



1 Plan; requiring DEP to report biennially to commission  
2 regarding implementation of plan and survey results; requiring  
3 large-quantity users to submit certain report annually;  
4 requiring registration and inventory of certain aboveground  
5 storage tanks; making it unlawful to construct, maintain or  
6 use any aboveground storage tank without secretary's  
7 authorization; requiring secretary to develop a regulatory  
8 program and providing guidelines for new and existing  
9 aboveground storage tanks; requiring inspections, monitoring  
10 and testing; providing for administrative orders and  
11 reconsideration by secretary; providing for civil penalties  
12 and injunctive relief; and authorizing rulemaking.

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

14 That §22-26-1, §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-  
15 7 and §22-26-8 of the Code of West Virginia, 1931, as amended, be  
16 amended and reenacted; and that said code be amended by adding  
17 thereto six new sections, designated §22-26-10, §22-26-11, §22-26-  
18 12, §22-26-13, §22-26-14 and §22-26-15, all to read as follows:

19 **ARTICLE 26. WATER RESOURCES PROTECTION ACT.**

20 **§22-26-1. Short title; legislative findings.**

21 (a) *Short title.* -- This article may be known and cited as the  
22 Water Resources Protection and Management Act.

23 (b) *Legislative findings.* --

24 (1) The West Virginia Legislature finds that it is the public  
25 policy of the State of West Virginia to protect and conserve the  
26 water resources for the state and to provide for the public

1 welfare. The state's water resources are vital natural resources  
2 of the state that are essential to maintain, preserve and promote  
3 quality of life and economic vitality of the state.

4 (2) The West Virginia Legislature further finds that it is the  
5 public policy of the state that the water resources of the state be  
6 available for the benefit of the citizens of West Virginia,  
7 consistent with and preserving all other existing rights and  
8 remedies recognized in common law or by statute, while also  
9 preserving the resources within its sovereign powers for the common  
10 good.

11 (3) The West Virginia Legislature further finds that the water  
12 use survey conducted by the Department of Environmental Protection  
13 is a valuable tool for water resources assessment, protection and  
14 management.

15 (4) The West Virginia Legislature further finds that the water  
16 resources of this state have not been fully measured or assessed  
17 and that a program to accurately measure and assess the state's  
18 water resources is necessary to protect, conserve and better  
19 utilize the water resources of this state.

20 (5) The West Virginia Legislature further finds that the  
21 survey information collected and analyzed by the West Virginia  
22 ~~Department of Environmental Protection~~ has identified the need for  
23 a statewide water resources management plan.

24 (6) The West Virginia Legislature further finds that the  
25 development of a state water resources management plan is in the  
26 best interest of the state and its citizens and will promote the

1 protection of this valuable natural resource; promote its use for  
2 the public good; and enhance its use and development for tourism,  
3 industry and other economic development for the benefit of the  
4 state and its citizens.

5 (7) The West Virginia Legislature further finds that  
6 incomplete data collection from an inadequate groundwater  
7 monitoring system continues to hamper efforts to study, develop and  
8 protect the state's water resources and will be a major obstacle in  
9 the development of a water resources management plan.

10 (8) The Legislature further finds that large quantities of  
11 fluids are stored in aboveground storage tanks within the State of  
12 West Virginia and that emergency situations involving these  
13 substances can and will arise which may present a hazard to human  
14 health, safety or the environment. The Legislature also recognizes  
15 that some of these fluids have been stored in aboveground storage  
16 tanks in the state in a manner insufficient to protect human  
17 health, safety or the state's water resources.

18 **§22-26-2. Definitions.**

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

21 (i) "Aboveground storage tank" means any tank or container  
22 where ninety percent or more of the tank volume is located above  
23 the ground surface, but does not include farm or residential tanks  
24 or containers with a capacity of eleven hundred gallons or less and  
25 used for noncommercial purposes.

26 (a) "Baseline average" means the average amount of water

1 withdrawn by a large quantity user over a representative historical  
2 time period as defined by the secretary.

