

**H. B. 4258**

(By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

[By Request of the Executive]

[Introduced January 22, 2014; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §22-30-1, §22-30-2,  
12 §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8,  
13 §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13,  
14 §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18,  
15 §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23,  
16 §22-30-24, §22-30-25, §22-30-26, §22-30-27 and §22-30-28, all  
17 relating to the protection of source water supplies and  
18 systems generally through regulation of industrial aboveground  
19 storage tanks; short title; applicability; legislative  
20 findings and purposes; defining terms; authorizing a source  
21 water protection program; requiring public water systems to  
22 remit an annual fee and submit a source water protection plan  
23 for joint approval by the Secretary of the Department of  
24 Environmental Protection and the Secretary of the Department

1 of Health and Human Resources every three years; permitting  
2 the Secretary of Department of Environmental Protection to  
3 request studies from public water systems regarding potential  
4 contaminant sources; providing emergency and legislative  
5 rule-making authority to the secretary to adopt and implement  
6 an industrial aboveground storage tank program; setting forth  
7 powers and duties of the secretary to implement an industrial  
8 aboveground storage tank program; setting forth notification  
9 requirements for owners and operators of industrial  
10 aboveground storage tanks; providing emergency and legislative  
11 rule-making authority; setting forth registration  
12 requirements, including an annual registration fee, for  
13 industrial aboveground storage tanks; prohibiting the  
14 operation or use of an unregistered industrial aboveground  
15 storage tank; prohibiting the delivery or deposit of regulated  
16 material into an unregistered industrial aboveground storage  
17 tank; requiring annual inspection and certification by a  
18 registered professional engineer of minimum safety standards  
19 for industrial aboveground storage tanks, associated  
20 equipment, leak detection systems, and secondary containment  
21 structures; providing rule-making authority to ensure  
22 financial responsibility for corrective action for releases of  
23 regulated material from industrial aboveground storage tanks;  
24 providing rule-making authority for performance standards for

1 new and existing industrial aboveground storage tanks;  
2 authorizing the secretary to ensure corrective action be taken  
3 regarding a release or threatened release of regulated  
4 material from an industrial aboveground storage tank;  
5 permitting the secretary to use funds from the Leaking  
6 Industrial Aboveground Storage Tank Response Fund to pay for  
7 the costs of corrective action to prevent contamination of a  
8 source water supply; requiring written notice from the  
9 secretary to a responsible party regarding liability for  
10 reimbursement to the Leaking Industrial Aboveground Storage  
11 Tank Response Fund; requiring spill prevention response plans  
12 for each industrial aboveground storage tank to be submitted  
13 for approval by the secretary; requiring owners or operators  
14 of industrial aboveground storage tanks to provide public  
15 notice to certain public water systems, the local  
16 municipality, and the local county regarding regulated  
17 material; requiring signage on industrial aboveground storage  
18 tanks; providing rule-making authority; creating a special  
19 revenue fund entitled the Industrial Aboveground Storage Tank  
20 Administrative Fund and authorizing the secretary to collect  
21 an annual registration fee for deposit into this fund;  
22 creating a special revenue fund entitled the Leaking  
23 Industrial Aboveground Storage Tank Response Fund and  
24 authorizing the secretary to collect an annual fee for deposit

1 into this fund; authorizing expenditures from the funds;  
2 providing public access to information collected under this  
3 article pursuant to the Freedom of Information Act; permitting  
4 the secretary to require the owners or operators of industrial  
5 aboveground storage tanks to furnish information, conduct  
6 reasonable monitoring or testing, and allow access to records  
7 to facilitate implementation of the provisions of this  
8 article; permitting the secretary to issue orders to enforce  
9 this article, including temporary and permanent injunctions;  
10 providing for civil and criminal penalties; providing for  
11 appeals to the environmental quality board; prohibiting  
12 duplicative enforcement; requiring the secretary to report to  
13 the legislature every three years on the effectiveness of this  
14 article and annually on the accounting of the funds; requiring  
15 interagency coordination; permitting the secretary to bring a  
16 civil action against an owner or operator of an industrial  
17 aboveground storage tank upon receipt of evidence of imminent  
18 and substantial endangerment to human health or the  
19 environment; providing for immediate notice to appropriate  
20 state and local agencies and public water systems; and  
21 severability.

