

Senate Bill No. 423

(By Senators M. Hall, Blair, Carmichael, Facemire, D. Hall, Kirkendoll, Mullins, Plymale,
Romano, Trump, Woelfel, Williams and Stollings)

[Introduced February 5, 2015; referred to the Committee on the Judiciary.]

A BILL to repeal §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code; to amend said code by adding thereto two new sections, designated §22-30-26 and §22-30-27; and to amend and reenact §22-31-2 of said code, all relating to protection of water resources and public health generally; amending the Aboveground Storage Tank Act; defining terms; requiring secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; requiring secretary to develop regulatory program for tanks; providing factors to be considered in a program; requiring inspection and certification of tanks; requiring evidence of financial responsibility; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of type and quantity of fluids stored in tanks to local water utilities and governments; requiring

1 posting of signs at or near tanks; creating an administrative fund; creating Protect Our Water
2 Fund; authorizing public access to certain information; authorizing inspections, monitoring
3 and testing by secretary; authorizing secretary to issue administrative orders and seek
4 injunctive relief; providing for civil and criminal penalties; allowing appeals to
5 Environmental Quality Board; prohibiting duplicative enforcement; requiring secretary to
6 report to legislative entities; requiring interagency coordination; establishing duties of
7 secretary upon imminent and substantial danger; providing additional duties and powers of
8 secretary generally; providing for waiver of certain requirements; authorizing secretary to
9 require individual NPDES permits; authorizing secretary to inventory potential sources of
10 significant contamination; membership of study commission; scope of study; establishing
11 reporting requirements; requiring the establishment of advance warning, testing and
12 monitoring at certain water utilities; requiring certain information be filed with Public Water
13 Commission; and requiring utility to report back to Legislature if technology is infeasible.

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

15 That §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-1
16 §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended, be repealed; that
17 §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10,
18 §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18,
19 §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code be amended and reenacted;
20 that said code be amended by adding thereto two new sections, designated §22-30-26 and §22-30-27;
21 and that §22-31-2 of said code be amended and reenacted, all to read as follows:

22 **ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.**

1 **§22-30-2. Legislative findings.**

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

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

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

17 (d) The Legislature further finds that large quantities of fluids are stored in aboveground
18 storage tanks located in zones of critical concern within the state and that emergency situations
19 involving these fluids can and will arise that may present a hazard to human health, safety, the water
20 resources, the environment and the economy of the state. The Legislature further recognizes that
21 some of these fluids have been stored in aboveground storage tanks in a ~~regulated~~
22 insufficient to protect human health, safety, water resources, the environment and the economy of

1 the state.

2 **§22-30-3. Definitions.**

3 For purposes of this article:

4 (1) "Aboveground storage tank" or "tank" means a device that is located within a zone of
 5 critical concern as defined in this article and is made to contain an accumulation of more than ~~one~~
 6 ten thousand three hundred twenty gallons of fluids that are ~~liquids~~ liquid at standard temperature
 7 and pressure, which is constructed primarily of ~~noncarbon~~ nonearthen materials, including wood,
 8 concrete, steel, plastic or fiberglass reinforced plastic, which provide structural support, more than
 9 ninety percent of the capacity of which is above the surface of the ground, ~~but does not include any~~
 10 ~~process vessel~~ and includes all ancillary pipes and dispensing systems up to the first point of
 11 isolation. The term includes stationary devices which are permanently affixed, and mobile devices
 12 ~~which remain in one location on a continuous basis for sixty or more days, and includes all ancillary~~
 13 ~~aboveground pipes and dispensing systems up to the first point of isolation and all ancillary~~
 14 ~~underground pipes and dispensing systems connected to the aboveground containers to the first point~~
 15 ~~of isolation~~ do not move for three hundred sixty-five or more days. Notwithstanding any other
 16 provision of this code to the contrary, ~~shipping containers, including railroad freight cars, the~~
 17 following categories of devices are not subject to the provisions of this article:

18 (A) Shipping containers that are subject to state or federal laws or regulations governing the
 19 transportation of hazardous materials, including but not limited to railroad freight cars subject to
 20 federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended,
 21 including, but not limited to, federal regulations promulgated thereunder at ~~49 CFR 172, 173 or 174,~~
 22 ~~or subject to other federal law governing the transportation of hazardous materials are not subject~~

1 ~~to any provision of this article or of article thirty-one of this chapter. 49 C.F.R. Parts 172, 173 or 174;~~

2 ~~(B) Notwithstanding any other provision of this code to the contrary, barges~~ Barges or boats
3 subject to federal regulation under the United States Coast Guard, United States Department of
4 Homeland Security, including, but not limited to, federal regulations promulgated at ~~33 CFR 1, et~~
5 ~~seq.~~ 33 C.F.R. 1, et seq., or subject to other federal law governing the transportation of hazardous
6 materials. ~~are not subject to any provision of this article or of article thirty-one of this chapter;~~

7 ~~(C) Notwithstanding any other provision of this code to the contrary, swimming pools are~~
8 ~~not subject to any provision of this article or article thirty-one of this chapter.~~ Swimming pools;

9 (D) Process vessels;

10 (E) Devices containing drinking water, surface water or groundwater, demineralized water,
11 noncontact cooling water or water stored for fire or emergency purposes;

12 (F) Devices containing food or food-grade materials;

13 (G) Devices holding wastewater that is being actively treated or processed (e.g., clarifier,
14 chlorine contact chamber, batch reactor, etc.);

15 (H) Devices containing hazardous waste subject to regulation under 40 C.F.R. Parts 264 and
16 265, exclusive of tanks subject to regulation under 40 C.F.R. § 265.201;

17 (I) Devices that are used to store brines, crude oil, or any other fluids that are directly related
18 to the exploration, development, stimulation, completion, or production of crude oil or natural gas
19 regulated under article six or article six-a of this chapter;

20 (J) Empty tanks held in inventory or offered for sale;

21 (K) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline
22 Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline

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

4 (L) Liquid traps, atmospheric and pressure vessels, or associated gathering lines related to
5 oil or gas production and gathering operations; and

6 (M) Electrical equipment such as transformers, circuit breakers, and voltage regulator
7 transformers.

8 (2) "Department" means the West Virginia Department of Environmental Protection.

9 (3) ~~"Nonoperational storage tank" means an empty aboveground storage tank in which fluids~~
10 ~~will not be deposited or from which fluids will not be dispensed on or after the effective date of this~~
11 ~~article.~~ "First point of isolation" means the valve, pump, dispenser or other device or equipment on
12 or nearest to a tank where the flow of fluids into or out of the tank can be shut off.

