

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 373**

7 (SENATORS UNGER, KESSLER (MR. PRESIDENT), PALUMBO, PLYMALE, LAIRD, YOST, MILLER,  
8 PREZIOSO, FITZSIMMONS, WELLS, CANN, CHAFIN, TUCKER, STOLLINGS, COOKMAN AND SNYDER,  
9 *original sponsor*)

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12 [Passed March 8, 2014; in effect ninety days from passage.]  
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16 AN ACT to amend and reenact §16-1-2 and §16-1-9a of the Code of West  
17 Virginia, 1931, as amended; to amend said code by adding thereto  
18 three new sections, designated §16-1-9c, §16-1-9d and §16-1-9e;  
19 to amend and reenact §22-26-2, §22-26-3, §22-26-5, §22-26-6,  
20 §22-26-7 and §22-26-8 of said code; to amend said code by adding  
21 thereto a new article, designated §22-30-1, §22-30-2, §22-30-3,  
22 §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9,  
23 §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14,  
24 §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19,  
25 §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and

1 §22-30-25; to amend said code by adding thereto a new article,  
2 designated §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5,  
3 §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11  
4 and §22-31-12; and to amend said code by adding thereto a new  
5 article, designated §24-2G-1 and §24-2G-2, all relating to the  
6 protection of water resources and public health generally;  
7 defining terms generally; providing for rulemaking generally;  
8 providing for civil and criminal penalties generally; providing  
9 for the regulation of the public water systems by the  
10 Commissioner of the Bureau for Public Health;  
11 providing for entry into and evaluations of water systems;  
12 authorizing commissioner to seek injunctive relief; requiring  
13 source water protection plans; specifying contents of plan;  
14 requiring assessment and monitoring of plans; requiring Bureau  
15 for Public Health to coordinate the conduct of a long-term  
16 medical study; continuing wellhead and source water protection  
17 grant program; continuing grant fund to provide water source  
18 protection; revising the Water Resources Protection and  
19 Management Act; modifying registration requirements; requiring  
20 reports to the Secretary of the Department of Environmental  
21 Protection; requiring reports by secretary to legislative  
22 entities; requiring continuation of matching funds for  
23 stream-gauging network; modifying duties of legislative  
24 commission; requiring water resources survey and registry;

1 requiring information from drilling contractors for water  
2 systems; adopting state water resources management plan;  
3 requiring reports from certain water users; establishing the  
4 Aboveground Storage Tank Act; requiring the secretary to compile  
5 inventory of aboveground storage tanks in the state; requiring  
6 registration; authorizing certain fees; requiring secretary to  
7 develop regulatory program for the tanks; providing minimum  
8 factors to be included in program; requiring annual inspection  
9 and certification of the tanks; requiring evidence of financial  
10 security; requiring corrective action and plans; requiring  
11 spill prevention response plans; requiring notice of inventory  
12 of tanks to local water systems and governments; requiring the  
13 posting of signs at the tanks; creating an administrative fund;  
14 creating the Protect Our Water Fund; authorizing public access  
15 to certain information; authorizing inspections, monitoring and  
16 testing by secretary; authorizing secretary to issue  
17 administrative orders and seek injunctive relief; allowing  
18 appeals to Environmental Quality Board; prohibiting duplicative  
19 enforcement; requiring secretary to report to legislative  
20 entities; requiring interagency coordination; establishing  
21 duties of secretary upon imminent and substantial danger;  
22 providing additional duties and powers of secretary generally;  
23 providing certain exemptions; creating the Public Water Supply  
24 Protection Act; requiring inventories of sources of certain

1 contaminants in the zones of critical concern of certain public  
2 water systems; requiring registration and permits; authorizing  
3 inspections, monitoring and testing by secretary; requiring  
4 individual NPDES permits in certain circumstances; authorizing  
5 secretary to require NPDES permits in certain circumstances;  
6 creating public water system supply study commission;  
7 membership of study commission; scope of study; establishing  
8 reporting requirements; requiring the establishment of advance  
9 warning, testing and monitoring at certain water utilities;  
10 requiring certain information be filed with the Public Water  
11 Commission; and requiring utility to report back to Legislature  
12 if technology is infeasible.

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

14 That §16-1-2 and §16-1-9a of the Code of West Virginia, 1931,  
15 as amended, be amended and reenacted; that said code be amended by  
16 adding thereto three new sections, designated §16-1-9c, §16-1-9d and  
17 §16-1-9e; that §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and  
18 §22-26-8 of said code be amended and reenacted; that said code be  
19 amended by adding thereto a new article, designated §22-30-1,  
20 §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7,  
21 §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13,  
22 §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19,  
23 §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-25;  
24 that said code be amended by adding thereto a new article, designated

1 §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6,  
2 §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12;  
3 and that said code be amended by adding thereto a new article,  
4 designated §24-2G-1 and §24-2G-2, all to read as follows:

5 **CHAPTER 16. PUBLIC HEALTH.**

6 **ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

7 **§16-1-2. Definitions.**

8 As used in this article:

9 (1) "Basic public health services" means those services that are  
10 necessary to protect the health of the public. The three areas of  
11 basic public health services are communicable and reportable disease  
12 prevention and control, community health promotion and environmental  
13 health protection;

14 (2) "Bureau" means the Bureau for Public Health in the  
15 department;

16 (3) "Combined local board of health" means one form of  
17 organization for a local board of health and means a board of health  
18 serving any two or more counties or any county or counties and one  
19 or more municipalities within or partially within the county or  
20 counties;

21 (4) "Commissioner" means the commissioner of the bureau, who is  
22 the state health officer;

23 (5) "County board of health" means one form of organization for  
24 a local board of health and means a local board of health serving a

1 single county;

2 (6) "Department" means the West Virginia Department of Health  
3 and Human Resources;

4 (7) "Director" or "director of health" means the state health  
5 officer. Administratively within the department, the bureau through  
6 its commissioner carries out the public health functions of the  
7 department, unless otherwise assigned by the secretary;

8 (8) "Essential public health services" means the core public  
9 health activities necessary to promote health and prevent disease,  
10 injury and disability for the citizens of the state. The services  
11 include:

12 (A) Monitoring health status to identify community health  
13 problems;

14 (B) Diagnosing and investigating health problems and health  
15 hazards in the community;

16 (C) Informing, educating and empowering people about health  
17 issues;

18 (D) Mobilizing community partnerships to identify and solve  
19 health problems;

20 (E) Developing policies and plans that support individual and  
21 community health efforts;

22 (F) Enforcing laws and rules that protect health and ensure  
23 safety;

24 (G) Uniting people with needed personal health services and

1 assuring the provision of health care when it is otherwise not  
2 available;

3 (H) Promoting a competent public health and personal health care  
4 workforce;

5 (I) Evaluating the effectiveness, accessibility and quality of  
6 personal and population-based health services; and

7 (J) Researching for new insights and innovative solutions to  
8 health problems;

9 (9) "Licensing boards" means those boards charged with  
10 regulating an occupation, business or profession and on which the  
11 commissioner serves as a member;

12 (10) "Local board of health", "local board" or "board" means a  
13 board of health serving one or more counties or one or more  
14 municipalities or a combination thereof;

15 (11) "Local health department" means the staff of the local board  
16 of health;

17 (12) "Local health officer" means the physician with a current  
18 West Virginia license to practice medicine who supervises and directs  
19 the activities, services, staff and facilities of the local health  
20 department and is appointed by the local board of health with approval  
21 by the commissioner;

22 (13) "Municipal board of health" means one form of organization  
23 for a local board of health and means a board of health serving a single  
24 municipality;

1           (14) "Performance-based standards" means generally accepted,  
2 objective standards such as rules or guidelines against which public  
3 health performance can be measured;

4           (15) "Potential source of significant contamination" means a  
5 facility or activity that stores, uses or produces substances or  
6 compounds with potential for significant contaminating impact if  
7 released into the source water of a public water supply;

8           (16) "Program plan" or "plan of operation" means the annual plan  
9 for each local board of health that must be submitted to the  
10 commissioner for approval;

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

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

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

1 influenced, directly or indirectly, by the quantity and quality of  
2 surface water in the immediate area;

3 (20) "Public water system" means:

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

9 (i) Any collection, treatment, storage and distribution  
10 facilities under the control of the owner or operator of the system  
11 and used primarily in connection with the system; and

12 (ii) Any collection or pretreatment storage facilities not under  
13 such control which are used primarily in connection with the system;

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

16 (i) Consists only of distribution and storage facilities and  
17 does not have any collection and treatment facilities;

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

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

21 (iv) Is not a carrier conveying passengers in interstate  
22 commerce;

23 (21) "Public water utility" means a public water system which  
24 is regulated by the West Virginia Public Service Commission pursuant

1 to the provisions of chapter twenty-four of this code.

2 (22) "Secretary" means the secretary of the department.

3 (23) "Service area" means the territorial jurisdiction of a  
4 local board of health;

5 (24) "State Advisory Council on Public Health" means the  
6 advisory body charged by this article with providing advice to the  
7 commissioner with respect to the provision of adequate public health  
8 services for all areas in the state;

9 (25) "State Board of Health" means the secretary,  
10 notwithstanding any other provision of this code to the contrary,  
11 whenever and wherever in this code there is a reference to the State  
12 Board of Health;

13 (26) "Zone of critical concern" for a public surface water supply  
14 is a corridor along streams within a watershed that warrant more  
15 detailed scrutiny due to its proximity to the surface water intake  
16 and the intake's susceptibility to potential contaminants within that  
17 corridor. The zone of critical concern is determined using a  
18 mathematical model that accounts for stream flows, gradient and area  
19 topography. The length of the zone of critical concern is based on  
20 a five-hour time-of-travel of water in the streams to the water  
21 intake, plus an additional one-fourth mile below the water intake.  
22 The width of the zone of critical concern is one thousand feet measured  
23 horizontally from each bank of the principal stream and five hundred  
24 feet measured horizontally from each bank of the tributaries draining

1 into the principal stream.