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

23 That the Code of West Virginia, 1931, as amended, be amended  
24 by adding thereto a new article, designated §22-30-1, §22-30-2,

1 §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8,  
2 §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14,  
3 §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20,  
4 §22-30-21, §22-30-22, §22-30-23, §22-30-24, §22-30-25, §22-30-26,  
5 §22-30-27 and §22-30-28, all to read as follows:

6 **ARTICLE 30. WEST VIRGINIA SOURCE WATER PROTECTION ACT.**

7 **§22-30-1. Short title.**

8 This article shall be known and may be cited as the "West  
9 Virginia Source Water Protection Act."

10 **§22-30-2. Applicability.**

11 This article applies to all new and existing industrial  
12 aboveground storage tanks located within a zone of critical concern  
13 and to all public water systems located within the state.

14 **§22-30-3. Legislative findings and purpose.**

15 (a) The Legislature recognizes that industrial businesses are  
16 vital to our economy, create good-paying jobs with benefits for our  
17 citizens, and ensure that commerce will continue to flourish in  
18 West Virginia. The Legislature also recognizes that many factors  
19 go into an industrial facility's selection of a site to do  
20 business, including, but not limited to, topography, proximity to  
21 workforce, access to necessary infrastructure, access to  
22 transportation modalities such as railroads, rivers and highways,  
23 a state's regulatory environment, and proximity to raw materials.  
24 In connection with the operation of industrial businesses, it is

1 often necessary to store large quantities of petroleum, chemicals,  
2 solvents, and other hazardous substances and pollutants in  
3 aboveground storage tanks. Recognizing the value that industrial  
4 businesses add to our economy and the associated risks of potential  
5 harm to human health and the environment posed by storage of  
6 significant quantities of regulated material in aboveground storage  
7 tanks, the Legislature finds it is necessary to regulate the  
8 industrial storage of regulated material in aboveground storage  
9 tanks located within zones of critical concern in the vicinity of  
10 public water systems. Further, the Legislature finds that it is  
11 also necessary to require public water systems to evaluate  
12 potential risks to the water supply and to develop certain  
13 contingency and emergency response plans to prepare for potential  
14 releases of regulated material from industrial aboveground storage  
15 tanks that jeopardize a public water system, human health, or the  
16 environment.

17 (b) Therefore, it is the purpose of this article to:

18 (1) Implement reasonable regulations governing the storage of  
19 specified volumes of regulated material in industrial aboveground  
20 storage tanks within zones of critical concern in the vicinity of  
21 public water systems;

22 (2) Assure that industrial aboveground storage tanks are  
23 constructed and maintained in a manner consistent with acceptable  
24 industry safety standards;

1       (3) Assure that public water systems properly plan for  
2 contingencies and prepare appropriate emergency response plans to  
3 implement in the event a leak from an industrial aboveground  
4 storage tank jeopardizes one or more public water systems; and

5       (4) Otherwise protect human health and the environment from  
6 the dangers posed by the storage of specified volumes of regulated  
7 material in industrial aboveground storage tanks located within  
8 zones of critical concern in the vicinity of public water systems.

9 **§22-30-4. Definitions.**

10       As used in this article, unless the context clearly requires  
11 a different meaning, the term:

12       (a) "Aboveground storage tank" means a single stationary  
13 aboveground container or a set of stationary aboveground containers  
14 that are connected in such a manner that the contents thereof can  
15 travel between containers. The term includes all ancillary  
16 aboveground pipes and dispensing systems up to the first point of  
17 isolation and all ancillary underground pipes and dispensing  
18 systems connected to the aboveground containers. The term does not  
19 include, however, any of the following:

20       (1) Farm or residential tanks with a capacity of 1,100 gallons  
21 or less that are used for storing motor fuel for noncommercial  
22 purposes;

23       (2) Tanks used for storing heating oil for consumptive use on  
24 the premises where stored;

- 1       (3) Septic tanks;
- 2       (4) 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       (5) Liquid traps or associated gathering lines related to oil  
10 or gas production and gathering operations;
- 11       (6) Surface impoundments, pits, ponds or lagoons;
- 12       (7) Stormwater or wastewater collection systems;
- 13       (8) Flow-through process tanks;
- 14       (9) Tanks used for the storage of products that are regulated  
15 pursuant to the federal Food, Drug, and Cosmetic Act;
- 16       (10) Oil filled tanks regulated under section 1321 of the  
17 federal Water Pollution Control Act (section 311 of the federal  
18 Clean Water Act) and the regulations promulgated thereunder, 40  
19 C.F.R. § 112, et seq.;
- 20       (11) Farm tanks with a capacity of 1,100 gallons or less used  
21 solely to store or contain substances that are used to facilitate  
22 the production of crops, livestock, and livestock products on such  
23 farm;
- 24       (12) Tanks that are used to store propane gas;



1       (13) Tanks that are mobile in nature or that do not remain in  
2 one location for more than thirty consecutive calendar days;

3       (14) Storage tank systems storing hazardous wastes regulated  
4 under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C.  
5 § 6921, et seq., or substances regulated under the West Virginia  
6 Hazardous Waste Management Act, W. Va. Code § 22-18-1, et seq.;

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

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

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

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

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

1 methane gas, and methane gas condensate management.