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

15 (5) "Owner" means a person who holds title to, controls or owns an interest in an
16 aboveground storage tank, including ~~owners of tanks~~ the owner immediately preceding the
17 discontinuation of ~~a tank's~~ its use. "Owner" does not mean a person who holds an interest in a tank
18 for financial security, unless the holder has taken possession of and operated the tank.

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

1 (7) "Potential source of significant contamination" means a facility or activity designated by
2 the secretary that stores, uses or produces substances which, because of their composition, quantity
3 and location, pose a threat of significant adverse impact to public health or welfare if released into
4 the source water of a public water supply.

5 ~~(7)~~ (8) "Process vessel" means tanks, containers or other vessels utilized in a facility in the
6 manufacturing a tank that forms an integral part of a production process through which there is a
7 steady, variable, recurring or intermittent flow of materials during the operation of the process or in
8 which a biological, chemical or physical change in the material occurs. This does not include tanks
9 used for storage of materials prior to their introduction into the production process or for the storage
10 of finished products or by-products of the production process.

11 ~~(8) "Public groundwater supply source" means a primary source of water supply for a public~~
12 ~~water system which is directly drawn from a well, underground stream, underground reservoir,~~
13 ~~underground mine or other primary source of water supplies which is found underneath the surface~~
14 ~~of the state.~~

15 (9) "Public surface water supply source" means a primary source of water supply for a public
16 water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or other
17 primary sources of water supplies which are found on the surface of the state.

18 (10) "Public surface water influenced groundwater supply source" means a source of water
19 supply ~~from~~ for a public water system which is directly drawn from an underground well,
20 underground river or stream, underground reservoir or underground mine, and the quantity ~~or~~ and
21 quality of the water in that underground supply source is heavily influenced, directly or indirectly,
22 by the quantity and quality of surface water in the immediate area.

1 (11) "Public water system" means:

2 (A) Any water supply or system which regularly supplies or offers to supply water for human
3 consumption through pipes or other constructed conveyances, if serving at least an average of
4 twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service
5 connections, and shall include:

6 (I) Any collection, treatment, storage and distribution facilities under the control of the owner
7 or operator of the system and used primarily in connection with the system; and

8 (ii) Any collection or pretreatment storage facilities not under such control which are used
9 primarily in connection with the system.

10 (B) A public water system does not include a system which meets all of the following
11 conditions:

12 (I) Consists only of distribution and storage facilities (and does not have any collection and
13 treatment facilities);

14 (ii) Obtains all of its water from, but is not owned or operated by, a public water system
15 which otherwise meets the definition;

16 (iii) Does not sell water to any person; and

17 (iv) Is not a carrier conveying passengers in interstate commerce.

18 (12) "Public water utility" means a public water system which is regulated by the Public
19 Service Commission pursuant to the provisions of chapter twenty-four of this code.

20 ~~(12)~~ (13) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching
21 ~~or disposing~~ of fluids from an aboveground storage tank into groundwater, surface water or
22 ~~subsurface soils~~ waters of the state. The term ~~shall also~~ does not include spilling, leaking, emitting,

1 discharging, escaping, or leaching ~~or disposing~~ of fluids from an aboveground storage tank into a
2 secondary containment structure ~~or facility that poses an immediate threat of contamination of the~~
3 ~~soils, subsurface soils, surface water or groundwater: *Provided*, That the overflow or spillage of up~~
4 ~~to twenty gallons of fluid during the loading or unloading of liquids shall not be required to be~~
5 ~~reported if the overflow or spillage is wholly contained within a containment structure or facility,~~
6 ~~it is promptly cleaned up and no portion of the overflow or spillage escapes onto the ground or into~~
7 ~~adjacent surface water.~~

8 (13) (14) "Secondary containment" means a safeguard applied to one or more aboveground
9 storage tanks that prevents the discharge into the waters of the state of the entire capacity of the
10 largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary
11 containment, the barrier and containment field must be sufficiently impervious to contain fluids in
12 the event of a release, and may include double-walled tanks, dikes, containment curbs, pits or
13 drainage trench enclosures that safely confine the release from a tank in a facility catchment basin
14 or holding pond. Earthen dikes and similar containment structures must be designed and constructed
15 to contain fluid that escapes from a tank for a minimum of seventy-two hours.

16 (14) (15) "Secretary" means the Secretary of the Department of Environmental Protection,
17 or his or her designee.

18 (15) "Source water protection area" for a public groundwater supply source is the area within
19 an aquifer that supplies water to a public water supply well within a five-year time-of-travel, and is
20 determined by the mathematical calculation of the locations from which a drop of water placed at
21 the edge of the protection area would theoretically take five years to reach the well.

22 (16) "Zone of critical concern" for a public surface water supply source and for a public

1 surface water influenced groundwater supply source is a corridor along streams within a watershed
2 that warrants ~~more~~ detailed scrutiny due to its proximity to the ~~surface~~ public water utility's intake
3 and the intake's susceptibility to potential contaminants within that corridor. The zone of critical
4 concern is determined using a mathematical model that accounts for stream flows, gradient and area
5 topography. The length of the zone of critical concern is based on a five-hour time of travel of water
6 in the streams to the ~~water intake, plus an additional one-fourth mile below the water~~ intake. The
7 width of the zone of critical concern is one thousand feet measured horizontally from each bank of
8 the principal stream and five hundred feet measured horizontally from each bank of the tributaries
9 draining directly into the principal stream. A zone of critical concern is established only for a public
10 water utility's primary drinking water intake, not secondary or alternative intakes.

11 **§22-30-4. Inventory and registration of existing aboveground storage tanks.**

12 (a) To assure protection of the water resources of the state, the secretary shall compile an
13 inventory of all aboveground storage tanks ~~in existence in this state, regardless of whether it is an~~
14 ~~operational or nonoperational storage tank on the effective date of this article.~~ The secretary shall
15 prescribe ~~an inventory and a~~ registration form for this purpose ~~within thirty days of the effective date~~
16 ~~of the enactment of this article.~~

17 (b) Each owner or operator of an aboveground storage tank shall complete and submit to the
18 secretary the registration form by July 1, 2015. The owner or operator of any aboveground storage
19 tank placed into service on or after the effective date of this section shall complete and submit a
20 registration form to the secretary prior to storing fluids therein. Tank registrations previously
21 submitted to the secretary pursuant to this article shall constitute registration pursuant to this section.

