WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2612

BY DELEGATES HILL, WILSON, HOWELL, ROWAN,

FLEISCHAUER AND WALKER

[Passed February 23, 2019; in effect ninety days from passage.]

AN ACT to amend and reenact §16-1-9c of the Code of West Virginia, 1931, as amended, to authorize that the Secretary of the Department of Health and Human Resources to propose rules related to source water protection plans; and staggering the timeframes of source water protection plan reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9c. Required update or completion of source water protection plans.

(a) An existing public water utility that draws and treats water from a surface water supply source or a surface water influenced groundwater supply source shall submit to the commissioner an updated or completed source water protection plan for each of its public water system plants with such intakes to protect its public water supplies from contamination. Every effort shall be made to inform and engage the public, local governments, local emergency planners, local health departments, and affected residents at all levels of the development of the protection plan.

(b) The completed or updated plan for each affected plant, at a minimum, shall include the following:

(1) A contingency plan that documents each public water utility's planned response to contamination of its public surface water supply source or its public surface water influenced groundwater supply source;

(2) An examination and analysis of the public water system's ability to isolate or divert contaminated waters from its surface water intake or groundwater supply and the amount of raw water storage capacity for the public water system's plant;

(3) An examination and analysis of the public water system's existing ability to switch to an alternative water source or intake in the event of contamination of its primary water source;

(4) An analysis and examination of the public water system's existing ability to close its water intake in the event the system is advised that its primary water source has become

contaminated due to a spill or release into a stream and the duration of time it can keep that water intake closed without creating a public health emergency;

(5) The following operational information for each plant receiving water supplies from a surface water source:

(A) The average number of hours the plant operates each day, and the maximum and minimum number of hours of operation in one day at that plant during the past year; and

(B) The average quantities of water treated and produced by the plant per day, and the maximum and minimum quantities of water treated and produced at that plant in one day during the past year;

(6) An analysis and examination of the public water system's existing available storage capacity on its system, how its available storage capacity compares to the public water system's normal daily usage and whether the public water system's existing available storage capacity can be effectively utilized to minimize the threat of contamination to its system;

(7) The calculated level of unaccounted for water experienced by the public water system for each surface water intake, determined by comparing the measured quantities of water which are actually received and used by customers served by that water plant to the total quantities of water treated at the water plant over the past year. If the calculated ratio of those two figures is less than 85 percent, the public water system is to describe all of the measures it is actively taking to reduce the level of water loss experienced on its system;

(8) A list of the potential sources of significant contamination contained within the zone of critical concern as provided by the Department of Environmental Protection, the Bureau for Public Health and the Division of Homeland Security and Emergency Management. The exact location of the contaminants within the zone of critical concern is not subject to public disclosure in response to a Freedom of Information Act request under §29B-1-1 *et seq*. of this code. However, the location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern shall be made known to one or more designees

of the public water utility, and shall be maintained in a confidential manner by the public water utility. Disclosure is permitted on any location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern to the extent they are in the public domain through a state or federal agency. In the event of a chemical spill, release or related emergency, information pertaining to any spill or release of contaminant shall be immediately disseminated to any emergency responders responding to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency;

(9) If the public water utility's water supply plant is served by a single-source intake to a surface water source of supply or a surface water influenced source of supply, the submitted plan shall also include an examination and analysis of the technical and economic feasibility of each of the following options to provide continued safe and reliable public water service in the event its primary source of supply is detrimentally affected by contamination, release, spill event or other reason:

(A) Constructing or establishing a secondary or backup intake which would draw water supplies from a substantially different location or water source;

(B) Constructing additional raw water storage capacity or treated water storage capacity or both, to provide at least two days of system storage, based on the plant's maximum level of production experienced within the past year;

(C) Creating or constructing interconnections between the public water system with other plants on the public water utility system or another public water system, to allow the public water utility to receive its water from a different source of supply during a period its primary water supply becomes unavailable or unreliable due to contamination, release, spill event or other circumstance;

(D) Any other alternative which is available to the public water utility to secure safe and reliable alternative supplies during a period its primary source of supply is unavailable or negatively impacted for an extended period; and

(E) If one or more alternatives set forth in paragraphs (A) through (D), inclusive, of this subdivision is determined to be technologically or economically feasible, the public water utility shall submit an analysis of the comparative costs, risks and benefits of implementing each of the described alternatives;

(10) A management plan that identifies specific activities that will be pursued by the public water utility, in cooperation and in concert with the Bureau for Public Health, local health departments, local emergency responders, local emergency planning committee, and other state, county, or local agencies and organizations to protect its source water supply from contamination, including, but not limited to, notification to and coordination with state and local government agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic surveys of the system, the adoption of best management practices, the purchase of property or development rights, conducting public education or the adoption of other management techniques recommended by the commissioner or included in the source water protection plan;

(11) A communications plan that documents the manner in which the public water utility, working in concert with state and local emergency response agencies, shall notify the local health agencies and the public of the initial spill or contamination event and provide updated information related to any contamination or impairment of the source water supply or the system’s drinking water supply, with an initial notification to the public to occur, in any event, no later than 30 minutes after the public water system becomes aware of the spill, release or potential contamination of the public water system;

(12) A complete and comprehensive list of the potential sources of significant contamination contained within the zone of critical concern, based upon information which is directly provided or can otherwise be requested and obtained from the Department of

Environmental Protection, the Bureau for Public Health, the Division of Homeland Security, and Emergency Management and other resources; and

(13) An examination of the technical and economic feasibility of implementing an early warning monitoring system.

(c) A public water utility's public water system with a primary surface water source of supply or a surface water influenced groundwater source of supply shall submit, prior to the commencement of its operations, a source water protection plan satisfying the requirements of subsection (b) of this section.

(d) The commissioner shall review a plan submitted pursuant to this section and provide a copy to the Secretary of the Department of Environmental Protection. Thereafter, within 180 days of receiving a plan for approval, the commissioner may approve, reject, or modify the plan as may be necessary and reasonable to satisfy the purposes of this article. The commissioner shall consult with the local public health officer and conduct at least one public hearing when reviewing the plan. Failure by a public water system to comply with a plan approved pursuant to this section is a violation of this article.

(e) The commissioner may request a public water utility to conduct one or more studies to determine the actual risk and consequences related to any potential source of significant contamination identified by the plan, or as otherwise made known to the commissioner.

(f) Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall submit an updated source water protection plan at least every three years or when there is a substantial change in the potential sources of significant contamination within the identified zone of critical concern.

(g) The commissioner's authority in reviewing and monitoring compliance with a source water protection plan may be transferred by the bureau to a nationally accredited local board of public health.

(h) The secretary is authorized to propose legislative rules for promulgation pursuant to §29A-3-1 *et seq.* of this code to implement the provisions of this section. The rules shall include a staggered schedule by hydrologic regions for the submission of source water protection plans by public water utilities. The first report submitted pursuant to a staggered schedule is exempt from the reporting interval set forth in §16-1-9c(f) of this code. Subsequent reports shall be submitted pursuant to the provisions of §16-1-9c(f) of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

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The within ..... this the.....

day of ....., 2019.

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Governor