2 (16) Any other tank excluded by legislative rule promulgated  
3 by the secretary pursuant to this article and article three,  
4 chapter twenty-nine-a of this code.

5 (b) "Change in status" means an instance in which the reported  
6 uses, contents, or ownership of an industrial aboveground storage  
7 tank changes, including discontinuing the use of an industrial  
8 aboveground storage tank.

9 (c) "Industrial aboveground storage tank" means an aboveground  
10 storage tank located within a zone of critical concern that  
11 contains a volume of regulated material in excess of the applicable  
12 threshold established by the secretary by rule pursuant to section  
13 six of this article.

14 (d) "Nonoperational storage tank" means an aboveground storage  
15 tank in which regulated material will not be deposited or from  
16 which regulated material will not be dispensed on or after the  
17 effective date of this article.

18 (e) "Operator" means any person in control of or having  
19 responsibility for the daily operation of an industrial aboveground  
20 storage tank.

21 (f) "Owner" means a person who holds title to, owns or  
22 controls an industrial aboveground storage tank. "Owner" does not  
23 include any person who holds indicia of ownership of an industrial  
24 aboveground storage tank only for the purpose of protecting the

1 person's security interest in the industrial aboveground storage  
2 tank.

3 (g) "Person" means any individual, trust, firm, joint stock  
4 company, corporation (including government corporations), limited  
5 liability company, partnership, association, state, municipality,  
6 commission, political subdivision of a state, interstate body,  
7 consortium, joint venture, commercial entity and the United States  
8 government.

9 (h) "Public water system" means the same in this article as  
10 set forth in subsection (p), section two, article one, chapter  
11 sixteen of this code.

12 (i) "Regulated material" means each substance having a health  
13 hazard of two, three or four, as set forth on the material safety  
14 data sheet applicable to each such substance, or any other  
15 substance as determined by the National Fire Protection Association  
16 or the secretary.

17 (j) "Release" means any spilling, leaking, emitting,  
18 discharging, escaping, leaching or disposing of a regulated  
19 material from an industrial aboveground storage tank into  
20 groundwater, surface water or subsurface soils within a zone of  
21 critical concern. The term shall also include spilling, leaking,  
22 emitting, discharging, escaping, leaching or disposing of a  
23 regulated material from an industrial aboveground storage tank into  
24 a containment structure or facility that poses an immediate threat

1 of contamination of the soils, subsurface soils, surface water or  
2 groundwater within a zone of critical concern.

3 (k) "Secondary containment" means an additional layer of  
4 impervious material creating a space in which a release of a  
5 regulated material from an industrial aboveground storage tank may  
6 be detected before it enters the environment.

7 (l) "Secretary" means the Secretary of the Department of  
8 Environmental Protection as designated in article one of this  
9 chapter or his or her designee.

10 (m) "Zone of critical concern" means those areas identified as  
11 a zone of critical concern in a Source Water Assessment Report, as  
12 determined as of the effective date of this article by the  
13 department of health and human resources in conjunction with the  
14 State of West Virginia Source Water Assessment and Protection  
15 Program, as such areas may be revised and as additional areas, if  
16 any, may be added from time to time by promulgation of emergency  
17 and legislative rule by the secretary in accordance with article  
18 three, chapter twenty-nine-a of this code.

19 **§22-30-5. Source water protection.**

20 (a) In addition to all other powers and duties prescribed in  
21 this chapter or otherwise by law, and unless otherwise specifically  
22 set forth in this article, the secretary has the sole and exclusive  
23 authority to perform any and all acts necessary to implement a  
24 source water protection program designed to protect each public

1 water system in the state from contamination of its source water  
2 supply caused by the release of regulated material from an  
3 industrial aboveground storage tank consistent with the  
4 requirements of this article.

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

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

18 (2) Information pertaining to alternative water sources  
19 focusing on long-term source replacement should such system be  
20 required to develop a new source of water due to such  
21 contamination;

22 (3) A management plan that identifies specific activities that  
23 will be pursued by such system to protect its source water supply  
24 from such contamination, including coordination with government

1 agencies and periodic surveys of the zone of critical concern  
2 related to such system; and

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

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

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

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

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

23 **§22-30-6. Promulgation of rules and standards by the secretary.**

24 (a) The secretary shall promulgate emergency and legislative

1 rules in accordance with article three, chapter twenty-nine-a of  
2 this code as may be necessary for the effective implementation and  
3 administration of this article.