22 ~~(b)~~ (c) At a minimum, the ~~inventory~~ registration form shall identify the ownership of the tank,

1 tank location, date of installation if known, type of construction, capacity and age of the tank, the
 2 type ~~and volume~~ of fluid generally stored therein, ~~and the identity of and distance to the nearest~~
 3 ~~groundwater public water supply intake and/or nearest surface water downstream public water supply~~
 4 ~~intake.~~ and the circumstances under which the registration must be updated.

5 (e) If the ~~inventoried~~ registered tank is regulated under any existing state or federal regulatory
 6 program, the owner of the tank shall be required to provide the identifying number of any license,
 7 registration or permit issued for the tank, ~~and identify the regulatory standards and requirements the~~
 8 ~~tank is required to meet.~~

9 (d) ~~Any aboveground storage tank placed into service on or after the effective date of this~~
 10 ~~section, but prior to the establishment of a permit program, shall complete and submit an inventory~~
 11 ~~form with the secretary.~~

12 (e) ~~Upon receipt of an inventory form, the secretary shall determine whether the storage tank~~
 13 ~~is required to meet the minimum design, construction, inspection, secondary containment, leak~~
 14 ~~reporting and performance standards equivalent to or greater than the standards and requirements~~
 15 ~~established under an existing license or permit issued for the individual storage tank, storage tank~~
 16 ~~farm or site on which the storage tank is located.~~

17 (f) (d) The secretary may charge a reasonable fee to cover the cost of ~~maintaining and~~
 18 ~~overseeing the inventory and registration program~~ processing registrations. The fee may be set by
 19 emergency and legislative rules proposed for promulgation in accordance with the provisions of
 20 article three, chapter twenty-nine-a of this code.

21 (g) (e) ~~On and after October 1, 2014~~ After July 1, 2015, it shall be unlawful for any owner
 22 or operator to operate or use an aboveground storage tank ~~subject to this article which~~ that has not

1 been properly registered or for which any applicable registration fee has not been paid.

2 **§22-30-5. Aboveground Storage Tank Regulatory Program; promulgation of appropriate**
 3 **aboveground storage tank standards. permitting procedures and waiver**
 4 **requirements; rulemaking requirements.**

5 (a) ~~The secretary shall promulgate for review and consideration by the West Virginia~~
 6 ~~Legislature legislative rules during the 2015 Regular Session of the West Virginia Legislature, on~~
 7 ~~all matters related to this article.~~

8 (b) ~~(a) To assure further protection of the water resources of the state, the~~ The secretary shall
 9 develop a regulatory program for new and existing aboveground storage tanks and secondary
 10 containment incorporating nationally recognized tank standards such as those standards developed
 11 by the American Petroleum Institute (API), the Steel Tank Institute (STI) or comparable authorities,
 12 and taking that takes into account the size, location and contents of the tanks: At a minimum, the
 13 program shall include the following *Provided*, That each tank or secondary containment which the
 14 owner or operator certifies as being operated and maintained in accordance with any one of the
 15 following standards or plans shall be subject to only such standards and/or plans in lieu of the
 16 standards developed by the secretary in accordance with subsection (b) of this section:

17 (1) An API or STI tank operation and maintenance standard, including but not limited to API
 18 653 standards for “Tank Inspection, Repair, Alteration, and Reconstruction” or STI SP001 “Standard
 19 for the Inspection of Aboveground Storage Tanks”; or

20 (2) A groundwater protection plan approved by the secretary in accordance with article
 21 twelve of this chapter; or

22 (3) The requirements of the federal spill prevention control and countermeasures program,

1 40 C.F.R. Part 112.

2 (b) The standards promulgated by the secretary for tanks and secondary containment not
3 regulated in accordance with subsection (a) of this section shall include the following:

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

6 (2) ~~(1) Performance standards~~ Criteria for the design, construction, installation, and
7 maintenance of aboveground storage tanks; corrosion detection and maintenance, release detection
8 and prevention and secondary containment to ensure the structural integrity of the storage tank and
9 the secondary containment;

10 (2) Criteria for the design, construction, maintenance or methods of secondary containment;

11 (3) ~~Requirements for maintaining a leak detection system,~~ Criteria for the design, operation,
12 maintenance, or methods of leak detection. Acceptable leak detection shall include visual
13 inspections, an inventory control systems together with tank testing, or a comparable system or
14 method designed to identify releases leaks from aboveground storage tanks; in a manner consistent
15 with the protection of human health, safety, water resources and the environment;

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

18 (5) ~~Requirements for early detection of releases and immediate reporting of releases;~~
19 Requirements for the development of maintenance and corrosion prevention plans.

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

22 (7) ~~Requirements for the closure of aboveground storage tanks and remediation to prevent~~

1 future releases of fluids or materials to the state's water resources;

2 ~~(8) Requirements for certification of installation, removal, retrofit, corrosion and other testing~~
3 ~~and inspection of aboveground storage tanks, leak detection systems and secondary containment by~~
4 ~~a qualified registered professional engineer regulated and licensed by the State Board of Registration~~
5 ~~for Professional Engineers, or by an individual certified to perform tank inspections by the American~~
6 ~~Petroleum Institute, or by a person holding certification under another program approved by the~~
7 ~~secretary;~~

8 ~~(9) Requirements for life-cycle management of aboveground storage tanks that include~~
9 ~~mitigation and corrosion prevention plans that include, but are not limited to:~~

10 ~~(A) A life-cycle maintenance schedule for the use of protective coatings and or other repair,~~
11 ~~rehabilitation, and maintenance methods used for the preservation of aboveground storage tanks;~~

12 ~~(B) A process for ensuring that corrosion prevention and mitigation is carried out according~~
13 ~~to corrosion prevention industry standards adopted by the secretary for aboveground storage tanks~~
14 ~~that includes the use of industry trained and certified:~~

15 ~~(i) Protective coatings personnel to carry out surface preparation operations and coating~~
16 ~~application on any type of substrate and or surface, but especially concrete and steel;~~

17 ~~(ii) Cathodic protection experts for all aspects of corrosion prevention projects requiring~~
18 ~~knowledge of the design, installation, monitoring or maintenance of a cathodic protection system;~~
19 ~~and~~

20 ~~(iii) Inspectors to ensure best practices and standards are adhered to on a corrosion prevention~~
21 ~~and mitigation project;~~