2 **§16-1-9a. Regulation of public water systems.**

3 (a) The commissioner shall regulate public water systems as  
4 prescribed in this section.

5 (b) The commissioner shall establish by legislative rule, in  
6 accordance with article three, chapter twenty-nine-a of this code:

7 (1) The maximum contaminant levels to which all public water  
8 systems shall conform in order to prevent adverse effects on the  
9 health of individuals;

10 (2) Treatment techniques that reduce the contaminant or  
11 contaminants to a level which will not adversely affect the health  
12 of the consumer;

13 (3) Provisions to protect and prevent contamination of wellheads  
14 and well fields used by public water supplies so that contaminants  
15 do not reach a level that would adversely affect the health of the  
16 consumer;

17 (4) Minimum requirements for:

18 (A) Sampling and testing;

19 (B) System operation;

20 (C) Public notification by a public water system on being granted  
21 a variance or exemption or upon failure to comply with specific  
22 requirements of this section and regulations promulgated under this  
23 section;

24 (D) Recordkeeping;

1 (E) Laboratory certification; and

2 (F) Procedures and conditions for granting variances and  
3 exemptions to public water systems from state public water systems'  
4 regulations;

5 (5) Requirements covering the production and distribution of  
6 bottled drinking water;

7 (6) Requirements governing the taste, odor, appearance and other  
8 consumer acceptability parameters of drinking water; and

9 (7) Any other requirement the commissioner finds necessary to  
10 effectuate the provisions of this article.

11 (c) The commissioner or his or her authorized representatives  
12 or designees may enter any part of a public water system, whether or  
13 not the system is in violation of a legal requirement, for the purpose  
14 of inspecting, sampling or testing and shall be furnished records or  
15 information reasonably required for a complete inspection.

16 (d) The commissioner, his or her authorized representative or  
17 designee may conduct an evaluation necessary to assure the public  
18 water system meets federal safe drinking water requirements. The  
19 public water system shall provide a written response to the  
20 commissioner within thirty days of receipt of the evaluation by the  
21 public water system, addressing corrective actions to be taken as a  
22 result of the evaluation.

23 (e) (1) Any individual or entity who violates any provision of  
24 this article, or any of the rules or orders issued pursuant to this

1 article, is liable for a civil penalty not less than \$1,000 nor more  
2 than \$5,000. Each day's violation shall constitute a separate  
3 offense.

4 (2) For a willful violation of a provision of this article, or  
5 of any of the rules or orders issued under this article, an individual  
6 or entity shall be subject to a civil penalty of not more than \$10,000  
7 and each day's violation shall be grounds for a separate penalty.

8 (3) Civil penalties are payable to the commissioner. All moneys  
9 collected under this section shall be deposited into a restricted  
10 account known as the Safe Drinking Water Fund. All moneys deposited  
11 into the fund shall be used by the commissioner to provide technical  
12 assistance to public water systems.

13 (f) The commissioner, or his or her authorized representative,  
14 may also seek injunctive relief in the circuit court of the county  
15 in which all or part of the public water system is located for  
16 threatened or continuing violations.

17 **§16-1-9c. Required update or completion of source water protection**  
18 **plans.**

19 (a) On or before July 1, 2016, each existing public water utility  
20 which draws and treats water from a surface water supply source or  
21 a surface water influenced groundwater supply source shall submit to  
22 the commissioner an updated or completed source water protection plan  
23 for each of its public water system plants with such intakes to protect  
24 its public water supplies from contamination. Every effort shall be

1 made to inform and engage the public, local governments, local  
2 emergency planners, local health departments and affected residents  
3 at all levels of the development of the protection plan.

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

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

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

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

17 (4) An analysis and examination of the public water system's  
18 existing ability to close its water intake in the event the system  
19 is advised that its primary water source has become contaminated due  
20 to a spill or release into a stream, and the duration of time it can  
21 keep that water intake closed without creating a public health  
22 emergency;

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

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

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

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

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

22 (8) A list of the potential sources of significant contamination  
23 contained within the zone of critical concern as provided by the  
24 Department of Environmental Protection, the Bureau for Public Health

1 and the Division of Homeland Security and Emergency Management. The  
2 exact location of the contaminants within the zone of critical concern  
3 is not subject to public disclosure in response to a Freedom of  
4 Information Act request under article one, chapter twenty-nine-b of  
5 this code. However, the location, characteristics and approximate  
6 quantities of potential sources of significant contamination within  
7 the zone of critical concern shall be made known to one or more  
8 designees of the public water utility, and shall be maintained in a  
9 confidential manner by the public water utility. In the event of a  
10 chemical spill, release or related emergency, information pertaining  
11 to any spill or release of contaminant shall be immediately  
12 disseminated to any emergency responders responding to the site of  
13 a spill or release, and the general public shall be promptly notified  
14 in the event of a chemical spill, release or related emergency.

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

23 (A) Constructing or establishing a secondary or backup intake  
24 which would draw water supplies from a substantially different

1 location or water source;

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

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

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

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

21 (10) A management plan that identifies specific activities that  
22 will be pursued by the public water utility, in cooperation and in  
23 concert with the Bureau for Public Health, local health departments,  
24 local emergency responders, local emergency planning committee, and

1 other state, county or local agencies and organizations to protect  
2 its source water supply from contamination, including, but not  
3 limited to, notification to and coordination with state and local  
4 government agencies whenever the use of its water supply is  
5 inadvisable or impaired, to conduct periodic surveys of the system,  
6 the adoption of best management practices, the purchase of property  
7 or development rights, conducting public education or the adoption  
8 of other management techniques recommended by the commissioner or  
9 included in the source water protection plan;

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

19 (12) A complete and comprehensive list of the potential sources  
20 of significant contamination contained within the zone of critical  
21 concern, based upon information which is directly provided or can  
22 otherwise be requested and obtained from the Department of  
23 Environmental Protection, the Bureau for Public Health, the Division  
24 of Homeland Security and Emergency Management and other resources;

1 and

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

4 (c) Any public water utility's public water system with a primary  
5 surface water source of supply or a surface water influenced  
6 groundwater source of supply that comes into existence on or after  
7 the effective date of this article shall submit prior to the  
8 commencement of its operations a source water protection plan  
9 satisfying the requirements of subsection (b) of this section.

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

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

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

7 (g) Any public water utility required to file a complete or  
8 updated plan in accordance with the provisions of this section shall  
9 review any source water protection plan it may currently have on file  
10 with the bureau and update it to ensure it conforms with the  
11 requirements of subsection (b) of this section on or before July 1,  
12 2016.

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

16 **§16-1-9d. Wellhead and Source Water Protection Grant Program.**

17 (a) The commissioner shall continue the Wellhead and Source  
18 Water Protection Grant Program.

19 (b) The fund heretofore created to provide funds for the Wellhead  
20 and Source Water Protection Grant Program is continued in the State  
21 Treasury and shall be known as the Wellhead and Source Water  
22 Protection Grant Fund. The fund shall be administered by the  
23 commissioner and shall consist of all moneys made available for the  
24 program from any source, including, but not limited to, all fees,

1 civil penalties and assessed costs, all gifts, grants, bequests or  
2 transfers from any source, any moneys that may be appropriated and  
3 designated for the program by the Legislature and all interest or  
4 other return earned from investment of the fund. Expenditures from  
5 the fund shall be for the purposes set forth in this article to provide  
6 water source protection pursuant to the program and are not authorized  
7 from collections but are to be made only in accordance with  
8 appropriation by the Legislature and in accordance with the  
9 provisions of article three, chapter twelve of this code and upon the  
10 fulfillment of the provisions set forth in article two, chapter  
11 eleven-b of this code: *Provided*, That for the fiscal years ending June  
12 30, 2014 and 2015, expenditures are authorized from collections  
13 rather than pursuant to an explicit appropriation by the Legislature.  
14 Any balance, including accrued interest and other returns, remaining  
15 in the fund at the end of each fiscal year shall not revert to the  
16 General Revenue Fund but shall remain in the fund and be expended as  
17 provided by this section.

18 (c) In prospectively awarding any grants under the Wellhead and  
19 Source Water Protection Grant Program, the commissioner shall  
20 prioritize those public water systems where there is the highest  
21 probability of contamination of the water source based on the source  
22 water assessment report or the source water protection plans which  
23 were previously performed. Priority shall also be extended to  
24 publicly owned public water systems over privately owned public water

1 systems.

2 (d) The commissioner, or his or her designee, shall apply for  
3 and diligently pursue all available federal funds to help offset the  
4 cost of completing source water protection plans by the deadlines  
5 established in section nine-c of this article.

6 (e) The commissioner may receive any gift, federal grant, other  
7 grant, donation or bequest and receive income and other funds or  
8 appropriations to contribute to the Wellhead and Source Water  
9 Protection Grant Program.