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

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

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

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

19 (f) "Department" means the West Virginia Department of  
20 Environmental Protection.

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

25 ~~(g)~~ (h) "Industrial well" means a well used in industrial  
26 processing, fire protection, washing, packing or manufacturing of

1 a product excluding food and beverages or similar nonpotable uses.

2 ~~(h)~~ (I) "Interbasin transfer" means the permanent removal of  
3 water from the watershed from which it is withdrawn.

4 ~~(i)~~ (j) "Large quantity user" means any person who withdraws  
5 over ~~seven~~ three hundred ~~fifty~~ thousand gallons of water in ~~a~~ any  
6 ~~calendar month~~ thirty-day period from the state's waters and any  
7 person who bottles water for resale regardless of quantity  
8 withdrawn.

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

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

15 ~~(l)~~ (m) "Nonconsumptive withdrawal" means any withdrawal of  
16 water which is not a consumptive withdrawal as defined in this  
17 section.

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

21 (o) "Owner" means a person who owns an aboveground storage  
22 tank used for the storage of any fluid.

23 ~~(m)~~ (p) "Person", "persons" or "people" means an individual,  
24 public and private business or industry, public or private water  
25 service and governmental entity.

26 ~~(n)~~ (q) "Secretary" means the Secretary of the Department of

1 Environmental Protection or his or her designee.

2 ~~(o)~~ (r) "Transient water system" means a public water system  
3 that serves at least twenty-five transient people at least sixty  
4 days a year."

5 ~~(p)~~ (s) "Test well" means a well that is used to obtain  
6 information on groundwater quantity, quality, aquifer  
7 characteristics and availability of production water supply for  
8 manufacturing, commercial and industrial facilities.

9 ~~(q)~~ (t) "Water resources", "water" or "waters" means any and  
10 all water on or beneath the surface of the ground, whether  
11 percolating, standing, diffused or flowing, wholly or partially  
12 within this state, or bordering this state and within its  
13 jurisdiction and includes, without limiting the generality of the  
14 foregoing, natural or artificial lakes, rivers, streams, creeks,  
15 branches, brooks, ponds, impounding reservoirs, springs, wells,  
16 watercourses and wetlands: *Provided*, That farm ponds, industrial  
17 settling basins and ponds and waste treatment facilities are  
18 excluded from the waters of the state.

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

23 (s) "Withdrawal" means the removal or capture of water from  
24 water resources of the state regardless of whether it is  
25 consumptive or nonconsumptive: *Provided*, That water encountered  
26 during coal, oil, gas, water well drilling and initial testing of

1 water wells, or other mineral extraction and diverted, but not used  
2 for any purpose and not a factor in low-flow conditions for any  
3 surface water or groundwater, is not deemed a withdrawal.

4 **§22-26-3. Waters claimed by state; water resources protection**  
5 **survey; registration requirements; agency cooperation;**  
6 **information gathering.**

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

19 (b) The secretary shall conduct an ongoing water resources  
20 survey of consumptive and nonconsumptive surface water and  
21 groundwater withdrawals by large quantity users in this state. The  
22 secretary shall determine the form and format of the information  
23 submitted, including the use of electronic submissions. The  
24 secretary shall establish and maintain a statewide registration  
25 program to monitor large quantity users of water resources of this  
26 state beginning in two thousand six.



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

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

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

26 (f) The secretary shall make a good faith effort to obtain

1 survey and registration information from persons who are  
2 withdrawing water from in-state water resources, but who are  
3 located outside the state borders.

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

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

22 (I) Persons required to participate in the survey and  
23 registration shall provide the most accurate information available  
24 on water withdrawal during seasonal conditions and future potential  
25 maximum withdrawals or other information that the secretary  
26 determines is necessary for the completion of the survey or

1 registration: *Provided*, That a coal-fired electric generating  
2 facility shall also report the nominal design capacity of the  
3 facility, which is the quantity of water withdrawn by the  
4 facility's intake pumps necessary to operate the facility during a  
5 calendar day.