22 ~~(C) A plan to prevent environmental degradation that could occur as a result of carrying out~~

1 ~~corrosion prevention and mitigation including, but not limited to, the careful handling and~~
2 ~~containment of hazardous materials, not including the contaminant within, removed from the interior~~
3 ~~and or exterior of an aboveground storage tank; and~~

4 ~~(D) Use of industry experts for consultation and direct to determine whether to approve a~~
5 ~~corrosion prevention and mitigation plan, or any part therein, the secretary shall consult, and interact~~
6 ~~directly with, corrosion industry experts specializing in the training and certification of personnel~~
7 ~~to carry out corrosion prevention and mitigation methods.~~

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

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

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

20 ~~(13) A procedure for the administrative resolution of violations including the assessment of~~
21 ~~administrative civil penalties;~~

22 ~~(14) A procedure for any person adversely affected by a decision or order of the secretary~~

1 relating to the aboveground storage tank program to appeal to the Environmental Quality Board,
2 pursuant to the provisions of article one, chapter twenty-two-b of this code;

3 (15) ~~In coordination and cooperation with the Bureau for Public Health and the Division of~~
4 ~~Homeland Security and Emergency Management, create a process and procedure for identifying any~~
5 ~~aboveground storage tanks which are located within a defined zone of critical concern for a public~~
6 ~~water system's surface water intake or within a defined source water protection area for a public~~
7 ~~water system's groundwater intake, and determining whether additional permit requirements and~~
8 ~~inspections should be imposed on that tank or facility by requiring the issuance of any new permit~~
9 ~~pursuant to this article, or by amending any existing permit which may pertain to that tank or facility,~~
10 ~~under this chapter, or by any other article of this chapter;~~

11 (16) ~~Requirements for maintaining written or electronic records that log at least the following~~
12 ~~information for each aboveground storage tank: Tank numbers, additives, verifiable content levels,~~
13 ~~deliveries, amounts and quantities, dispensing, repairs and maintenance; and including the~~
14 ~~requirement that such logs be signed by the owner or a designated responsible supervisor, and be~~
15 ~~available for inspection upon request of the secretary; and~~

16 (17) ~~Compliance with a nationally recognized tank standard as solely determined by the~~
17 ~~department shall be deemed compliance with the requirements that are developed in accordance~~
18 ~~with subsection (9) of this section.~~

19 (c) The manner and time frames for implementation of the regulatory program required by
20 this section shall be established by the secretary through emergency or legislative rule-making in
21 accordance with the provisions of article three, chapter twenty-nine-a of this code.

22 **§22-30-6. Annual inspection Evaluation and certification.**

1 (a) Every owner or operator of an Each aboveground storage tank ~~regulated herein shall have~~
2 ~~an annual inspection of each tank performed~~ and its associated secondary containment structure shall
3 be evaluated by a qualified registered professional engineer or a qualified person working under the
4 direct supervision of a registered professional engineer, ~~regulated and licensed by the State Board~~
5 ~~of Registration for Professional Engineers~~, or by an individual certified to perform tank inspections
6 by the American Petroleum Institute or the Steel Tank Institute, or by a person holding certification
7 under another program approved by the secretary.

8 (b) Every owner or operator shall submit ~~on a form prescribed by the secretary~~, a certification
9 ~~from the engineer~~ that each tank and its associated ~~equipment, leak detection system and secondary~~
10 ~~containment structure~~ has been evaluated by a qualified person as set forth in subsection (a) of this
11 section and meets the minimum standards established by in accordance with section five of this
12 ~~article or by the secretary by rule.~~

13 (b) (c) The certification form shall be submitted to the secretary ~~on or before January 1, 2015,~~
14 ~~and each year thereafter~~ within one hundred eighty days of the effective date of the rules establishing
15 standards that are adopted in accordance with section five of this article. Subsequent certifications
16 shall be due at regular intervals thereafter as established by the secretary by legislative rule, but not
17 more frequently than once per calendar year.

18 (d) Any person who performs a tank evaluation in accordance with subsection (a) of this
19 section, any person designated by the owner or operator of a tank, and any other person designated
20 by the secretary by legislative rule may certify aboveground storage tanks in accordance with
21 subsection (b) of this section.

22 **§22-30-7. Financial responsibility.**

1 The secretary shall promulgate rules requiring owners and operators of aboveground storage
 2 tanks to provide evidence of adequate financial resources to undertake reasonable corrective action
 3 for releases ~~of fluid~~ from aboveground storage tanks based on factors including the location, contents
 4 and size of the tanks. The means of demonstrating adequate financial responsibility may include,
 5 but not be limited to, providing evidence of current insurance, guarantee, surety bond, letter of credit,
 6 proof of assets, trust fund or qualification as a self insurer. The secretary may determine which
 7 bonds and other guarantees of performance provided to the secretary pursuant to other articles of this
 8 chapter shall satisfy the requirements of this section.

9 **§22-30-8. Corrective action.**

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

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

14 ~~(2)~~ (1) Require the owner or operator of an aboveground storage tank to undertake prompt
 15 corrective action to protect human health, safety, water resources or the environment from
 16 contamination caused by a release; or

17 ~~(3)~~ (2) Undertake immediate corrective action with respect to any release or threatened
 18 release of fluid from an aboveground storage tank when, in the judgment of the secretary, the action
 19 is necessary to protect human health, safety, water resources or the environment from contamination
 20 caused by a release.

21 (b) The corrective action undertaken or required by this section shall be what may be
 22 necessary to protect human health, water resources and the environment from contamination caused

1 by a release, including the ordered cessation or closure of a source of contamination and the ordered
2 remediation of a contaminated site. The secretary shall use funds in the Protect Our Water Fund
3 established pursuant to this article for payment of costs incurred for corrective action taken by the
4 secretary in accordance with this article. In undertaking corrective actions under this section and in
5 issuing orders requiring owners or operators to undertake the actions, the secretary shall give priority
6 to releases or threatened releases of fluid from aboveground storage tanks that pose the greatest
7 threat to human health, water resources or the environment.