10 **§16-1-9e. Long-term medical study.**

11 The Bureau for Public Health shall endeavor to engage the Centers  
12 for Disease Control and other federal agencies for the purpose of  
13 creating, organizing and implementing a medical study to assess any  
14 long-term health effects resulting from the chemical spill that  
15 occurred on January 9, 2014, and which exposed the public to  
16 chemicals, including 4-methylcyclohexane.

17 The commissioner shall conduct such study pursuant to the  
18 authority granted to the commissioner pursuant to section six of this  
19 article: *Provided*, That in the event the commissioner determines  
20 that, in order to adequately perform such study, additional authority  
21 is required, the commissioner shall provide a report of such  
22 additional authority requested to the Governor and the Joint  
23 Committee on Government and Finance.

24 The commissioner shall cause to be collected and preserved

1 information from health providers who treated patients presenting  
2 with symptoms diagnosed as having been caused or exacerbated as a  
3 result of exposure related to the January 9, 2014, chemical spill.  
4 The commissioner shall analyze such data and other information deemed  
5 relevant by the commissioner and provide a report of the  
6 commissioner's findings regarding potential long-term health effects  
7 of the January 9, 2014, chemical spill to the Joint Committee on Health  
8 by January 1, 2015, including the results of its efforts to engage  
9 federal cooperation and assistance for a long-term comprehensive  
10 study on the costs of conducting such study on behalf of the state.

11 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

13 **§22-26-2. Definitions.**

14 For purposes of this article:

15 (1) "Baseline average" means the average amount of water  
16 withdrawn by a large-quantity user over a representative historical  
17 time period as defined by the secretary.

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

24 (3) "Commercial well" means a well that serves small businesses

1 and facilities in which water is the prime ingredient of the service  
2 rendered, including water wells drilled to support horizontal well  
3 operations.

4 (4) "Community water system" means a public water system that  
5 pipes water for human consumption to at least fifteen service  
6 connections used by year-round residents or one that regularly serves  
7 at least twenty-five residents.

8 (5) "Consumptive withdrawal" means any withdrawal of water which  
9 returns less water to the water body than is withdrawn.

10 (6) "Department" means the West Virginia Department of  
11 Environmental Protection.

12 (7) "Farm use" means irrigation of any land used for general  
13 farming, forage, aquaculture, pasture, orchards, nurseries, the  
14 provision of water supply for farm animals, poultry farming or any  
15 other activity conducted in the course of a farming operation.

16 (8) "Industrial well" means a well used exclusively for  
17 nonpotable purposes, including industrial processing, fire  
18 protection, washing, packing or manufacturing of a product excluding  
19 food and beverages, or other nonpotable uses.

20 (9) "Interbasin transfer" means the permanent removal of water  
21 from the watershed from which it is withdrawn.

22 (10) "Large-quantity user" means any person who withdraws over  
23 three hundred thousand gallons of water in any thirty-day period from  
24 the state's waters and any person who bottles water for resale

1 regardless of quantity withdrawn. "Large-quantity user" excludes  
2 farm use, including watering livestock or poultry on a farm, though  
3 farms may voluntarily report water withdrawals to assist with the  
4 accuracy of the survey.

5 (11) "Maximum potential" means the maximum designed capacity of  
6 a facility to withdraw water under its physical and operational  
7 design.

8 (12) "Noncommunity nontransient water system" means a public  
9 water system that serves at least twenty-five of the same persons over  
10 six months per year.

11 (13) "Nonconsumptive withdrawal" means any withdrawal of water  
12 which is not a consumptive withdrawal as defined in this section.

13 (14) "Person", "persons" or "people" means an individual, public  
14 and private business or industry, public or private water service and  
15 governmental entity.

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

18 (16) "Transient water system" means a public water system that  
19 serves at least twenty-five transient people at least sixty days a  
20 year.

21 (17) "Test well" means a well that is used to obtain information  
22 on groundwater quantity, quality, aquifer characteristics and  
23 availability of production water supply for manufacturing,  
24 commercial and industrial facilities.

1 (18) "Water resources", "water" or "waters" means any and all  
2 water on or beneath the surface of the ground, whether percolating,  
3 standing, diffused or flowing, wholly or partially within this state,  
4 or bordering this state and within its jurisdiction and includes,  
5 without limiting the generality of the foregoing, natural or  
6 artificial lakes, rivers, streams, creeks, branches, brooks, ponds,  
7 impounding reservoirs, springs, wells, watercourses and wetlands:  
8 *Provided*, That farm ponds, industrial settling basins and ponds and  
9 waste treatment facilities are excluded from the waters of the state.

10 (19) "Watershed" means a hydrologic unit utilized by the United  
11 States Department of Interior's Geological Survey, adopted in 1974,  
12 as a framework for detailed water and related land-resources  
13 planning.

14 (20) "Withdrawal" means the removal or capture of water from  
15 water resources of the state regardless of whether it is consumptive  
16 or nonconsumptive: *Provided*, That water encountered during coal, oil,  
17 gas, water well drilling and initial testing of water wells, or other  
18 mineral extraction and diverted, but not used for any purpose and not  
19 a factor in low-flow conditions for any surface water or groundwater,  
20 is not deemed a withdrawal.

21 **§22-26-3. Waters claimed by state; water resources protection**  
22 **survey; registration requirements; agency cooperation;**  
23 **information gathering.**

24 (a) The waters of the State of West Virginia are claimed as

1 valuable public natural resources held by the state for the use and  
2 benefit of its citizens. The state shall manage and protect its  
3 waters effectively for present and future use and enjoyment and for  
4 the protection of the environment. Therefore, it is necessary for  
5 the state to determine the nature and extent of its water resources,  
6 the quantity of water being withdrawn or otherwise used and the nature  
7 of the withdrawals or other uses: *Provided*, That no provisions of this  
8 article may be construed to amend or limit any other rights and  
9 remedies created by statute or common law in existence on the date  
10 of the enactment of this article.

11 (b) The secretary shall conduct an ongoing water resources  
12 survey of consumptive and nonconsumptive surface water and  
13 groundwater withdrawals by large-quantity users in this state. The  
14 secretary shall determine the form and format of the information  
15 submitted, including the use of electronic submissions. The  
16 secretary shall establish and maintain a statewide registration  
17 program to monitor large-quantity users of water resources.

18 (c) Large-quantity users, except those who purchase water from  
19 a public or private water utility or other service that is reporting  
20 its total withdrawal, shall register with the department and provide  
21 all requested survey information regarding withdrawals of the water  
22 resources. Multiple withdrawals from state water resources that are  
23 made or controlled by a single person and used at one facility or  
24 location shall be considered a single withdrawal of water. Water

1 withdrawals for self-supplied farm use and private households will  
2 be estimated. Water utilities regulated by the Public Service  
3 Commission pursuant to article two, chapter twenty-four of this code  
4 are exempted from providing information on interbasin transfers to  
5 the extent those transfers are necessary to provide water utility  
6 services within the state.

7 (d) Except as provided in subsection (f) of this section,  
8 large-quantity users who withdraw water from a West Virginia water  
9 resource shall comply with the survey and registration requirements  
10 of this article. Registration shall be maintained annually by every  
11 large-quantity user on forms and in a manner prescribed by the  
12 secretary.

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

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

19 (g) All state agencies and local governmental entities that have  
20 a regulatory, research, planning or other function relating to water  
21 resources, including, but not limited to, the State Geological and  
22 Economic Survey, the Division of Natural Resources, the Public  
23 Service Commission, the Bureau for Public Health, the Commissioner  
24 of the Department of Agriculture, the Division of Homeland Security

1 and Emergency Management, Marshall University, West Virginia  
2 University and regional, county and municipal planning authorities  
3 may enter into interagency agreements with the secretary and shall  
4 cooperate by: (i) Providing information relating to the water  
5 resources of the state; (ii) providing any necessary assistance to  
6 the secretary in effectuating the purposes of this article; and (iii)  
7 assisting in the development of a state water resources management  
8 plan. The secretary shall determine the form and format of the  
9 information submitted by these agencies.

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

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

22 (j) The secretary shall, to the extent reliable water withdrawal  
23 data is reasonably available from sources other than persons required  
24 to provide data and participate in the survey and registration,

1 utilize that data to fulfill the requirements of this section. If  
2 the data is not reasonably available to the secretary, persons  
3 required to participate in the survey and registration are required  
4 to provide the data. Altering locations of intakes and discharge  
5 points that result in an impact to the withdrawal of the water  
6 resources shall also be reported.

7 (k) The secretary shall report annually to the Joint Legislative  
8 Oversight Commission on State Water Resources on the survey results.  
9 The secretary shall also make a progress report annually on the  
10 implementation of the State Water Resources Management Plan and any  
11 significant changes that may have occurred since the State Water  
12 Resources Management Plan was submitted in 2013.

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

19 (m) The secretary shall make recommendations to the Joint  
20 Legislative Oversight Commission on Water Resources created in  
21 section five of this article relating to the implementation of a water  
22 quantity management strategy for the state or regions of the state  
23 where the quantity of water resources are found to be currently  
24 stressed or likely to be stressed due to emerging beneficial or other

1 uses, ecological conditions or other factors requiring the  
2 development of a strategy for management of these water resources.

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

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

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

20 **§22-26-5. Joint Legislative Oversight Commission on State Water**  
21 **Resources.**

22 (a) The President of the Senate and the Speaker of the House of  
23 Delegates shall each designate five members of their respective  
24 houses, at least one of whom shall be a member of the minority party,

1 to serve on a joint legislative oversight commission charged with  
2 immediate and ongoing oversight of the water resources survey,  
3 registration and development of a state water resources management  
4 plan. This commission shall be known as the Joint Legislative  
5 Oversight Commission on State Water Resources and shall regularly  
6 investigate and monitor all matters relating to water resources,  
7 including the survey and plan.