4 (b) As part of the emergency and legislative rules authorized  
5 by subsection a of this section, the secretary shall promulgate  
6 emergency and legislative rules in accordance with article three,  
7 chapter twenty-nine-a of this code to adopt and implement an  
8 industrial aboveground storage tank program that, at a minimum,  
9 includes the following subjects:

10 (1) Payment of an annual registration fee to the department of  
11 environmental protection by the owner or operator of each  
12 industrial aboveground storage tank;

13 (2) Registration with the secretary of each industrial  
14 aboveground storage tank and the filing of an annual report with  
15 the secretary by the owner or operator of each industrial  
16 aboveground storage tank regarding changes in status of any such  
17 tank;

18 (3) Methods and procedures for inventory control measures, as  
19 appropriate;

20 (4) The periodic inspection of leak detection systems, the  
21 structural integrity of industrial aboveground storage tanks and  
22 associated equipment, and release prevention measures;

23 (5) Corrective actions by owners, operators, or other  
24 responsible parties, as applicable, in response to a release of a

1 regulated material from an industrial aboveground storage tank;

2 (6) The reporting of any release of a regulated material from  
3 an industrial aboveground storage tank and corrective action taken  
4 in response to a release of a regulated material from an industrial  
5 aboveground storage tank;

6 (7) The maintenance of records, by owners or operators, as  
7 applicable, of periodic inspections of leak detection systems;  
8 inspections of structural integrity of the industrial aboveground  
9 storage tanks, their associated equipment, and secondary  
10 containment systems; and all release prevention measures as may be  
11 necessary to protect human health and the environment from  
12 contamination of a source water supply used by a public water  
13 system caused by a release of a regulated material from an  
14 industrial aboveground storage tank;

15 (8) Minimum standards for the construction, testing, corrosion  
16 protection, maintenance, operation, release prevention, and repair  
17 and reuse of industrial aboveground storage tanks, their associated  
18 equipment, and leak detection systems as may be necessary to  
19 protect human health or the environment;

20 (9) Methods and procedures for the removal of industrial  
21 aboveground storage tanks from service;

22 (10) Requirements for reporting of the planned and completed  
23 closure of any industrial aboveground storage tank;

24 (11) Procedures and amount of fees to be assessed for the



1 Industrial Aboveground Storage Tank Administrative Fund and the  
2 Leaking Industrial Aboveground Storage Tank Response Fund  
3 established pursuant to this article, which shall include a  
4 capitalization fee to be assessed against all owners or operators  
5 of industrial aboveground storage tanks to be used for initial  
6 establishment of the Industrial Aboveground Storage Tank  
7 Administrative Fund and the Leaking Industrial Aboveground Storage  
8 Tank Response Fund;

9       (12) Procedures for making expenditures from the Industrial  
10 Aboveground Storage Tank Administrative Fund and the Leaking  
11 Industrial Aboveground Storage Tank Response Fund;

12       (13) Acceptable methods by which an owner or operator may  
13 demonstrate financial responsibility;

14       (14) Procedures establishing when and how the secretary  
15 determines if information obtained by the department under this  
16 article is confidential;

17       (15) Standards of performance for new and existing industrial  
18 aboveground storage tanks;

19       (16) Minimum standards for the construction, testing,  
20 operation, maintenance, and repair of secondary containment  
21 structures associated with industrial aboveground storage tanks, as  
22 may be necessary to protect human health and the environment from  
23 contamination of a source water supply used by a public water  
24 system caused by a release of a regulated material from an

1 industrial aboveground storage tank; and

2 (17) The volume of regulated material that must be stored in  
3 an industrial aboveground storage tank before such tank is subject  
4 to regulation under this article, with such volume being  
5 established by the secretary based on his or her assessment of the  
6 risk posed by materials having a health hazard of two, three or  
7 four, as set forth on the material safety data sheet applicable to  
8 such material, or any other substance as determined by the National  
9 Fire Protection Association or the secretary.

10 **§22-30-7. Powers and duties of secretary.**

11 (a) In addition to all other powers and duties prescribed in  
12 this chapter or otherwise provided by law, and unless otherwise  
13 specifically set forth in this article, the secretary has the sole  
14 and exclusive authority to perform any and all acts necessary to  
15 implement an industrial aboveground storage tank program consistent  
16 with the requirements of this article.

17 (b) The secretary may receive and expend money from the  
18 federal government or any other sources to implement the industrial  
19 aboveground storage tank program required by this article.

20 (c) The secretary may revoke any registration provided for in  
21 this article for any violation of this article or the legislative  
22 rules promulgated hereunder.