8 (c) Following the effective date of rules promulgated pursuant to this article, all actions or
9 orders of the secretary shall be in conformity with those rules. Following the effective date of the
10 rules, the secretary may utilize funds from the Protect Our Water Fund to undertake corrective action
11 with respect to any release ~~or threatened release of fluid~~ from an aboveground storage tank only if,
12 in the judgment of the secretary, the action is necessary to protect human health, safety, water
13 resources or the environment from contamination, and one or more of the following situations exists:

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

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

20 (3) The cost of corrective action to be expended on an aboveground storage tank exceeds the
21 amount of resources that the owner or operator can reasonably be expected to possess based on the
22 information required to be submitted pursuant to this article and, considering the fluid being stored

1 in the aboveground storage tank in question, expenditures from the Protect Our Water Fund are
2 necessary to assure an effective corrective action; or

3 (4) The owner or operator of the tank has failed or refused to comply with an order of the
4 secretary under this article or of the Environmental Quality Board under article one, chapter
5 twenty-two-b of this code or of a court of competent jurisdiction to comply with appropriate
6 corrective action measures. ~~ordered by the secretary or the Environmental Quality Board.~~

7 (d) The secretary may draw upon the Protect Our Water Fund in order to take action under
8 subdivision (1) or (2), subsection (c) of this section if the secretary has made diligent good-faith
9 efforts to determine the identity of the owner or operator responsible for the release ~~or threatened~~
10 ~~release~~ and:

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

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

17 (e) The written notice to the owner or operator must inform the owner or operator that if it
18 is subsequently found liable by a court of competent jurisdiction for releases pursuant to this section,
19 the owner or operator will be required to reimburse the Protect Our Water Fund for the costs of the
20 investigation, information gathering, and corrective action taken by the secretary.

21 (f) If the secretary determines that immediate response to an imminent threat to human health,
22 safety, water resources or the environment is necessary to avoid substantial injury or damage thereto,

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

6 **§22-30-9. Spill prevention and response plan.**

7 (a) Within one hundred eighty days of the effective date of this article, each owner or
8 operator of an aboveground storage tank shall submit to the secretary a spill prevention and response
9 plan for ~~each~~ all aboveground storage ~~tank~~ tanks at a facility or location. Owners and operators of
10 aboveground storage tanks shall file updated plans required to be submitted by this section no less
11 frequently than every ~~three~~ five years. ~~Each plan shall be site-specific, consistent with the~~
12 ~~requirements of this article, and developed in consultation with Bureau for Public Health, county and~~
13 ~~municipal emergency management agencies.~~ The spill prevention and response plan shall at a
14 minimum:

15 (1) ~~Identify and describe~~ Describe the activity that occurs at the site and ~~identify applicable~~
16 ~~hazard and process information, including a specific listing and~~ provide an inventory of ~~all~~ the types
17 and amounts of fluids stored, ~~amount of fluids stored and wastes generated that are stored in~~
18 aboveground storage tanks at the facility. The plan shall ~~include~~ provide a reference to the location
19 of the ~~material~~ safety data sheets (MSDS) required by the Occupational Safety and Health
20 Administration for all fluids ~~in use or~~ stored in aboveground storage tanks at the facility. ~~The~~
21 ~~material safety data sheets must include the health hazard number identified by the National Fire~~
22 ~~Protection Association. The plan shall also include drawings of the aboveground storage tank~~

1 facility, including the locations of all drainage pipes and water outlets;

2 (2) Identify all facility-related positions with duties and responsibilities for ~~developing,~~
 3 ~~implementing and maintaining the facility's plan. The plan shall describe in detail the chain of~~
 4 ~~command at the aboveground storage tank facility~~ overseeing the implementation of the facility's
 5 plan, and list all facility emergency coordinators; ~~and all known emergency response contractors;~~

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

11 (4) ~~Details~~ Describe the ~~specific~~ general release response procedures that the aboveground
 12 storage tank facility and contract emergency personnel shall ~~take~~ employ upon the occurrence of any
 13 ~~release~~ escape of fluids from an aboveground storage tank at the facility, regardless of whether such
 14 fluids escape secondary containment;

15 (5) Provide contact information ~~obtained by the owner or operator of the aboveground storage~~
 16 ~~tanks from~~ for the county and municipal emergency management agencies and the nearest
 17 downstream public water supply intake, and designate the person or persons to be notified in the
 18 event of a release from an aboveground storage tank that could reach waters of the state; and

19 (6) Provide the secretary with all other ~~requested~~ information required by legislative rule.

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

1 (1) There is a substantial modification in design, construction, operation or maintenance of
 2 any aboveground storage tank ~~or associated equipment~~, secondary containment or leak detection
 3 equipment or methods, or there are other circumstances that increase the potential for fires,
 4 explosions or releases of fluids;

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

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

8 (4) The plan fails in an emergency; or

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

10 ~~(6)~~ (5) Other circumstances occur ~~about~~ for which the secretary requests an update.

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

17 (d) In lieu of a plan developed in accordance with the requirements of this section, the owner
 18 or operator of an aboveground storage tank may certify to the secretary that it is subject to (1) a
 19 groundwater protection plan approved by the secretary, or (2) a spill prevention control and
 20 countermeasures plan that complies the requirements of 40 C.F.R. Part 112. Such plans shall be
 21 made available for review by the secretary upon request.

22 ~~(d)~~ (e) Nothing contained in this section relieves the owner or operator of an aboveground

1 storage tank from his or her obligation to report any release ~~immediately to the department's~~
2 ~~emergency notification telephone number~~ in accordance with the law.

3 **§22-30-10. Notice to local governments and water companies.**

4 (a) ~~The owner or operator of an aboveground storage tank facility that is within a public~~
5 ~~water utility's zone of critical concern shall provide, as required by the secretary public notice to any~~
6 ~~public water system where the facility is located within the system's identified groundwater supply's~~
7 ~~source water protection area or within the system's surface water supply's zone of critical protection,~~
8 ~~to the local municipality, if any, and to the county in which the facility is located. The notice shall~~
9 ~~provide a detailed inventory and subject to the protections afforded in section fourteen of this article,~~
10 ~~notice to that public water utility and to state, county and municipal emergency response~~
11 ~~organizations of the type and quantity of fluid stored in the aboveground storage tanks at the facility~~
12 ~~and the location of the material safety data sheets (MSDS) associated with the fluids in storage. The~~
13 ~~owner or operator shall also provide as required by the secretary a copy of the spill prevention~~
14 ~~response plan and any updates thereto, which have been approved by the secretary pursuant to this~~
15 ~~act, to the applicable public water systems and county and municipal emergency management~~
16 ~~agencies.~~

17 (b) In lieu of the information required in subsection (a) of this section, the tank owner or
18 operator may provide the inventory forms and applicable documents required by sections 311 and
19 312 of the Emergency Planning and Community Right-to-Know Act, subject to the protection of
20 trade secrets and site security information allowed by section fourteen of this article.