8 (b) The expenses of the commission, including the cost of  
9 conducting the survey and monitoring any subsequent strategy and  
10 those incurred in the employment of legal, technical, investigative,  
11 clerical, stenographic, advisory and other personnel, are to be  
12 approved by the Joint Committee on Government and Finance and paid  
13 from legislative appropriations.

14 **§22-26-6. Mandatory survey and registration compliance.**

15 (a) The water resources survey and subsequent registry will  
16 provide critical information for protection of the state's water  
17 resources and, thus, mandatory compliance with the survey and  
18 registry is necessary.

19 (b) All large-quantity users who withdraw water from a West  
20 Virginia water resource shall complete the survey and register use  
21 with the department. Any person who fails to complete the survey or  
22 register, provides false or misleading information on the survey or  
23 registration, or fails to provide other information as required by  
24 this article may be subject to a civil administrative penalty not to

1 exceed \$5,000 to be collected by the secretary consistent with the  
2 secretary's authority pursuant to this chapter. Every thirty days  
3 after the initial imposition of the civil administrative penalty,  
4 another penalty may be assessed if the information is not provided.  
5 The secretary shall provide written notice of failure to comply with  
6 this section thirty days prior to assessing the first administrative  
7 penalty.

8 **§22-26-7. Secretary authorized to log wells; collect data.**

9 (a) In order to obtain important information about the state's  
10 surface and groundwater, the secretary is authorized to collect  
11 scientific data on surface and groundwater and to enter into  
12 agreements with local and state agencies, the federal government and  
13 private entities to obtain this information.

14 (b) Any person who installs a community water system,  
15 noncommunity nontransient water system, transient water system,  
16 commercial well, industrial or test well shall notify the secretary  
17 of his or her intent to drill a water well no less than ten days prior  
18 to commencement of drilling. The ten-day notice is the  
19 responsibility of the owner, but may be given by the drilling  
20 contractor.

21 (c) The secretary has the authority to gather data, including  
22 driller and geologist logs, run electric and other remote-sensing  
23 logs and devices and perform physical characteristics tests on  
24 nonresidential and multifamily water wells.

1 (d) The drilling contractor shall submit to the secretary a copy  
2 of the well completion forms submitted to the Bureau for Public Health  
3 for a community water system, noncommunity nontransient water system,  
4 transient water system, commercial well, industrial or test well.  
5 The drilling contractor shall also provide the well GPS location and  
6 depth to groundwater on the well report submitted to the secretary.

7 (e) Any person who fails to notify the secretary prior to  
8 drilling a well or impedes collection of information by the secretary  
9 under this section is in violation of the Water Resources Protection  
10 and Management Act and is subject to the civil administrative penalty  
11 authorized by section six of this article.

12 (f) Any well contracted for construction by the secretary for  
13 groundwater or geological testing must be constructed at a minimum  
14 to well design standards as promulgated by the Bureau for Public  
15 Health. Any wells contracted for construction by the secretary for  
16 groundwater or geological testing that would at a later date be  
17 converted to a public use water well must be constructed to comport  
18 to state public water design standards.

19 **§22-26-8.State Water Resources Management Plan; powers and duty of**  
20 **secretary.**

21 (a) The secretary shall oversee the development of a State Water  
22 Resources Management Plan to be completed no later than November 30,  
23 2013. The plan shall be reviewed and revised as needed after its  
24 initial adoption. The plan shall be developed with the cooperation

1 and involvement of local and state agencies with regulatory, research  
2 or other functions relating to water resources including, but not  
3 limited to, those agencies and institutions of higher education set  
4 forth in section three of this article and a representative of  
5 large-quantity users. The State Water Resources Management Plan  
6 shall be developed utilizing the information obtained pursuant to  
7 said section and any other relevant information available to the  
8 secretary.

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

13 (c) The secretary shall continue to develop and obtain the  
14 following:

15 (1) An inventory of the surface water resources of each region  
16 of this state, including an identification of the boundaries of  
17 significant watersheds and an estimate of the safe yield of sources  
18 for consumptive and nonconsumptive uses during periods of normal  
19 conditions and drought.

20 (2) A listing of each consumptive or nonconsumptive withdrawal  
21 by a large-quantity user, including the amount of water used, location  
22 of the water resources, the nature of the use, location of each intake  
23 and discharge point by longitude and latitude where available and,  
24 if the use involves more than one watershed or basin, the watersheds

1 or basins involved and the amount transferred.

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

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

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

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

20 (A) A discussion of any area of concern regarding historical or  
21 current conditions that indicate a low-flow condition or where a  
22 drought or flood has occurred or is likely to occur that threatens  
23 the beneficial use of the surface water or groundwater in the area;  
24 and

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

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

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

12 (9) An assessment of floodplain and stormwater management  
13 problems.

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

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

24 (12) An assessment of both structural and nonstructural

1 alternatives to address identified water availability problems,  
2 adverse impacts on water uses or conflicts between water users,  
3 including potential actions to develop additional or alternative  
4 supplies, conservation measures and management techniques.

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

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

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

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

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

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

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

24 (4) The needs and priorities reflected in comprehensive plans

1 and zoning ordinances adopted by a county or municipal government.

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

4 (6) A balancing and encouragement of multiple uses of water  
5 resources, recognizing that all water resources of this state are  
6 capable of serving multiple uses and human needs, including multiple  
7 uses of water resources for reasonable and beneficial 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 treatment  
12 of all water users that are similarly situated without regard to  
13 established political boundaries.

14 (e) Each November, the secretary shall report to the Joint  
15 Legislative Oversight Commission on State Water Resources on the  
16 implementation of the State Water Resources Management Plan.

17 (f) The State Water Resources Management Plan is adopted.  
18 Persons identified as large-quantity users prior to the effective  
19 date of this subsection shall report actual monthly water  
20 withdrawals, or monthly water withdrawals by a method approved by the  
21 secretary, for the previous calendar year by March 31 of each  
22 succeeding year. Persons identified as large-quantity users on or  
23 after the effective date of this subsection shall submit their initial  
24 annual report no later than March 31, 2016, and subsequent annual

1 reports by March 31 of each year thereafter.

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

3 **§22-30-1. Short title.**

4 This article may be known and cited as the Aboveground Storage  
5 Tank Act.

6 **§22-30-2. Legislative findings.**

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

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

18 (c) The West Virginia Legislature further finds it in the public  
19 policy of the state that clean, uncontaminated water be available to  
20 its businesses and industries that rely on water for their economic  
21 survival, and the well-being of their employees. These include  
22 hospitals and the medical industry, schools and educational  
23 institutions, the food and hospitality industries, the tourism  
24 industry, manufacturing, coal, natural gas and other industries.

1 Businesses and industries searching for places to locate or relocate  
2 consider the quality of life for their employees as well as the quality  
3 of the raw materials such as clean water.

4 (d) The Legislature further finds that large quantities of  
5 fluids are stored in aboveground storage tanks within the state and  
6 that emergency situations involving these fluids can and will arise  
7 that may present a hazard to human health, safety, the water  
8 resources, the environment and the economy of the state. The  
9 Legislature further recognizes that some of these fluids have been  
10 stored in aboveground storage tanks in a regulated manner  
11 insufficient to protect human health, safety, water resources, the  
12 environment and the economy of the state.

13 **§22-30-3. Definitions.**

14 For purposes of this article:

15 (1) "Aboveground storage tank" or "tank" means a device made to  
16 contain an accumulation of more than one thousand three hundred twenty  
17 gallons of fluids that are liquids at standard temperature and  
18 pressure, which is constructed primarily of noncarbon materials,  
19 including wood, concrete, steel, plastic or fiberglass reinforced  
20 plastic, which provide structural support, more than ninety percent  
21 capacity of which is above the surface of the ground, but does not  
22 include any process vessel. The term includes stationary devices  
23 which are permanently affixed, and mobile devices which remain in one  
24 location on a continuous basis for sixty or more days, and includes

1 all ancillary aboveground pipes and dispensing systems up to the first  
2 point of isolation and all ancillary underground pipes and dispensing  
3 systems connected to the aboveground containers to the first point  
4 of isolation. Notwithstanding any other provision of this code to  
5 the contrary, shipping containers, including railroad freight cars,  
6 subject to federal regulation under the Federal Railroad Safety Act,  
7 49 U. S. C. §§20101-2015, as amended, including but not limited to  
8 federal regulations promulgated thereunder at 49 CFR 172, 173 or 174,  
9 or subject to other federal law governing the transportation of  
10 hazardous materials are not subject to any provision of this article  
11 or of article thirty-one of this chapter. Notwithstanding any other  
12 provision of this code to the contrary, barges or boats subject to  
13 federal regulation under the United States Coast Guard, United States  
14 Department of Homeland Security, including, but not limited to,  
15 federal regulations promulgated at 33 CFR 1, et seq, or subject to  
16 other federal law governing the transportation of hazardous materials  
17 are not subject to any provision of this article or of article  
18 thirty-one of this chapter. Notwithstanding any other provision of  
19 this code to the contrary, swimming pools are not subject to any  
20 provision of this article or article thirty-one of this chapter.