23 (d) The secretary, in accordance with this article, may issue  
24 orders, assess civil penalties, institute enforcement proceedings,

1 and prosecute violations of this article as the secretary  
2 determines to be necessary and appropriate.

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

6 (f) The secretary may recover the costs of taking corrective  
7 action, including those costs associated with authorizing third  
8 parties to perform corrective action. These costs may not include  
9 the cost of routine inspection and administrative activities not  
10 associated with a release or threatened release of a regulated  
11 material from an industrial aboveground storage tank.

12 **§22-30-8. Notification requirements.**

13 (a) Industrial aboveground storage tank owners and operators  
14 shall notify the secretary of any industrial aboveground storage  
15 tank placed into service on or after January 1, 2014, within thirty  
16 days of such placement or by June 30, 2014, whichever is later, on  
17 a form prescribed by the secretary. The notice shall specify the  
18 date of tank installation, tank location, type of construction,  
19 size and age of the tank, and the type and volume of regulated  
20 material to be stored therein. If, at the time this information is  
21 required to be submitted, the secretary has not prepared the form  
22 required by this section, the owner shall nevertheless submit the  
23 information in writing to the secretary.

24 (b) For an industrial aboveground storage tank that was in

1 existence, whether in service or out of service, prior to  
2 January 1, 2014, the owner or operator shall notify the secretary  
3 in writing by June 30, 2014, specifying the date of tank  
4 installation, tank location, type of construction, size and age of  
5 the tank, and the type and volume of regulated material stored  
6 therein.

7 (c) A new owner of any industrial aboveground storage tank  
8 shall notify the secretary in writing of the transfer of ownership  
9 of any industrial aboveground storage tank. Upon the effective  
10 date of the transfer, the new owner becomes subject to all  
11 provisions of this article. The secretary may prescribe by  
12 emergency and legislative rule the appropriate form and timing for  
13 the notifications required by this section.

14 **§22-30-9. Registration.**

15 (a) Every owner of an industrial aboveground storage tank  
16 shall register each industrial aboveground storage tank by  
17 completing and submitting the form provided by the secretary and by  
18 paying the annual registration fee prescribed by the secretary for  
19 each industrial aboveground storage tank.

20 (b) It is unlawful for any owner or operator to operate or  
21 use, in any way, any industrial aboveground storage tank which has  
22 not been properly registered or for which the annual registration  
23 fee has not been timely paid as required by this section.

24 (c) It is unlawful for any person to approve a delivery order,

1 or deliver or deposit a regulated material into an industrial  
2 aboveground storage tank unless the industrial aboveground storage  
3 tank owner or operator provides proof of valid registration of the  
4 industrial aboveground storage tank into which the regulated  
5 material is delivered or deposited.

6 **§22-30-10. Annual inspection and certification by registered**  
7 **professional engineer.**

8 (a) Every owner or operator of an industrial aboveground  
9 storage tank is required to have an annual inspection of each  
10 industrial aboveground storage tank performed by a registered  
11 professional engineer and is required to submit, on a form  
12 prescribed by rule by the secretary, a certification from a  
13 registered professional engineer certifying that the industrial  
14 aboveground storage tank, associated equipment, leak detection  
15 systems, and secondary containment structures associated therewith  
16 meet the minimum standards established by the secretary by  
17 emergency and legislative rule for such structures.

18 (b) This certification form must be submitted to the secretary  
19 by January 1st of each year, beginning January 1, 2015.

20 **§22-30-11. Financial responsibility.**

21 The secretary shall promulgate rules, as provided in this  
22 article, containing requirements for owners and operators to  
23 provide evidence satisfactory to the secretary of adequate  
24 financial resources to undertake reasonable corrective action for

1 releases of regulated material from industrial aboveground storage  
2 tanks. The means of demonstrating adequate financial  
3 responsibility may include, but not be limited to, providing  
4 evidence of current insurance, guarantee, surety bond, letter of  
5 credit, proof of assets, trust fund or qualification as a  
6 self-insurer.

7 **§22-30-12. Performance standards.**

8 (a) The secretary shall propose legislative rules regarding  
9 performance standards for new and existing industrial aboveground  
10 storage tanks. The performance standards for new and existing  
11 industrial aboveground storage tanks shall include, but not be  
12 limited to, design, construction, installation, maintenance,  
13 repair, release detection, and compatibility standards.