21 **§22-30-11. Required signage.**

22 Every aboveground storage tank shall display, or have displayed nearby, ~~the signage, if any,~~

1 ~~required by the Occupational Safety and Health Administration; the tank registration number, when~~
 2 ~~issued by the secretary; and the emergency contact number for the owner or operator of the tank; and~~
 3 ~~the emergency contact number for the Department of Environmental Protection's Spill Reporting~~
 4 ~~Hotline. For the purposes of this section, the requirements for prominently posted signage shall be~~
 5 ~~specified in the rules proposed for promulgation by the secretary pursuant to this article and article~~
 6 ~~three, chapter twenty-nine-a of this code.~~

7 **§22-30-12. Aboveground Storage Tank Administrative Fund.**

8 (a) The secretary shall collect ~~annual~~ a registration fees from owners or operators of each
 9 aboveground storage tank in an amount to be promulgated in the legislative rules authorized by this
 10 article, to be used by the secretary to defray the costs of administering this article. All registration
 11 ~~and permit~~ fees and the net proceeds of all fines, penalties and forfeitures collected under this article,
 12 including accrued interest, shall be paid into a special revenue account, hereby created within the
 13 State Treasury, designated the "Aboveground Storage Tank Administrative Fund."

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

18 **§22-30-13. Protect Our Water Fund.**

19 (a) Each owner or operator of an aboveground storage tank ~~located in this state~~ shall pay an
 20 annual fee to establish a fund to assure adequate response to ~~leaking~~ releases from aboveground
 21 storage tanks. The amount of fees assessed pursuant to this section shall be set forth by rule. ~~The fees~~
 22 ~~must be sufficient to cover the regulatory oversight and services to be provided by designated~~

1 ~~agencies, including necessary technical and administrative personnel.~~ The proceeds of the assessment
2 shall be paid into a special revenue account, hereby created within the State Treasury, designated the
3 “Protect Our Water Fund.” The fund shall be administered by the secretary. Expenditures from the
4 fund shall be solely to respond to ~~leaking~~ releases from aboveground storage tanks, and are not
5 authorized from collections but are to be made only in accordance with appropriation by the
6 Legislature and in accordance with the provisions of article three, chapter twelve of this code and
7 upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided,*
8 That for the fiscal years ending June 30, ~~2014~~ 2015 and ~~2015~~ 2016, expenditures are authorized from
9 collections rather than pursuant to an explicit appropriation by the Legislature. ~~At the end of each~~
10 ~~fiscal year, any unexpended balance, including accrued interest, on deposit in the Protect Our Water~~
11 ~~Fund shall not be transferred to the General Revenue Fund, but shall remain in the Protect Our Water~~
12 ~~Fund for expenditure pursuant to this section.~~

13 (b) Each owner or operator of an aboveground storage tank subject to a fee assessment under
14 subsection (a) of this section shall pay a fee based on the number, contents and location of
15 aboveground storage tanks he or she owns or operates, as applicable. The secretary shall vary the
16 fees annually to a level necessary to produce a sufficient fund of no more than \$1 million after three
17 years from the effective date of this article, and to maintain an aggregate fund of \$1 million at the
18 beginning of each calendar year thereafter.

19 (c) At the end of each fiscal year, any unexpended balance, including accrued interest, on
20 deposit in the Protect Our Water Fund shall not be transferred to the General Revenue fund, but shall
21 remain in the Protect Our Water Fund for expenditure pursuant to this section.

22 (d) The secretary may enter into agreements and contracts and to expend the moneys in the

1 fund for the following purposes:

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

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

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

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

18 **§22-30-14. Public access to information.**

19 (a) The public shall have access to all documents and information submitted to the ~~agency~~
20 department pursuant to this article, subject to the limitations contained in the state Freedom of
21 Information Act, article one, chapter twenty-nine-b of this code, or any information designated by
22 the Division of Homeland Security and Emergency Management as restricted from public release.

1 Trade secrets, proprietary business information and information designated by the Division of
2 Homeland Security and Emergency Management as restricted from public release shall be secured
3 and safeguarded by the department. Such information or data shall not be disclosed to the public or
4 to any firm, individual or agency other than officials or authorized employees or ~~Records, reports~~
5 ~~or information obtained from any persons under this article may be disclosed to other officers,~~
6 ~~employees or authorized representatives of this~~ a state or federal agency implementing the provisions
7 of this article or any other applicable law related to releases of fluid from aboveground storage tanks
8 that impact the state's water resources. Any person who makes any unauthorized disclosure of such
9 confidential information or data is guilty of a misdemeanor and, upon conviction thereof, may be
10 fined not more than \$5,000 or confined in a correctional facility for not more than one year, or both.

11 (b) A list of the potential sources of significant contamination contained within the zone of
12 critical concern as provided by the Department of Environmental Protection, the Bureau for Public
13 Health and the Division of Homeland Security and Emergency Management may only be disclosed
14 to the extent consistent with the protection of trade secrets, confidential business information and
15 information designated by the Division of Homeland Security and Emergency Management as
16 described above. The exact location of the contaminants within the zone of critical concern is not
17 subject to public disclosure in response to a Freedom of Information Act request under article one,
18 chapter twenty-nine-b of this code. However, the ~~location,~~ characteristics and approximate quantities
19 of potential sources of significant contamination within the zone of critical concern shall be made
20 known to one or more designees of the public water utility, and shall be maintained in a confidential
21 manner by the public water utility. In the event of a ~~chemical spill, release or related emergency~~
22 release to waters of the state that could affect a public water supply, information ~~pertaining to any~~

1 ~~spill or~~ about the release of contaminant shall be ~~immediately disseminated~~ promptly made available
2 to any emergency responders responding to the site of a spill or release ~~and the general public shall~~
3 ~~be promptly notified in the event of a chemical spill, release or related emergency.~~

4 **§22-30-15. Inspections, monitoring and testing.**

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

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

10 (2) Conduct reasonable monitoring or testing;

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

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

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

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

18 (2) Inspect and obtain samples of any fluid contained in an aboveground storage tank ~~from~~
19 ~~any person~~;

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

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

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

2 ~~(d) To ensure protection of the water resources of the state and compliance with any~~
3 ~~provision of this article or rule promulgated thereunder, the secretary shall inspect at least annually~~
4 ~~any aboveground storage tank facility located within the zone of critical concern of a public water~~
5 ~~system with a public surface water supply source or a public surface water influenced groundwater~~
6 ~~supply source.~~

7 **§22-30-16. Administrative orders; injunctive relief.**

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

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

22 **§22-30-17. Civil and criminal penalties.**

1 (a) Any person who knowingly and intentionally fails to comply with an order of the
2 secretary issued under subsection (a), section sixteen of this article within the time specified in the
3 order is liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance.

