23. Imminent and substantial danger.**

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

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



1 danger to be promptly posted at the aboveground storage tank  
2 facility containing the aboveground storage tank at issue.

3 **§22-30-24. Source water protection.**

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

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

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

25 (2) Alternative water source or intake, with particular  
26 emphasis on single-source intake systems, focusing on source

1 replacement should the system be required to use a new or  
2 alternate source of water due to contamination;

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

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

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

14 (d) The Secretary of the Department of Health and Human  
15 Resources shall accept a plan submitted pursuant to this section  
16 and provide a copy to the secretary. Thereafter, within ninety  
17 days, the secretary and the Secretary of the Department of Health  
18 and Human Resources may reject the plan and require modifications  
19 as may be necessary and reasonable to satisfy the purposes of this  
20 article. Failure by a public water system to comply with a plan  
21 approved pursuant to this section is a violation of this article.

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

26 (f) A public water system shall submit an updated source water

1 protection plan not less frequently than every three years.

2 **§22-30-25. Promulgation of rules.**

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

7 **§22-30-26. Powers and duties of secretary.**

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

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

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

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

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

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

1 with a release.