14 (b) New and existing industrial aboveground storage tank  
15 construction standards must include at least the following  
16 requirements:

17 (1) That an industrial aboveground storage tank will prevent  
18 releases of regulated material stored therein that may occur as a  
19 result of corrosion or structural failure for the operational life  
20 of the tank;

21 (2) That an industrial aboveground storage tank will be  
22 cathodically protected against corrosion, constructed of  
23 noncorrosive material, steel clad with a noncorrosive material, or  
24 designed in a manner to prevent the release or threatened release

1 of stored regulated material; and

2 (3) That materials used in the construction or lining of an  
3 industrial aboveground storage tank are compatible with the  
4 regulated material to be stored therein.

5 **§22-30-13. Corrective action.**

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

9 (1) Require the owner or operator, as applicable, of an  
10 industrial aboveground storage tank to undertake corrective action  
11 with respect to any release or threatened release of a regulated  
12 material from the industrial aboveground storage tank when the  
13 secretary determines that corrective action shall be undertaken  
14 promptly by the owner or operator thereof to protect human health  
15 or the environment from contamination of a source water supply used  
16 by a public water system caused by a release of a regulated  
17 material from an industrial aboveground storage tank; or

18 (2) Undertake corrective action with respect to any release or  
19 threatened release of a regulated material from an industrial  
20 aboveground storage tank when, in the judgment of the secretary,  
21 the action is necessary to protect human health or the environment  
22 from contamination of a source water supply used by a public water  
23 system caused by a release of a regulated material from an  
24 industrial aboveground storage tank.

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

17       (c) Following the effective date of rules promulgated pursuant  
18 to this article, all actions or orders of the secretary shall be in  
19 conformity with those rules. Further, following the effective date  
20 of such rules, the secretary may undertake corrective action with  
21 respect to any release or threatened release of a regulated  
22 material from an industrial aboveground storage tank only if, in  
23 the judgment of the secretary, the action is necessary to protect  
24 human health or environment from contamination of a source water



1 supply used by a public water system, and one or more of the  
2 following situations exists:

3 (1) If no person can be found within thirty days, or such  
4 shorter period as may be necessary to protect human health or the  
5 environment, who is an owner or operator of the industrial  
6 aboveground storage tank at issue and who is capable of carrying  
7 out the corrective action properly;

8 (2) A situation exists that requires prompt action by the  
9 secretary under this section to protect human health or the  
10 environment;

11 (3) The cost of corrective action to be expended on an  
12 industrial aboveground storage tank exceeds the amount of resources  
13 that the owner or operator can reasonably be expected to possess  
14 based on the information required to be submitted pursuant to this  
15 article and, considering the regulated material being stored in the  
16 industrial aboveground storage tank in question, expenditures from  
17 the Leaking Industrial Aboveground Storage Tank Response Fund are  
18 necessary to assure an effective corrective action; or

19 (4) The owner or operator of the tank has failed or refused to  
20 comply with an order of the secretary under this article or of the  
21 environmental quality board under article one, chapter twenty-two-b  
22 of this code to comply with appropriate corrective action measures  
23 ordered by the secretary or the environmental quality board.

24 (d) The secretary may draw upon the Leaking Industrial

1 Aboveground Storage Tank Response Fund in order to take action  
2 under subdivision (1) or (2), subsection (c) of this section if the  
3 secretary has made diligent good faith efforts to determine the  
4 identity of the party or parties responsible for the release or  
5 threatened release of regulated material and:

6 (1) The secretary is unable to determine the identity of the  
7 responsible party or parties in a manner consistent with the need  
8 to take timely corrective action; or

9 (2) The party or parties determined by the secretary to be  
10 responsible for the release or threatened release have been  
11 informed in writing of the secretary's determination and have been  
12 requested by the secretary to take appropriate corrective action  
13 but are unable or unwilling to take proper action in a timely  
14 manner.

15 (e) The written notice to a responsible party must inform the  
16 responsible party that if that party is subsequently found liable  
17 for releases pursuant to this section, he or she will be required  
18 to reimburse the Leaking Industrial Aboveground Storage Tank  
19 Response Fund for the costs of the investigation, information  
20 gathering, and corrective action taken by the secretary.

21 (f) If the secretary determines that immediate response to an  
22 imminent threat to human health or the environment is necessary to  
23 avoid substantial injury or damage thereto, corrective action may  
24 be taken pursuant to this section without the prior written notice

1 required by subdivision (2), subsection (d) of this section. In  
2 that case, the secretary must give subsequent written notice to the  
3 responsible party within fifteen days after the action is taken  
4 describing the circumstances that required the action to be taken  
5 and setting forth the matters identified in subsection e of this  
6 section.