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

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

12 (d) Any person who knowingly and intentionally violates any provision of this article, or any
13 rule or order issued under or subject to the provisions of this article, ~~shall be~~ is guilty of a
14 misdemeanor, and, upon conviction thereof, shall be confined in a regional jail for a period of time
15 not exceeding one year, and be fined an amount not to exceed \$25,000.

16 (e) Any person convicted of a second or subsequent willful violation ~~of~~ as set forth in
17 subsection (d) of this section ~~or knowingly and willfully violates any provision of any permit, rule~~
18 ~~or order issued under or subject to the provisions of this article~~ is guilty of a felony and, upon
19 conviction, ~~shall~~ may be imprisoned in a correctional facility not less than one nor more than three
20 years, or fined not more than \$50,000 for each day of violation, or both fined and imprisoned.

21 (f) Any person may be prosecuted and convicted under the provisions of this section
22 notwithstanding that none of the administrative remedies provided in this article have been pursued

1 or invoked against said person and notwithstanding that civil action for the imposition and collection
2 of a civil penalty or an application for an injunction under the provisions of this article has not been
3 filed against such person.

4 (g) Where a person holding a permit is carrying out a program of pollution abatement or
5 remedial action in compliance with the conditions and terms of ~~the permit~~ a corrective action plan
6 approved by the secretary, the person is not subject to criminal prosecution for pollution recognized
7 and authorized by the ~~permit~~ approved corrective action plan.

8 (h) Civil penalties are payable to the secretary. All moneys collected under this section for
9 civil fines collected under this article shall be deposited into a restricted account known as the
10 “Protect Our Water Fund.” All money deposited into this account shall be used by the secretary
11 solely to respond to ~~leaking~~ releases from aboveground storage tanks.

12 **§22-30-18. Appeal to Environmental Quality Board.**

13 Any person aggrieved or adversely affected by an action, decision or order of the secretary
14 made and entered in accordance with the provisions of this article may appeal to the Environmental
15 Quality Board, pursuant to the provisions of article one, chapter twenty-two-b of this code.

16 **§22-30-19. Duplicative enforcement prohibited.**

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

21 **§22-30-21. Interagency cooperation.**

22 (a) In implementation of this article, the secretary shall coordinate with the Department of

1 Health and Human Resources, the West Virginia Public Service Commission, the Division of
2 Homeland Security and Emergency Management and local health departments to ensure the
3 successful planning and implementation of this act, including consideration of the role of those
4 agencies in providing services to owners and operators of aboveground storage tanks and public
5 water ~~systems~~ utilities.

6 (b) The secretary shall also coordinate with state and local emergency response agencies to
7 prepare and issue appropriate emergency response plans to facilitate a coordinated emergency
8 response and incident command and communication between the owner or operator of the
9 aboveground storage tank, the state and local emergency response agencies and the affected public
10 water ~~system~~ utility.

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

14 **§22-30-22. Imminent and substantial danger.**

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

1 (b) Upon receipt of information that there is any aboveground storage tank that presents an
2 imminent and substantial danger to human health, safety, water resources or the environment, the
3 secretary shall provide immediate notice to the appropriate state and local government agencies and
4 any affected public water ~~system~~ utility. In addition, the secretary shall require notice of any danger
5 to be promptly posted at the aboveground storage tank facility containing the aboveground
6 storage tank at issue.

7 **§22-30-24. Powers and duties of secretary.**

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

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

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

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

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

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

21 ~~§22-30-25. Scope of article; waiving additional permitting requirements for certain categories~~
22 ~~of aboveground storage tanks; establishing a process for granting waivers for~~

1 ~~additional categories of ground storage tanks, by legislative rule, upon~~
2 ~~verification that the category of tanks are regulated under comparable or more~~
3 ~~rigorous protective state or federal standards. Waiving certain requirements of~~
4 ~~this article for specified categories of aboveground storage tanks as designated~~
5 ~~by the department by legislative rule.~~

6 (a) ~~While all aboveground storage tanks shall be required to participate in the inventory and~~
7 ~~registration process set forth in section four of this article, the following categories of containers and~~
8 ~~tanks shall not be required to be permitted under section five of this article, either because they do~~
9 ~~not represent a substantial threat of contamination, or they are currently regulated under standards~~
10 ~~which meet or exceed the protective standards and requirements set forth in this article:~~

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

13 (2) ~~Any natural gas or propane tanks regulated under NFPA 58-30A or NFPA 58-30B;~~

14 (3) ~~Septic tanks and home aeration systems;~~

15 (4) ~~A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline~~
16 ~~Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline~~
17 ~~facility regulated by the West Virginia Public Service Commission or otherwise regulated under any~~
18 ~~state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the~~
19 ~~Hazardous Liquid Pipeline Safety Act of 1979;~~

20 (5) ~~Equipment or machinery containing substances for operational purposes, including~~
21 ~~integral hydraulic lift tanks, lubricating oil reservoirs for pumps and motors, electrical equipment~~
22 ~~and heating and cooling equipment;~~

1 ~~(6) A mobile tank, truck or rail car that is located on a site for less than sixty consecutive~~
2 ~~calendar days;~~

3 ~~(7) Liquid traps or associated gathering lines related to oil or gas production and gathering~~
4 ~~operations;~~

5 ~~(8) A surface impoundment, pit, pond or lagoon;~~

6 ~~(9) Aboveground storage tanks for which spill prevention, control, and countermeasure plans~~
7 ~~are required by the Environmental Protection Agency (EPA) under 40 CFR Part 112 (oil pollution~~
8 ~~prevention), unless located within a zone of critical protection.~~

9 ~~(b) The Department of Environmental Protection may designate, by legislative rule,~~
10 ~~additional categories of aboveground storage tanks for which an individual aboveground storage tank~~
11 ~~permit may be waived, after confirming that the tank is regulated under an existing state or federal~~
12 ~~regulatory permit or enforceable standard which includes, but is not limited to, the following:~~

13 ~~(1) Secondary containment with an impermeable base, which is sufficient to fully contain the~~
14 ~~contents of the tank or the contents of the largest tank in the group of tanks in the event of a leak~~
15 ~~from spilling out onto the ground or adjacent surface water;~~

16 ~~(2) Spill prevention, leak detection and control and inspection requirements which meet or~~
17 ~~exceed the standards established by the article or by rules promulgated thereunder;~~

18 ~~(3) Regular inspections and routine integrity testing requirements which are equally~~
19 ~~protective to the requirements established pursuant to this article or any rules promulgated~~
20 ~~thereunder; and~~

21 ~~(4) Emergency response and notification requirements which are at least as prompt and~~
22 ~~comprehensive as the emergency response and notification requirements established by this article~~

1 or any rules promulgated thereunder.