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

16 (k) The secretary shall report annually to the Joint  
17 Legislative Oversight Commission on State Water Resources on the  
18 survey results. The secretary shall also make a progress report  
19 ~~every three years~~ annually on the ~~development~~ implementation of the  
20 state water resources management plan and any significant changes  
21 that may have occurred since the ~~survey report~~ State Water  
22 Resources Management Plan was submitted in two thousand ~~six~~  
23 thirteen.

24 (l) In addition to any requirements for completion of the  
25 survey established by the secretary, the survey must accurately  
26 reflect both actual and maximum potential water withdrawal. Actual

1 withdrawal shall be established through metering, measuring or  
2 alternative accepted scientific methods to obtain a reasonable  
3 estimate or indirect calculation of actual use.

4 (m) The secretary shall make recommendations to the joint  
5 Legislative Oversight commission created in section five of this  
6 article relating to the implementation of a water quantity  
7 management strategy for the state or regions of the state where the  
8 quantity of water resources are found to be currently stressed or  
9 likely to be stressed due to emerging beneficial or other uses,  
10 ecological conditions or other factors requiring the development of  
11 a strategy for management of these water resources.

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

15 (o) The secretary is authorized to enter into cooperative  
16 agreements with local, state and federal agencies and private  
17 policy or research groups to obtain federal matching funds, conduct  
18 research and analyze survey and registration data and other  
19 agreements as may be necessary to carry out his or her duties under  
20 this article.

21 (p) The Department, the Division of Natural Resources, the  
22 Division of Highways, and the Conservation Agency (cooperating  
23 State agencies") shall continue providing matching funds for the  
24 United States Geological Survey's (USGS) stream gaging network to  
25 the maximum extent practicable. Should a cooperating State agency  
26 become unable to maintain its contribution level, it should notify

1 the USGS and the commission of its inability to continue funding  
2 for the subsequent federal fiscal year by July 1, in order to allow  
3 for the possible identification of alternative funding resources.

4 **§22-26-5. Joint Legislative Oversight Commission on State Water**  
5 **Resources.**

6 (a) The President of the Senate and the Speaker of the House  
7 of Delegates shall each designate five members of their respective  
8 houses, at least one of whom shall be a member of the minority  
9 party, to serve on a joint Legislative Oversight commission charged  
10 with immediate and ongoing oversight of the water resources survey,  
11 registration and development of a state water resources management  
12 plan. This commission shall be known as the Joint Legislative  
13 Oversight Commission on State Water Resources and shall regularly  
14 investigate and monitor all matters relating to ~~the~~ water  
15 resources, including the survey and plan.

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

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

23 (a) The water resources survey and subsequent registry will  
24 provide critical information for protection of the state's water  
25 resources and, thus, mandatory compliance with the survey and  
26 registry is necessary.

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

15 **§22-26-7. Secretary authorized to log wells; collect data.**

16 (a) In order to obtain important information about the  
17 state's surface and groundwater, the secretary is authorized to  
18 collect scientific data on surface and groundwater and to enter  
19 into agreements with local and state agencies, the federal  
20 government and private entities to obtain this information.

21 ~~(1)~~ (b) Any person who installs a community water system,  
22 noncommunity nontransient water system, transient water system,  
23 commercial well, industrial or test well shall notify the secretary  
24 of his or her intent to drill a water well no less than ten days  
25 prior to commencement of drilling. The ten-day notice is the  
26 responsibility of the owner, but may be given by the drilling

1 contractor.

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

7 ~~(3)~~ (d) The drilling contractor shall submit to the secretary  
8 a copy of the well completion forms submitted to the Division of  
9 Health for a community water system, noncommunity nontransient  
10 water system, transient water system, commercial well, industrial  
11 or test well. The drilling contractor shall also provide the well  
12 GPS location and depth to groundwater on the well report submitted  
13 to the secretary.

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

19 ~~(5)~~ (f) Any well contracted for construction by the secretary  
20 for groundwater or geological testing must be constructed at a  
21 minimum to well design standards as promulgated by the Division of  
22 Health. Any wells contracted for construction by the secretary for  
23 groundwater or geological testing that would at a later date be  
24 converted to a public use water well must be constructed to comport  
25 to state public water design standards.