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

23 (3) "Nonoperational storage tank" means an empty aboveground  
24 storage tank in which fluids will not be deposited or from which fluids

1 will not be dispensed on or after the effective date of this article.

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

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

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

17 (7) "Process vessel" means tanks, containers or other vessels  
18 utilized in a facility in the manufacturing process through which  
19 there is a steady, variable, recurring or intermittent flow of  
20 materials. This does not include tanks used for storage of materials  
21 prior to their introduction into the production process or for the  
22 storage of finished products or by-products of the production  
23 process.

24 (8) "Public groundwater supply source" means a primary source

1 of water supply for a public water system which is directly drawn from  
2 a well, underground stream, underground reservoir, underground mine  
3 or other primary source of water supplies which is found underneath  
4 the surface of the state.

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

9 (10) "Public surface water influenced groundwater supply  
10 source" means a source of water supply from a public water system which  
11 is directly drawn from an underground well, underground river or  
12 stream, underground reservoir or underground mine, and the quantity  
13 or quality of the water in that underground supply source is heavily  
14 influenced, directly or indirectly, by the quantity and quality of  
15 surface water in the immediate area.

16 (11) "Public water system" means:

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

22 (i) Any collection, treatment, storage and distribution  
23 facilities under the control of the owner or operator of the system  
24 and used primarily in connection with the system; and

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

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

5 (i) Consists only of distribution and storage facilities and  
6 does not have any collection and treatment facilities;

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

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

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

12 (12) "Release" means any spilling, leaking, emitting,  
13 discharging, escaping, leaching or disposing of fluids from an  
14 aboveground storage tank into groundwater, surface water or  
15 subsurface soils. The term shall also include spilling, leaking,  
16 emitting, discharging, escaping, leaching or disposing of fluids from  
17 an aboveground storage tank into a containment structure or facility  
18 that poses an immediate threat of contamination of the soils,  
19 subsurface soils, surface water or groundwater: *Provided*, That the  
20 overflow or spillage of up to twenty gallons of fluid during the  
21 loading or unloading of liquids shall not be required to be reported  
22 if the overflow or spillage is wholly contained within a containment  
23 structure or facility, it is promptly cleaned up and no portion of  
24 the overflow or spillage escapes onto the ground or into adjacent

1 surface water.

2 (13) "Secondary containment" means a safeguard applied to one  
3 or more tanks that prevents the discharge into the waters of the state  
4 of the entire capacity of the largest single tank and sufficient  
5 freeboard to contain precipitation. In order to qualify as secondary  
6 containment, the barrier and containment field must be sufficiently  
7 impervious to contain fluids in the event of a release, and may include  
8 double-walled tanks, dikes, containment curbs, pits or drainage  
9 trench enclosures that safely confine the release from a tank in a  
10 facility catchment basin or holding pond. (14) "Secretary"

11 means the Secretary of the Department of Environmental Protection,  
12 or his or her designee.

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

19 (16) "Zone of critical concern" for a public surface water supply  
20 is a corridor along streams within a watershed that warrants more  
21 detailed scrutiny due to its proximity to the surface water intake  
22 and the intake's susceptibility to potential contaminants within that  
23 corridor. The zone of critical concern is determined using a  
24 mathematical model that accounts for stream flows, gradient and area

1 topography. The length of the zone of critical concern is based on  
2 a five-hour time-of-travel of water in the streams to the water  
3 intake, plus an additional one-fourth mile below the water intake.  
4 The width of the zone of critical concern is one thousand feet measured  
5 horizontally from each bank of the principal stream and five hundred  
6 feet measured horizontally from each bank of the tributaries draining  
7 into the principal stream.

8 **§22-30-4. Inventory and registration of existing aboveground storage**  
9 **tanks.**

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

17 (b) At a minimum the inventory form shall identify the ownership  
18 of the tank, tank location, date of installation if known, type of  
19 construction, capacity and age of the tank, the type and volume of  
20 fluid stored therein, and the identity of and distance to the nearest  
21 groundwater public water supply intake and/or nearest surface water  
22 downstream public water supply intake. (c) If the

23 inventoried tank is regulated under any existing state or federal  
24 regulatory program, the owner of the tank shall be required to provide

1 the identifying number of any license, registration or permit issued  
2 for the tank, and identify the regulatory standards and requirements  
3 the tank is required to meet.

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

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

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

20 (g) On and after October 1, 2014, it shall be unlawful for any  
21 owner or operator to operate or use an aboveground storage tank  
22 subject to this article which has not been properly registered or for  
23 which any applicable registration fee has not been paid.

24 **§22-30-5. Aboveground Storage Tank Regulatory Program;**

1        **promulgation of appropriate aboveground tank standards;**  
2        **permitting procedures and waiver requirements; rulemaking**  
3        **requirements.**

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

8        (b) To assure further protection of the water resources of the  
9 state, the secretary shall develop a regulatory program for new and  
10 existing aboveground storage tanks incorporating nationally  
11 recognized tank standards such as those standards developed by the  
12 American Petroleum Institute (API), the Steel Tank Institute (STI)  
13 or comparable authorities, and taking into account the size, location  
14 and contents of the tanks. At a minimum, the program shall include  
15 the following:

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

18        (2) Performance standards for design, construction,  
19 installation, maintenance, corrosion detection and maintenance,  
20 release detection and prevention and secondary containment to ensure  
21 the structural integrity of the storage tank and the secondary  
22 containment;

23        (3) Requirements for maintaining a leak detection system,  
24 inventory control systems together with tank testing or a comparable

1 system or method designed to identify releases from aboveground  
2 storage tanks in a manner consistent with the protection of human  
3 health, safety, water resources and the environment;

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

7 (5) Requirements for early detection of releases and immediate  
8 reporting of releases;

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

11 (7) Requirements for the closure of aboveground storage tanks  
12 and remediation to prevent future releases of fluids or materials to  
13 the state's water resources;

14 (8) Requirements for certification of installation, removal,  
15 retrofit, corrosion and other testing and inspection of aboveground  
16 storage tanks, leak detection systems and secondary containment by  
17 a qualified registered professional engineer regulated and licensed  
18 by the State Board of Registration for Professional Engineers, or by  
19 an individual certified to perform tank inspections by the American  
20 Petroleum Institute, or by a person holding certification under  
21 another program approved by the secretary;

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

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

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

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

11 (ii) Cathodic protection experts for all aspects of corrosion  
12 prevention projects requiring knowledge of the design, installation,  
13 monitoring or maintenance of a cathodic protection system; and

14 (iii) Inspectors to ensure best practices and standards are  
15 adhered to on a corrosion prevention and mitigation project;

16 (C) A plan to prevent environmental degradation that could occur  
17 as a result of carrying out corrosion prevention and mitigation  
18 including, but not limited to, the careful handling and containment  
19 of hazardous materials, not including the contaminant within, removed  
20 from the interior and or exterior of an aboveground storage tank; and

21

22 (D) Use of industry experts for consultation and direct to  
23 determine whether to approve a corrosion prevention and mitigation  
24 plan, or any part therein, the secretary shall consult, and interact

1 directly with, corrosion industry experts specializing in the  
2 training and certification of personnel to carry out corrosion  
3 prevention and mitigation methods.

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

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

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

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

21 (14) A procedure for any person adversely affected by a decision  
22 or order of the secretary relating to the aboveground storage tank  
23 program to appeal to the Environmental Quality Board, pursuant to the  
24 provisions of article one, chapter twenty-two-b of this code;

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

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

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

24 **§22-30-6. Annual inspection and certification.**

1           (a) Every owner or operator of an aboveground storage tank  
2 regulated herein shall have an annual inspection of each tank  
3 performed by a qualified registered professional engineer or a  
4 qualified person working under the direct supervision of a registered  
5 professional engineer, regulated and licensed by the State Board of  
6 Registration for Professional Engineers, or by an individual  
7 certified to perform tank inspections by the American Petroleum  
8 Institute, or by a person holding certification under another program  
9 approved by the secretary. Every owner or operator shall submit, on  
10 a form prescribed by the secretary, a certification from the engineer  
11 that each tank, associated equipment, leak detection system and  
12 secondary containment structure meets the minimum standards  
13 established by this article or by the secretary by rule.

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

16 **§22-30-7. Financial responsibility.**

17           The secretary shall promulgate rules requiring owners and  
18 operators to provide evidence of adequate financial resources to  
19 undertake reasonable corrective action for releases of fluid from  
20 aboveground storage tanks. The means of demonstrating adequate  
21 financial responsibility may include, but not be limited to,  
22 providing evidence of current insurance, guarantee, surety bond,  
23 letter of credit, proof of assets, trust fund or qualification as a  
24 self insurer.

1 **§22-30-8. Corrective action.**

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

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

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

12 (3) Undertake immediate corrective action with respect to any  
13 release or threatened release of fluid from an aboveground storage  
14 tank when, in the judgment of the secretary, the action is necessary  
15 to protect human health, safety, water resources or the environment  
16 from contamination caused by a release.

17 (b) The corrective action undertaken or required by this section  
18 shall be what may be necessary to protect human health, water  
19 resources and the environment from contamination caused by a release,  
20 including the ordered cessation or closure of a source of  
21 contamination and the ordered remediation of a contaminated site.  
22 The secretary shall use funds in the Protect Our Water Fund  
23 established pursuant to this article for payment of costs incurred  
24 for corrective action taken by the secretary in accordance with this

1 article. In undertaking corrective actions under this section and  
2 in issuing orders requiring owners or operators to undertake the  
3 actions, the secretary shall give priority to releases or threatened  
4 releases of fluid from aboveground storage tanks that pose the  
5 greatest threat to human health, water resources or the environment.