2 ~~(c) In lieu of requiring a separate permit issued under this section, the secretary may adopt~~
3 ~~rules that would allow the requirements of this article to be incorporated into, and enforced through,~~
4 ~~the state-only portion of a National Pollutant Discharge Elimination System (NPDES) permit or a~~
5 ~~permit under article six or six-a of this chapter.~~

6 ~~(d) If the aboveground storage tank or tanks' location is to be regulated pursuant to a general~~
7 ~~NPDES permit or an individual NPDES permit, the secondary containment, spill prevention, leak~~
8 ~~detection and control requirements, inspection requirements, reporting requirements and routine~~
9 ~~integrity testing requirements for that tank or tanks are to be specifically set forth as~~
10 ~~enforceable permit conditions and requirements.~~

11 The Department of Environmental Protection may designate, by rule, additional categories
12 of aboveground storage tanks for which one or more of the requirements of this article may be
13 waived upon a determination that such categories of aboveground storage tanks either do not
14 represent a substantial threat of contamination or they are currently regulated under standards that
15 are consistent with the protective standards and requirements set forth in this article.

16 **§22-30-26. Secretary's authority to require individual NPDES permits within a zone of critical**
17 **concern.**

18 Any permittee that holds a National Pollutant Discharge Elimination System general permit
19 pursuant to the federal Water Pollution Control Act for a site that contains one or more aboveground
20 storage tanks may be required by the secretary to apply for and hold an individual permit under that
21 act. Any general NPDES permit held currently under that act shall remain in effect until the
22 individual NPDES permit is either issued or denied.

1 **§22-30-27. Inventory of potential sources of significant contamination.**

2 (a) The secretary, working in collaboration with the Bureau of Public Health and the
3 Division of Homeland Security and Emergency Management, may compile an inventory of all
4 potential sources of significant contamination contained within a public water system's zone of
5 critical concern and identify those that are not currently permitted or subject to regulation by the
6 secretary under one or more articles of this chapter. In compiling the inventory, the secretary shall
7 use information provided in the registrations submitted pursuant to section four of this article,
8 information provided to the Department of Homeland Security and Emergency Management
9 pursuant to section 312 of the federal Emergency Planning and Community Right-to-Know Act, and
10 other information available to the agency.

11 (b) The Department shall provide a copy of the compiled list of known potential sources of
12 significant contamination in each zone of critical concern to the affected public water utility, the
13 Bureau for Public Health, and the Division of Homeland Security and Emergency Management.

14 **ARTICLE 31. THE PUBLIC WATER SUPPLY PROTECTION ACT.**

15 **§22-31-2. Public Water System Supply Study Commission.**

16 (a) There is hereby established the Public Water System Supply Study Commission which
17 is created for the purpose of studying and reporting back to the Joint Committee on Government and
18 Finance on the following subject matters:

19 (1) A review and assessment of the effectiveness and the quality of information contained
20 in updated source water protection plans required for certain public water systems by the provisions
21 of section nine-c, article one, chapter sixteen of this code;

22 (2) A review and assessment of the effectiveness of legislation enacted during the 2014

1 Regular Session of the West Virginia Legislature, as it pertains to assisting public water systems in
2 identifying and reacting or responding to identified potential sources of significant contamination,
3 and increasing public awareness and public participation in the emergency planning and response
4 process;

5 (3) The extent of available financing and funding alternatives which are available to existing
6 public water systems to pursue projects which are designed to create alternate sources of supply or
7 increased stability of supply in the event of a spill, release or contamination event which impairs the
8 water system's primary source of supply;

9 (4) A review and consideration of the recommendations of the U. S. Chemical Safety and
10 Hazard and Investigation Board after its investigation of the Bayer Crop Science incident of 2008;
11 and

12 (5) Any recommendations or suggestions the study commission may offer to improve the
13 infrastructure of existing public water systems, to provide safe and reliable sources of supplies, and
14 to pursue other measures designed to protect the integrity of public water service.

15 (b) The study commission shall consist of the following twelve members, who shall be
16 appointed and comprised as follows:

17 (1) Four members appointed by the Governor, one of whom shall be a professional engineer
18 experienced in the design and construction of public water systems; one of whom shall be a
19 hydrologist or other expert experienced in determining the flow characteristics of rivers and streams;
20 one of whom shall be an environmental toxicologist or other public health expert who is familiar
21 with the impact of contaminants on the human body; and one citizen representative;

22 (2) One representative designated by the Rural Water Association;

- 1 (3) One representative designated by the Municipal League;
- 2 (4) The Secretary of the Department of Environmental Protection or his or her designee;
- 3 (5) The Commissioner of the Bureau for Public Health or his or her designee;
- 4 (6) The Director of the Division of Homeland Security and Emergency Management or his
5 or her designee;
- 6 (7) The Chairman of the Public Service Commission or his or her designee;
- 7 (8) One nonvoting member appointed by the President of the Senate; and
- 8 (9) One nonvoting member appointed by the Speaker of the House of Delegates.
- 9 (c) Reports by the Commission shall be submitted to the Joint Committee on Government
10 and Finance on or before December 15 of each year, beginning December 15, 2014.

NOTE: The purpose of this bill is to amend the Aboveground Storage Tank Act to address and correct certain unintended consequences of the original enactment. The program is now focused on tanks with a capacity of 10,000 gallons or above within zones of critical concern of public water utilities. Definitions are amended and added. The owner or operator of a tank will certify its compliance with an approved industry standard or program, or to the standards developed by the DEP by rule. Releases are defined in the same way as in other programs administered by the Department of Environmental Protection. Spill prevention and response plans are required. Much of article 31 has been deleted although key provisions have been moved into article 30.

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

§22-30-26 and §22-30-27 are new; therefore, strike-throughs and underscores have been omitted.

§22-31-2 was formerly designated §22-31-12. No changes to existing law have been made in this section.