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

1                   **of secretary.**

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

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

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

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

26           (2) A listing of each consumptive or nonconsumptive withdrawal



1 by a large quantity user, including the amount of water used,  
2 location of the water resources, the nature of the use, location of  
3 each intake and discharge point by longitude and latitude where  
4 available and, if the use involves more than one watershed or  
5 basin, the watersheds or basins involved and the amount  
6 transferred.

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

12 (4) After consulting with the appropriate state and federal  
13 agencies, assess and project the existing and future nonconsumptive  
14 use needs of the water resources required to serve areas with  
15 important or unique natural, scenic, environmental or recreational  
16 values of national, regional, local or statewide significance,  
17 including national and state parks; designated wild, scenic and  
18 recreational rivers; national and state wildlife refuges; and the  
19 habitats of federal and state endangered or threatened species.

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

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

25 (A) A discussion of any area of concern regarding historical  
26 or current conditions that indicate a low-flow condition or where

1 a drought or flood has occurred or is likely to occur that  
2 threatens the beneficial use of the surface water or groundwater in  
3 the area; and

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

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

11 (8) An assessment of the current and future capabilities of  
12 public water supply agencies and private water supply companies to  
13 provide an adequate quantity and quality of water to their service  
14 areas.

15 (9) An assessment of flood plain and stormwater management  
16 problems.

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

19 (11) A process for identifying projects and practices that are  
20 being, or have been, implemented by water users that reduce the  
21 amount of consumptive use, improve efficiency in water use, provide  
22 for reuse and recycling of water, increase the supply or storage of  
23 water or preserve or increase groundwater recharge and a  
24 recommended process for providing appropriate positive recognition  
25 of such projects or practices in actions, programs, policies,  
26 projects or management activities.

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

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

9           (14) A review and evaluation of water resources management  
10 alternatives and recommended programs, policies, institutional  
11 arrangements, projects and other provisions to meet the water  
12 resources needs of each region and of this state.

13           (15) Proposed methods of implementing various recommended  
14 actions, programs, policies, projects or management activities.

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

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

18           (2) Regional or watershed water resources needs, objectives  
19 and priorities.

20           (3) Federal, state and interstate water resource policies,  
21 plans, objectives and priorities, including those identified in  
22 statutes, rules, regulations, compacts, interstate agreements or  
23 comprehensive plans adopted by federal and state agencies and  
24 compact basin commissions.

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

1 (5) The water quantity and quality necessary to support  
2 reasonable and beneficial uses.

3 (6) A balancing and encouragement of multiple uses of water  
4 resources, recognizing that all water resources of this state are  
5 capable of serving multiple uses and human needs, including  
6 multiple uses of water resources for reasonable and beneficial  
7 uses.

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

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

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

19 (f) ~~Upon adoption of the state Water Resources Management Plan~~  
20 ~~by the Legislature, the report requirements of this article shall~~  
21 ~~be superceded by the plan and subsequent reports shall be on the~~  
22 ~~survey results and the water resources plan. If the plan is not~~  
23 ~~adopted a detailed report discussing the provisions of this section~~  
24 ~~as well as progress reports on the development of the plan shall be~~  
25 ~~submitted every three years. The State Water Resources Management~~  
26 ~~Plan is hereby adopted. Persons identified as large quantity users~~

1 prior to the effective date of this subsection shall report actual  
2 monthly water withdrawals for the previous calendar year by March  
3 31 of each succeeding year. Persons identified as large quantity  
4 users on or after the effective date of this subsection shall  
5 submit their initial annual report no later than March 31, 2016,  
6 and subsequent annual reports by March 31 of each year thereafter.

7 **§22-26-10. Registration of existing aboveground storage tanks.**

8 (a) To assure protection of the water resources of the state,  
9 the secretary shall compile an inventory of aboveground storage  
10 tanks in existence on the effective date of this section. To  
11 develop the inventory, the secretary shall promulgate and propose  
12 emergency and legislative rules for legislative approval in  
13 accordance with the provisions of article three, chapter twenty-  
14 nine-a of this code regarding registration requirements.