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

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

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

23 (3) The cost of corrective action to be expended on an  
24 aboveground storage tank exceeds the amount of resources that the

1 owner or operator can reasonably be expected to possess based on the  
2 information required to be submitted pursuant to this article and,  
3 considering the fluid being stored in the aboveground storage tank  
4 in question, expenditures from the Protect Our Water Fund are  
5 necessary to assure an effective corrective action; or

6 (4) The owner or operator of the tank has failed or refused to  
7 comply with an order of the secretary under this article or of the  
8 Environmental Quality Board under article one, chapter twenty-two-b  
9 of this code to comply with appropriate corrective action measures  
10 ordered by the secretary or the Environmental Quality Board.

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

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

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

24 (e) The written notice to the owner or operator must inform the

1 owner or operator that if it is subsequently found liable for releases  
2 pursuant to this section, the owner or operator will be required to  
3 reimburse the Protect Our Water Fund for the costs of the  
4 investigation, information gathering and corrective action taken by  
5 the secretary.

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

16 **§22-30-9. Spill prevention response plan.**

17 (a) Within one hundred eighty days of the effective date of this  
18 article, each owner or operator of an aboveground storage tank shall  
19 submit a spill prevention response plan for each aboveground storage  
20 tank. Owners and operators of aboveground storage tanks shall file  
21 updated plans required to be submitted by this section no less  
22 frequently than every three years. Each plan shall be site-specific,  
23 consistent with the requirements of this article, and developed in  
24 consultation with Bureau for Public Health, county and municipal

1 emergency management agencies. The spill prevention response plan  
2 shall at a minimum:

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

15 (2) Identify all facility-related positions with duties and  
16 responsibilities for developing, implementing and maintaining the  
17 facility's plan. The plan shall describe in detail the chain of  
18 command at the aboveground storage tank facility and list all facility  
19 emergency coordinators and all known emergency response contractors;

20 (3) Provide a preventive maintenance program that includes  
21 monitoring and inspection procedures, including identification of  
22 stress points, employee training programs and security systems. The  
23 plan shall include a description of potential sources and areas where  
24 spills and leaks may occur by drawings and plot plans and shall

1 identify specific spill prevention measures for those identified  
2 areas;

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

7 (5) Provide contact information obtained by the owner or  
8 operator of the aboveground storage tanks from the county and  
9 municipal emergency management agencies and the nearest downstream  
10 public water supply intake, and designate the person or persons to  
11 be notified in the event of a release from an aboveground storage tank;  
12 and

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

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

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

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

24 (3) There are substantial changes in emergency response

1 protocols at the aboveground storage tank facility;

2 (4) The plan fails in an emergency;

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

4 or

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

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

16 (d) Nothing contained in this section relieves the owner or  
17 operator of an aboveground storage tank from his or her obligation  
18 to report any release immediately to the department's emergency  
19 notification telephone number.

20 **§22-30-10. Notice to local governments and water companies.**

21 The owner or operator of an aboveground storage tank facility  
22 shall provide as required by the secretary public notice to any public  
23 water system where the facility is located within the system's  
24 identified groundwater supply's source water protection area or

1 within the system's surface water supply's zone of critical  
2 protection, to the local municipality, if any, and to the county in  
3 which the facility is located. The notice shall provide a detailed  
4 inventory of the type and quantity of fluid stored in aboveground  
5 storage tanks at the facility and the material safety data sheets  
6 (MSDS) associated with the fluid in storage. The owner or operator  
7 shall also provide as required by the secretary a copy of the spill  
8 prevention response plan and any updates thereto, which have been  
9 approved by the secretary pursuant to this act, to the applicable  
10 public water systems and county and municipal emergency management  
11 agencies.

12 **§22-30-11. Required signage.**

13 Every aboveground storage tank shall display the signage, if  
14 any, required by the Occupational Safety and Health Administration;  
15 the tank registration number, when issued by the secretary; and the  
16 emergency contact number for the owner or operator of the tank and  
17 the emergency contact number for the Department of Environmental  
18 Protection's Spill Reporting Hotline. For the purposes of this  
19 section, the requirements for prominently posted signage shall be  
20 specified in the rules proposed for promulgation by the secretary  
21 pursuant to this article and article three, chapter twenty-nine-a of  
22 this code.

23 **§22-30-12. Aboveground Storage Tank Administrative Fund.**

24 (a) The secretary shall collect annual registration fees from

1 owners or operators of each aboveground storage tank in an amount to  
2 be promulgated in the legislative rules authorized by this article  
3 to be used by the secretary to defray the costs of administering this  
4 article. All registration and permit fees and the net proceeds of  
5 all fines, penalties and forfeitures collected under this article,  
6 including accrued interest, shall be paid into a special revenue  
7 account, hereby created within the State Treasury, designated the  
8 Aboveground Storage Tank Administrative Fund.

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

14 **§22-30-13. Protect Our Water Fund.**

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

1 Expenditures from the fund shall be solely to respond to leaking  
2 aboveground storage tanks, and are not authorized from collections  
3 but are to be made only in accordance with appropriation by the  
4 Legislature and in accordance with the provisions of article three,  
5 chapter twelve of this code and upon the fulfillment of the provisions  
6 set forth in article two, chapter eleven-b of this code: *Provided,*  
7 That for the fiscal years ending June 30, 2014 and 2015, expenditures  
8 are authorized from collections rather than pursuant to an explicit  
9 appropriation by the Legislature. At the end of each fiscal year,  
10 any unexpended balance, including accrued interest, on deposit in the  
11 Protect Our Water Fund shall not be transferred to the General Revenue  
12 Fund, but shall remain in the Protect Our Water Fund for expenditure  
13 pursuant to this section.

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

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

24 (d) The secretary may enter into agreements and contracts and

1 to expend the moneys in the fund for the following purposes:

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

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

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

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

23 **§22-30-14. Public access to information.**

24 (a) The public shall have access to all documents and information

1 submitted to the agency, subject to the limitations contained in the  
2 state Freedom of Information Act, article one, chapter twenty-nine-b  
3 of this code. Records, reports or information obtained from any  
4 persons under this article may be disclosed to other officers,  
5 employees or authorized representatives of this state or federal  
6 agency implementing the provisions of this article or any other  
7 applicable law related to releases of fluid from aboveground storage  
8 tanks that impact the state's water resources.

9 (b) A list of the potential sources of significant contamination  
10 contained within the zone of critical concern as provided by the  
11 Department of Environmental Protection, the Bureau for Public Health  
12 and the Division of Homeland Security and Emergency Management may  
13 be disclosed. The exact location of the contaminants within the zone  
14 of critical concern is not subject to public disclosure in response  
15 to a Freedom of Information Act request under article one, chapter  
16 twenty-nine-b of this code. However, the location, characteristics  
17 and approximate quantities of potential sources of significant  
18 contamination within the zone of critical concern shall be made known  
19 to one or more designees of the public water utility, and shall be  
20 maintained in a confidential manner by the public water utility. In  
21 the event of a chemical spill, release or related emergency,  
22 information pertaining to any spill or release of contaminant shall  
23 be immediately disseminated to any emergency responders responding  
24 to the site of a spill or release, and the general public shall be

1 promptly notified in the event of a chemical spill, release or related  
2 emergency.

3 **§22-30-15. Inspections, monitoring and testing.**

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

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

11 (2) Conduct reasonable monitoring or testing;

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

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

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

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

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

23 (3) Conduct monitoring or testing of the aboveground storage  
24 tanks, associated equipment, contents or surrounding soils, surface

1 water or groundwater; and

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

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

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

12 **§22-30-16. Administrative orders; injunctive relief.**

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

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

8 **§22-30-17. Civil and criminal penalties.**

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

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

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

23 (d) Any person who knowingly and intentionally violates any  
24 provision of this article shall be guilty of a misdemeanor, and, upon

1 conviction thereof, shall be confined in a regional jail for a period  
2 of time not exceeding one year, and be fined an amount not to exceed  
3 \$25,000.

4 (e) Any person convicted of a second or subsequent willful  
5 violation of subsection (d) of this section or knowingly and willfully  
6 violates any provision of any permit, rule or order issued under or  
7 subject to the provisions of this article is guilty of a felony and,  
8 upon conviction, shall be imprisoned in a correctional facility not  
9 less than one nor more than three years, or fined not more than \$50,000  
10 for each day of violation, or both fined and imprisoned.

11 (f) Any person may be prosecuted and convicted under the  
12 provisions of this section notwithstanding that none of the  
13 administrative remedies provided in this article have been pursued  
14 or invoked against said person and notwithstanding that civil action  
15 for the imposition and collection of a civil penalty or an application  
16 for an injunction under the provisions of this article has not been  
17 filed against such person.

18 (g) Where a person holding a permit is carrying out a program  
19 of pollution abatement or remedial action in compliance with the  
20 conditions and terms of the permit, the person is not subject to  
21 criminal prosecution for pollution recognized and authorized by the  
22 permit.

23 (h) Civil penalties are payable to the secretary. All moneys  
24 collected under this section for civil fines collected under this

1 article shall be deposited into a restricted account known as the  
2 Protect Our Water Fund. All money deposited into this account shall  
3 be used by the secretary solely to respond to leaking aboveground  
4 storage tanks.