7 **§22-30-14. Spill prevention response plan.**

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

19 (1) Description of the facility - The plan shall identify and  
20 describe the industrial or commercial activity that occurs at the  
21 site and identify applicable hazard and process information,  
22 including a specific listing and inventory of all types of  
23 regulated materials stored, amount of regulated material stored,  
24 and wastes generated that are stored in industrial aboveground

1 storage tanks at the facility. The plan shall include the material  
2 safety data sheets for all regulated material in use or stored in  
3 industrial aboveground storage tanks at the facility. The material  
4 safety data sheets must include the health hazard number identified  
5 by the National Fire Protection Association. The plan shall also  
6 include drawings of the industrial aboveground storage tank  
7 facility, including the locations of all drainage pipes and water  
8 outlets;

9       (2) Description of the organizational structure for plan  
10 implementation - The plan shall identify all facility-related  
11 individuals and their duties and responsibilities for developing,  
12 implementing, and maintaining the facility's plan. The plan shall  
13 describe in detail the chain of command at the industrial  
14 aboveground storage tank facility and list all facility emergency  
15 coordinators and emergency response contractors;

16       (3) Spill leak prevention and response - The plan shall  
17 provide a preventive maintenance program that includes monitoring  
18 and inspection procedures, including identification of stress  
19 points, employee training program(s), and security system(s). The  
20 plan shall include a description of potential sources and areas  
21 where spills and leaks may occur by drawings and plot plans and  
22 shall identify specific spill prevention measures for those  
23 identified areas;

24       (4) Countermeasures - The plan shall explain in detail the

1 specific response that industrial aboveground storage tank facility  
2 and contract emergency personnel shall take upon the occurrence of  
3 any release of a regulated material from an industrial aboveground  
4 storage tank at the facility;

5 (5) Emergency spill control network - The plan shall include  
6 pertinent information obtained by the owner or operator of the  
7 industrial aboveground storage tank facility from the county and  
8 municipal emergency management agencies and designate the person or  
9 persons to be notified in the event of a release of a regulated  
10 material from an industrial aboveground storage tank; and

11 (6) Other information - The owner or operator shall provide  
12 the secretary with all other information requested by the secretary  
13 to carry out his or her duties under this article.

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

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

24 (2) There is a substantial modification in emergency equipment

1 at the facility;

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

4 (4) The plan fails in an emergency;

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

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

9 (c) The secretary shall approve the spill prevention response  
10 plan or reject the plan and require such modifications as may be  
11 necessary and reasonable to assure the protection of the source  
12 water of a public water system from a release of a regulated  
13 material from an industrial aboveground storage tank. If rejected,  
14 the owner of the industrial aboveground storage tank shall submit  
15 a revised plan to the secretary for approval within thirty days of  
16 receipt of notification of the secretary's decision.

17 Failure to comply with a plan approved by the secretary  
18 pursuant to this section is a violation of this article.

19 (d) Nothing contained in this section relieves the owner or  
20 operator of an industrial aboveground storage tank from his or her  
21 obligation to report any release immediately to the department of  
22 environmental protection's emergency notification telephone number,  
23 1-800-642-3074.

24 **§22-30-15. Notice to local governments, water companies, and other**

1                   **industrial users.**

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

15 **§22-30-16. Required signage.**

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

24 **§22-30-17. Industrial aboveground storage tank administrative**

1                   fund.

2           (a) The secretary shall collect annual registration fees from  
3 owners or operators of each industrial aboveground storage tanks in  
4 an amount sufficient to cover the regulatory oversight and services  
5 to be provided by designated agencies, including necessary  
6 technical and administrative personnel, as provided in legislative  
7 rules promulgated by the secretary pursuant to this article. All  
8 registration fees and the net proceeds of all fines, penalties, and  
9 forfeitures collected under this article, including accrued  
10 interest, shall be paid into the State Treasury into a special  
11 revenue fund designated the "Industrial Aboveground Storage Tank  
12 Administrative Fund," and shall be used solely to defray the cost  
13 of administering this article.

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

19 **§22-30-18. Leaking industrial aboveground storage tank response**

20                   fund.

21           (a) Each industrial aboveground storage tank owner or operator  
22 within this state shall pay an annual fee to establish a fund to  
23 assure adequate response to leaking industrial aboveground storage  
24 tanks. The amount of fees assessed pursuant to this section shall



1 be specified in legislative rules promulgated in pursuant to this  
2 article. The fees must be sufficient to cover the regulatory  
3 oversight and services to be provided by designated agencies,  
4 including necessary technical and administrative personnel. The  
5 proceeds of the assessment shall be paid into the State Treasury  
6 into a special fund designated the "Leaking Industrial Aboveground  
7 Storage Tank Response Fund."

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

15 (c) At the end of each fiscal year, any unexpended balance,  
16 including accrued interest, on deposit in the Leaking Industrial  
17 Aboveground Storage Tank Response Fund may not be transferred to  
18 the General Revenue Fund, but shall remain in the Leaking  
19 Industrial Aboveground Storage Tank Response Fund.