15 (b) Within thirty days of the effective date of the rules  
16 referred to in subsection (a) of this section, owners or operators  
17 shall register each aboveground storage tank and provide an  
18 inventory of its contents to the secretary.

19 **§22-26-11. Permit required; Aboveground Storage Tank Regulatory**  
20 **Program.**

21 (a) Without authorization from the secretary, it is unlawful  
22 for any person to construct, maintain or use any aboveground  
23 storage tank for the storage of any fluid other than water, without  
24 first obtaining a permit from the secretary.

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

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

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

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

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

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

17 (5) Requirements for reporting releases and corrective action  
18 taken in response to a release;

19 (6) Requirements for taking corrective action in response to  
20 a release from an aboveground storage tank;

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

24 (8) Requirements for certification of installation, removal,  
25 retrofit, testing and inspection of aboveground storage tanks and  
26 leak detection systems by a registered professional engineer or

1 other qualified person;

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

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

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

17 (12) A procedure for the administrative resolution of  
18 violations including the assessment of administrative civil  
19 penalties; and

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

25 **§22-26-12. Inspections, monitoring and testing.**

26 (a) Any owner or operator of an aboveground storage tank

1 shall, upon request of the director, furnish information relating  
2 to such tanks, their associated equipment and contents, conduct  
3 reasonable monitoring or testing, permit the secretary or his or  
4 her authorized representative at all reasonable times to have  
5 access to, and to copy all records relating to such tanks and  
6 permit the secretary or his or her authorized representative to  
7 have access to the aboveground storage tank for corrective action.

8 (b) The secretary or his or her authorized representative may:

9 (1) Enter at reasonable times any establishment or other place  
10 where an aboveground storage tank is located;

11 (2) Inspect and obtain samples from any person of any fluids  
12 contained in such tank;

13 (3) Conduct monitoring or testing of the tanks, associated  
14 equipment, contents or surrounding soils, air, surface, water or  
15 groundwater; and

16 (4) Take any necessary corrective action.

17 **§22-26-13. Administrative orders; requests for reconsideration.**

18 (a) Whenever on the basis of any information, the secretary  
19 determines that any person is in violation of any requirement  
20 related to the aboveground storage program or any rule promulgated  
21 thereunder, the secretary may issue an order stating with  
22 reasonable specificity the nature of the violation and requiring  
23 compliance within a reasonable specified time period. The  
24 secretary may, except as provided in subsection (b) of this  
25 section, stay any order he or she issues upon application, until  
26 the order is reviewed by the environmental quality board.



1       (b) Any person issued an order may file a notice of request  
2 for reconsideration with the secretary not more than seven days  
3 from the issuance of such order. The notice of request for  
4 reconsideration shall identify the order to be reconsidered and  
5 shall set forth in detail the reasons for which reconsideration is  
6 requested. The secretary shall grant or deny the request for  
7 reconsideration within twenty days of the filing of the notice of  
8 request of reconsideration.

9 **§22-26-14. Civil penalties and injunctive relief.**

10       (a) The secretary may commence a civil action for temporary  
11 and permanent injunctive relief to compel compliance with any  
12 provision or requirement of the aboveground storage tank program.

13       (b) The secretary may also commence a civil action for civil  
14 penalties for any violation of any provision or requirement of the  
15 aboveground storage tank program.

16       (c) Venue for the civil actions authorized by subsections (a)  
17 and (b) of this section shall be in the circuit court of Kanawha  
18 County or the circuit court of the county in which an aboveground  
19 storage tank is located.

20 **§22-26-15. Promulgation of rules.**

21       The secretary may promulgate and propose emergency and  
22 legislative rules for legislative approval in accordance with the  
23 provisions of article three, chapter twenty-nine-a of this code to  
24 implement the aboveground storage tank program.

NOTE: The purpose of this bill is to amend the Water Resources Protection and Management Act to incorporate

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

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.