5 **§22-30-18. Appeal to Environmental Quality Board.**

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

10 **§22-30-19. Duplicative enforcement prohibited.**

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

16 **§22-30-20. Reporting and accountability.**

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

1 process, and any pertinent changes to federal rules or regulations.

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

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

14 **§22-30-21. Interagency cooperation.**

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

23 (b) The secretary shall also coordinate with state and local  
24 emergency response agencies to prepare and issue appropriate

1 emergency response plans to facilitate a coordinated emergency  
2 response and incident command and communication between the owner or  
3 operator of the aboveground storage tank, the state and local  
4 emergency response agencies and the affected public water system.

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

10 **§22-30-22. Imminent and substantial danger.**

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

23 (b) Upon receipt of information that there is any aboveground  
24 storage tank that presents an imminent and substantial danger to human

1 health, safety, water resources or the environment, the secretary  
2 shall provide immediate notice to the appropriate state and local  
3 government agencies and any affected public water system. In  
4 addition, the secretary shall require notice of any danger to be  
5 promptly posted at the aboveground storage tank facility containing  
6 the aboveground storage tank at issue.

7 **§22-30-23. Promulgation of rules.**

8 The secretary shall promulgate emergency and legislative rules  
9 as necessary to implement the provisions of this article in accordance  
10 with the provisions of article three, chapter twenty-nine-a of this  
11 code.

12 **§22-30-24. Powers and duties of secretary.**

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

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

18 (c) The secretary may revoke any registration, authorization or  
19 permit for a violation of this article or the rules promulgated  
20 hereunder.

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

24 (e) The secretary, in accordance with this article, may order

1 corrective action to be undertaken, take corrective action or  
2 authorize a third party to take corrective action.

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

7 **§22-30-25. Scope of article; waiving additional permitting**  
8 **requirements for certain categories of aboveground storage**  
9 **tanks; establishing a process for granting waivers for**  
10 **additional categories of ground storage tanks, by legislative**  
11 **rule, upon verification that the category of tanks are regulated**  
12 **under comparable or more rigorous protective state or federal**  
13 **standards.**

14 (a) While all aboveground storage tanks shall be required to  
15 participate in the inventory and registration process set forth in  
16 section four of this article, the following categories of containers  
17 and tanks shall not be required to be permitted under section five  
18 of this article, either because they do not represent a substantial  
19 threat of contamination, or they are currently regulated under  
20 standards which meet or exceed the protective standards and  
21 requirements set forth in this article:

22 (1) An aboveground storage tank containing drinking water,  
23 filtered surface water, demineralized water, noncontact cooling  
24 water or water stored for fire or emergency purposes;

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

3 (3) Septic tanks and home aeration systems;

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

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

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

17 (7) Liquid traps or associated gathering lines related to oil  
18 or gas production and gathering operations;

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

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

24 (b) The Department of Environmental Protection may designate,

1 by legislative rule, additional categories of aboveground storage  
2 tanks for which an individual aboveground storage tank permit may be  
3 waived, after confirming that the tank is regulated under an existing  
4 state or federal regulatory permit or enforceable standard which  
5 includes, but is not limited to, the following:

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

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

13 (3) Regular inspections and routine integrity testing  
14 requirements which are equally protective to the requirements  
15 established pursuant to this article or any rules promulgated  
16 thereunder; and

17 (4) Emergency response and notification requirements which are  
18 at least as prompt and comprehensive as the emergency response and  
19 notification requirements established by this article or any rules  
20 promulgated thereunder.

21 (c) In lieu of requiring a separate permit issued under this  
22 section, the secretary may adopt rules that would allow the  
23 requirements of this article to be incorporated into, and enforced  
24 through, the state-only portion of a National Pollutant Discharge

1 Elimination System (NPDES) permit or a permit under article six or  
2 six-a of this chapter.

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

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

11 **§22-31-1. Short title.**

12 This article may be known and cited as the Public Water Supply  
13 Protection Act.

14 **§22-31-2. Legislative findings.**

15 (a) The West Virginia Legislature finds that it is in the public  
16 policy of the State of West Virginia to protect and conserve the water  
17 resources which are relied upon by the state and its citizens. The  
18 state's water resources are vital natural resources that are  
19 essential to maintain, preserve and promote human health, quality of  
20 life and economic vitality of the state.

21 (b) The West Virginia Legislature further finds that it is the  
22 public policy of the state that clean, uncontaminated water be  
23 available for its citizens who are dependent on clean water as a basic  
24 need for survival, and who rely on the assurances from public water

1 systems and the government that the water is safe to consume.

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

12 (d) The Legislature further finds that large quantities of  
13 fluids are stored in aboveground storage tanks, below ground storage  
14 tanks, in impoundments and other locations which pose a threat of  
15 potential contamination to surface waters and groundwaters which are  
16 relied upon as primary sources of public water supplies in the state.  
17 Emergency situations involving these fluids can and will arise that  
18 may present a hazard to human health, safety, the water resources,  
19 the environment and the economy of the state.

20 (e) It is important that the public water systems, the responding  
21 emergency providers and regulatory inspectors and personnel require  
22 complete and accurate information regarding the volume, identity,  
23 characteristics and qualities of each potential source of significant  
24 contamination to efficiently and accurately anticipate and respond

1 to any associated threat to the public posed by a leak or spill event.

2 (f) The Legislature also finds it reasonable and appropriate to  
3 impose additional regulatory oversight and reporting requirements  
4 for potential contaminants which are in close proximity to a public  
5 water intake, due to the sudden and devastating impact that potential  
6 contaminants in that zone pose to a public water system's critical  
7 source of supply.

8 **§22-31-3. Definitions.**

9 For the purposes of this article:

10 (1) "Potential source of significant contamination" means a  
11 facility or activity that stores, uses or produces compounds with  
12 potential for significant contaminating impact if released into the  
13 source water of a public water supply.

14 (2) "Public water system" means:

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

20 (i) Any collection, treatment, storage and distribution  
21 facilities under the control of the owner or operator of the system  
22 and used primarily in connection with the system; and

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

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

3 (i) Consists only of distribution and storage facilities and  
4 does not have any collection and treatment facilities;

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

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

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

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

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

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

1 surface water in the immediate area.

2 (7) "Zone of critical concern" for a public surface water supply  
3 is a corridor along streams within a watershed that warrant more  
4 detailed scrutiny due to its proximity to the surface water intake  
5 and the intake's susceptibility to potential contaminants within that  
6 corridor. The zone of critical concern is determined using a  
7 mathematical model that accounts for stream flows, gradient and area  
8 topography. The length of the zone of critical concern is based on  
9 a five-hour time of travel of water in the streams to the water intake,  
10 plus an additional one-fourth mile below the water intake. The width  
11 of the zone of critical concern is one thousand feet measured  
12 horizontally from each bank of the principal stream and five hundred  
13 feet measured horizontally from each bank of the tributaries draining  
14 into the principal stream.

15 **§22-31-4. Inventory of potential sources of significant**  
16 **contamination in a zone of critical concern; registration;**  
17 **permitting; and notice.**

18 (a) To assure protection of the water resources of the state,  
19 the secretary, working in collaboration with the Bureau for Public  
20 Health and the Division of Homeland Security and Emergency  
21 Management, shall compile an inventory of all potential sources of  
22 significant contamination contained within a public water system's  
23 zone of critical concern for all public water systems whose source  
24 of supply is obtained from a surface water supply source or a surface

1 water influenced groundwater supply source.

2 (b) If the secretary shall determine that a designated potential  
3 significant source of contamination is not currently permitted and  
4 subject to regulation by the secretary under one or more articles of  
5 this chapter, and the secretary determines that the public interest  
6 in protecting the public drinking waters of the state warrant  
7 additional regulation and inspection of the site to protect the public  
8 interests, the secretary may require the owner and operator of that  
9 facility to register and obtain a permit for its location pursuant  
10 to the provisions of this article.

11 (c) Within sixty days of the date receiving notice from the  
12 secretary of the facility's obligation to register pursuant to this  
13 article, the owner or operator shall register the location pursuant  
14 to the provisions of this section.

15 (d) The secretary shall prescribe a registration form for this  
16 purpose within thirty days of the effective date of the enactment of  
17 this article. Any potential significant sources of contamination  
18 within a public water system's defined zone of critical concern which  
19 are required to register with the Department of Environmental  
20 Protection pursuant to this section shall do so within sixty days from  
21 the receiving notice of their obligation to register.

22 (e) Any potential source of significant contamination placed  
23 into service on and after the effective date of this section, but prior  
24 to the establishment of a permit program, may be required to register

1 by the secretary at any time.

2 (f) The secretary may charge a reasonable fee to cover the cost  
3 of the registration and permitting program. The fee may be set by  
4 emergency and legislative rules proposed for promulgation in  
5 accordance with the provisions of article three, chapter  
6 twenty-nine-a of this code.

7 **§22-31-5. Promulgation of rules.**

8 The secretary shall promulgate emergency and legislative rules  
9 as necessary to implement the provisions of this article in accordance  
10 with the provisions of article three, chapter twenty-nine-a of this  
11 code.

12 **§22-31-6. Powers and duties of secretary.**

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

16 (b) The secretary is authorized to utilize his or her authority  
17 under the West Virginia Water Pollution Control Act to require  
18 appropriate permitting and any other conditions or limitations to  
19 assure protection of water intakes in zones of critical concern.

20 (c) The secretary may receive and expend money from the federal  
21 government or any other sources to implement this article.