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

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

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

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

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

17 (e) The secretary, through a cooperative agreement with  
18 another state regulatory agency, in this or another state, may use  
19 the fund to compensate the cooperating agency for expenses the  
20 cooperating agency incurs in carrying out regulatory  
21 responsibilities that agency may have over an industrial  
22 aboveground storage tank facility regulated pursuant to this  
23 article.

24 **§22-30-19. Public access to information.**

1       (a) Subject to the exemptions listed in section four, article  
2 one, chapter twenty-nine-b of this code, the public shall have  
3 access to all documents and information submitted to the agency in  
4 accordance with this section pursuant to the state Freedom of  
5 Information Act.

6       (b) Any records, reports or information obtained from any  
7 persons under this article may be disclosed to other officers,  
8 employees, or authorized representatives of this state or the  
9 United States environmental protection agency or of this state if  
10 the officers, employees or authorized representatives are  
11 implementing the provisions of this article or any other applicable  
12 law related to releases of regulated material from industrial  
13 aboveground storage tanks that impact the source water supply used  
14 by a public water system.

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

21 **§22-30-20. Inspections, monitoring and testing.**

22       (a) For the purposes of developing or assisting in the  
23 development of any rule, conducting any study, taking any  
24 corrective action or enforcing any provision of this article, any

1 owner or operator of an industrial aboveground storage tank shall,  
2 upon request of the secretary, furnish information relating to the  
3 industrial aboveground storage tanks; their associated equipment  
4 and contents; conduct reasonable monitoring or testing; permit the  
5 secretary, at all reasonable times, to have access to and to copy  
6 all records relating to the industrial aboveground storage tanks;  
7 and permit the secretary to have access to the industrial  
8 aboveground storage tank for corrective action.

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

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

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

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

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

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

24 **§22-30-21. Administrative orders; injunctive relief.**

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

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

21 **§22-30-22. Civil and criminal penalties.**

22       (a) Any person who fails to comply with an order of the  
23 secretary issued under subsection (a), section twenty-two of this  
24 article within the time specified in the order is liable for a

1 civil penalty of not more than \$25,000 for each day of continued  
2 noncompliance.

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

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

14 (d) Any person who fails to comply with any requirement of  
15 section five of this article or any standard promulgated by the  
16 secretary pursuant to that section is subject to a civil penalty  
17 not to exceed \$10,000.

18 (e) Any person who knowingly and intentionally violates any  
19 provision of this article is guilty of a misdemeanor, and, upon  
20 conviction thereof, shall be confined in a state correctional  
21 facility for a period not exceeding one year, and be fined an  
22 amount not to exceed \$25,000.

23 **§22-30-23. Appeal to environmental quality board.**

24 Any person aggrieved or adversely affected by an order of the

1 secretary made and entered in accordance with the provisions of  
2 this article may appeal to the environmental quality board,  
3 pursuant to the provisions of article one, chapter twenty-two-b of  
4 this code.

5 **§22-30-24. Duplicative enforcement prohibited.**

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

12 **§22-30-25. Reporting and accountability.**

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

21 (b) The secretary shall keep accurate accounts of all receipts  
22 and disbursements related to the administration of the Industrial  
23 Aboveground Storage Tank Administrative Fund and shall make a  
24 specific annual report addressing the administration of the fund.

1 (c) The secretary shall keep accurate accounts of all receipts  
2 and disbursements related to the administration of the Leaking  
3 Industrial Aboveground Storage Tank Response Fund and shall make a  
4 specific annual report addressing the administration of the fund.

5 **§22-30-26. Interagency cooperation.**

6 (a) In implementation of this article, the secretary shall  
7 coordinate with the Department of Health and Human Resources, the  
8 Public Service Commission, and local health departments to ensure  
9 the successful planning, implementation, emergency notification and  
10 response, corrective action, and enforcement relating to this  
11 article, including consideration of the role of those agencies in  
12 providing services to owners and operators of industrial  
13 aboveground storage tanks and public water systems.

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

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



1 **§22-30-27. Imminent and substantial endangerment.**

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

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

23 **§22-30-28. Severability.**

24       If any provision of this article or its application to any

1 person or circumstance is held invalid, the invalidity does not  
2 affect the other provisions or applications of this article which  
3 can be given effect without the invalid provision or application,  
4 and to this end the provisions of this article are severable.

NOTE: The purpose of this bill is to create a source water protection program and an industrial aboveground storage tank program to protect source water supplies and systems.

This article is completely new; therefore, it has been completely underscored.