22 (d) The secretary may revoke any registration, authorization or  
23 permit for a violation of this article or the rules promulgated  
24 hereunder.

1 (e) The secretary may issue orders, assess civil penalties,  
2 institute enforcement proceedings and prosecute violations of this  
3 article as necessary.

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

7 (g) The secretary may recover the costs of taking corrective  
8 action, including costs associated with authorizing third parties to  
9 perform corrective action. Costs may not include routine inspection  
10 and administrative activities not associated with a release.

11 **§22-31-7. Public access to information.**

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

23 (b) In submitting data under this article, a person required to  
24 provide the data may designate the data that he or she believes is

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

5 (c) The Department of Environmental Protection shall provide a  
6 copy of the compiled list of contaminants in each zone of critical  
7 concern to the affected public water system, the Bureau for Public  
8 Health, the Department of Environmental Protection and the Division  
9 of Homeland Security and Emergency Management. This will enable  
10 those entities to possess a compiled list of the types, quantities,  
11 characteristics and locations of all of the known potential  
12 contaminants within the zone of critical concern for each public water  
13 supply. If any of the submitted information is requested to be kept  
14 confidential and good cause is found to grant the request, for reasons  
15 of security or other legitimate public interest concern, the  
16 protected information shall be redacted from public view and kept  
17 confidential, and it shall not be subject to public release in  
18 response to a Freedom of Information Act request made under chapter  
19 twenty-nine-b of this code.

20 **§22-31-8. Inspections, monitoring and testing.**

21 (a) For the purposes of developing or assisting in the  
22 development of any rule, conducting any study, taking any corrective  
23 action or enforcing any provision of this article, any owner or  
24 operator of designated site of potential contamination within a zone

1 of critical concern shall, upon request of the secretary:

2 (1) Furnish information relating to the site and potential  
3 contaminants on the site, their aboveground and underground storage  
4 tanks, their associated equipment and contents;

5 (2) Conduct reasonable monitoring or testing;

6 (3) Permit the secretary, at all reasonable times, to inspect  
7 and copy records relating to the facilities and equipment used to  
8 store or contain the potential contaminants; and

9 (4) Permit the secretary to have access to the site for  
10 corrective action.

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

14 (1) Enter at any time any establishment or other place where on  
15 the site or where the potential contaminant is located;

16 (2) Inspect and obtain samples of any fluid contained or stored  
17 on the site from any person;

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

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

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

1 (d) To ensure protection of the water resources of the state and  
2 compliance with any provision of this article or rule promulgated  
3 thereunder, the secretary shall inspect at least annually any  
4 designated site of potential contamination which is located within  
5 the zone of critical concern for a public water system's surface water  
6 intake.

7 (e) Due to the potential impact of contaminants within a zone  
8 of critical concern on public drinking water supplies, whenever there  
9 is an apparent spill of a chemical or substance within a zone of  
10 critical concern for a public water system, the Director of the Bureau  
11 for Public Health, and his or her representatives or designees, shall  
12 have the same right to enter, inspect and conduct sampling and  
13 monitoring at any site that is extended by this article to the  
14 Department of Environmental Protection.

15 **§22-31-9. Prohibition of general NPDES permits within a zone of**  
16 **critical concern for sites with aboveground storage tanks; and**  
17 **authorizing the Division of Environmental Protection to require**  
18 **individual NPDES permit for any other site when deemed**  
19 **appropriate.**

20 Because of the potential public health impact of pollution to  
21 downstream public water intakes in a watershed basin designated in  
22 an area of critical concern, on and after September 1, 2014, any  
23 permittee which presently holds a National Pollutant Discharge  
24 Elimination System (NPDES) general permit pursuant to the West

1 Virginia Water Pollution Control Act which has an aboveground storage  
2 tank as defined by article thirty of this chapter on a site which is  
3 located within any public water system's zone of critical concern must  
4 apply for and hold an individual permit under that act. The secretary  
5 shall also have the authority to require other holders of a general  
6 NPDES permit to obtain an individual NPDES permit, when deemed  
7 appropriate to protect the public water supply. Any general NPDES  
8 permit held currently under that act shall remain in effect until the  
9 individual NPDES permit is either issued or denied.

10 **§22-31-10. Civil and criminal penalties.**

11 (a) Any person who fails to comply with an order of the secretary  
12 issued pursuant to this article in the time specified in the order  
13 is liable for a civil penalty of not more than \$25,000 for each day  
14 of continued noncompliance.

15 (b) Any owner or operator of a site designated as a potential  
16 source of significant contamination within a zone of critical concern  
17 above a public water intake who knowingly fails to register or obtain  
18 a permit for an aboveground storage tank or submits false information  
19 pursuant to this article is liable for a civil penalty not to exceed  
20 \$10,000 for each aboveground storage tank that is not registered or  
21 permitted or for which false information is submitted.

22 (c) Any owner or operator of a site designated as a potential  
23 source of significant contamination within a zone of critical concern  
24 above a public water intake who fails to comply with any requirement

1 of this article or any standard promulgated by the secretary pursuant  
2 to this article is subject to a civil penalty not to exceed \$10,000  
3 for each day of violation.

4 (d) Any person who knowingly and intentionally violates any  
5 provision of this article shall be guilty of a misdemeanor and, upon  
6 conviction thereof, shall be confined in a regional jail for a period  
7 of time not exceeding one year and be fined an amount not to exceed  
8 \$25,000.

9 (e) Any person convicted of a second or subsequent willful  
10 violation of subsection (b) or (c) of this section or knowingly and  
11 willfully violates any provision of any permit, rule or order issued  
12 under or subject to the provisions of this article is guilty of a  
13 felony and, upon conviction, shall be imprisoned in a correctional  
14 facility not less than one nor more than three years, or fined not  
15 more than \$50,000 for each day of violation, or both fined and  
16 imprisoned.

17 (f) Any person may be prosecuted and convicted under the  
18 provisions of this section notwithstanding that none of the  
19 administrative remedies provided in this article have been pursued  
20 or invoked against said person and notwithstanding that civil action  
21 for the imposition and collection of a civil penalty or an application  
22 for an injunction under the provisions of this article has not been  
23 filed against such person.

24 (g) Where a person holding a permit is carrying out a program

1 of pollution abatement or remedial action in compliance with the  
2 conditions and terms of the permit, the person is not subject to  
3 criminal prosecution for pollution recognized and authorized by the  
4 permit.

5 **§22-31-11. Appeal to Environmental Quality Board.**

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

10 **§22-31-12. Public Water System Supply Study Commission.**

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

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

19 (2) A review and assessment of the effectiveness of legislation  
20 enacted during the 2014 Regular Session of the West Virginia  
21 Legislature, as it pertains to assisting public water systems in  
22 identifying and reacting or responding to identified potential  
23 sources of significant contamination, and increasing public  
24 awareness and public participation in the emergency planning and

1 response process;

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

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

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

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

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

24 (2) One representative designated by the Rural Water

1 Association;

2 (3) One representative designated by the Municipal League;

3 (4) The Secretary of the Department of Environmental Protection  
4 or his or her designee;

5 (5) The Commissioner of the Bureau for Public Health or his or  
6 her designee;

7 (6) The Director of the Division of Homeland Security and  
8 Emergency Management or his or her designee;

9 (7) The Chairman of the Public Service Commission or his or her  
10 designee;

11 (8) One nonvoting member appointed by the President of the  
12 Senate; and

13 (9) One nonvoting member appointed by the Speaker of the House  
14 of Delegates.

15 (c) Reports by the commission shall be submitted to the Joint  
16 Committee on Government and Finance on or before December 15 of each  
17 year, beginning December 15, 2014.

18 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

19 **ARTICLE 2G. PUBLIC WATER UTILITIES MONITORING REQUIREMENTS.**

20 **§24-2G-1. Public water utilities required to install monitor for**  
21 **contaminants.**

22 All public water utilities that provide water to more than one  
23 hundred thousand customers, including public service districts  
24 providing water service and municipally owned and operated utilities,

1 subject to the requirements and limitations of this article, shall  
2 implement a regular monitoring system as specified to the same  
3 technical capabilities for detection as utilized by the Ohio River  
4 Valley Water Sanitation Commission.

5 **§24-2G-2. Requirements.**

6 (a) Each public water utility, public service district or  
7 municipal water system, as set forth in section one of this article,  
8 shall provide testing for contamination of its water supply by the  
9 following contaminants:

- 10 (1) Salts or ions;
- 11 (2) Metals, including heavy metals;
- 12 (3) Polar organic compounds;
- 13 (4) Nonpolar organic compounds;
- 14 (5) Volatile compounds, oils and other hydrocarbons;
- 15 (6) Pesticides; and
- 16 (7) Biotoxins.

17 (b) Each public water utility is empowered to determine at its  
18 discretion which of the contaminants listed in subsection (a) of this  
19 section are most likely to contaminate its water supply, and shall  
20 provide a monitoring system which shall detect the three of the listed  
21 contaminants deemed most likely to affect that water system:  
22 *Provided*, That each public water utility shall file its list with the  
23 commission: *Provided, however*, That any public water system serving  
24 over one hundred thousand customers from any one treatment plant is

1 requested to test for all listed contaminants at each treatment plant:  
2 *Provided further,* That if technology to adequately detect  
3 contaminants as required by this section proves to be not feasible  
4 to implement, the public water utility shall report by January 1,  
5 2015, such to the Joint Committee on Government and Finance with the  
6 reasons why such technology is not feasible to obtain or use, and  
7 suggest alternatives.