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FOR

Senate Bill No. 373

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

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §16-1-2 and §16-1-9a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §16-1-9c, §16-1-9d and §16-1-9e; to amend and reenact §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of said code; to amend said code by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-25; to amend said code by adding thereto a new article, designated §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12; and to amend said code by adding thereto a new article, designated §24-2G-1 and §24-2G-2, all relating to the protection of water resources and public health generally; defining terms generally; providing for rulemaking generally; providing for civil and criminal penalties generally; providing for the regulation of the public water systems by the Commissioner of the Bureau for

Public Health; providing for entry into and evaluations of water systems; authorizing commissioner to seek injunctive relief; requiring source water protection plans; specifying contents of plan; requiring assessment and monitoring of plans; requiring Bureau for Public Health to coordinate the conduct of a long-term medical study; continuing wellhead and source water protection grant program; continuing grant fund to provide water source protection; revising the Water Resources Protection and Management Act; modifying registration requirements; requiring reports to the Secretary of the Department of Environmental Protection; requiring reports by secretary to legislative entities; requiring continuation of matching funds for stream-gauging network; modifying duties of legislative commission; requiring water resources survey and registry; requiring information from drilling contractors for water systems; adopting state water resources management plan; requiring reports from certain water users; establishing the Aboveground Storage Tank Act; requiring the secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees;

requiring secretary to develop regulatory program for the tanks; providing minimum factors to be included in program; requiring annual inspection and certification of the tanks; requiring evidence of financial security; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of inventory of tanks to local water systems and governments; requiring the posting of signs at the tanks; creating an administrative fund; creating the Protect Our Water Fund; authorizing public access to certain information; authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; allowing appeals to Environmental Quality Board; prohibiting duplicative enforcement; requiring secretary to report to legislative entities; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing certain exemptions; creating the Public Water Supply Protection Act; requiring inventories of sources of certain contaminants in the zones of critical concern of certain

public water systems; requiring registration and permits; authorizing inspections, monitoring and testing by secretary; requiring individual NPDES permits in certain circumstances; authorizing secretary to require NPDES permits in certain circumstances; creating public water system supply study commission; membership of study commission; scope of study; establishing reporting requirements; requiring the establishment of advance warning, testing and monitoring at certain water utilities; requiring certain information be filed with the Public Water Commission; and requiring utility to report back to Legislature if technology is infeasible.

Be it enacted by the Legislature of West Virginia:

That §16-1-2 and §16-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto three new sections, designated §16-1-9c, §16-1-9d and §16-1-9e; that §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-

30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-25; that said code be amended by adding thereto a new article, designated §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12; and that said code be amended by adding thereto a new article, designated §24-2G-1 and §24-2G-2, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-2. Definitions.

As used in this article:

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

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

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

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

(5) "County board of health" means one form of organization for a local board of health and means a local board of health serving a single county;

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

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

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

The services include:

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

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

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

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

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

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

(G) Uniting people with needed personal health services and assuring the provision of health care when it is otherwise not available;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) "Public water system" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Minimum requirements for:

(A) Sampling and testing;

(B) System operation;

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

(D) Recordkeeping;

(E) Laboratory certification; and

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

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

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

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

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

(d) The commissioner, his or her authorized representative or designee may conduct an evaluation necessary to assure the

public water system meets federal safe drinking water requirements. The public water system shall provide a written response to the commissioner within thirty days of receipt of the evaluation by the public water system, addressing corrective actions to be taken as a result of the evaluation.

(e)(1) Any individual or entity who violates any provision of this article, or any of the rules or orders issued pursuant to this article, is liable for a civil penalty not less than \$1,000 nor more than \$5,000. Each day's violation shall constitute a separate offense.

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

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

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

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

(a) On or before July 1, 2016, each existing public water utility which draws and treats water from a surface water supply source or a surface water influenced groundwater supply source shall submit to the commissioner an updated or completed source water protection plan for each of its public water system plants with such intakes to protect its public water supplies from contamination. Every effort shall be made to inform and engage the public, local governments, local emergency planners, local health departments and affected residents at all levels of the development of the protection plan.

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

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

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

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

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

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

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

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

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

(7) The calculated level of unaccounted for water experienced by the public water system for each surface water intake, determined by comparing the measured quantities of water which are actually received and used by customers served by that

water plant to the total quantities of water treated at the water plant over the past year. If the calculated ratio of those two figures is less than eighty-five percent, the public water system is to describe all of the measures it is actively taking to reduce the level of water loss experienced on its system;

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

to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency.

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

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

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

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

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

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

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

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

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

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

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

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

(d) The commissioner shall review a plan submitted pursuant to this section and provide a copy to the Secretary of the Department of Environmental Protection. Thereafter, within one hundred eighty days of receiving a plan for approval, the

commissioner may approve, reject or modify the plan as may be necessary and reasonable to satisfy the purposes of this article. The commissioner shall consult with the local public health officer and conduct at least one public hearing when reviewing the plan. Failure by a public water system to comply with a plan approved pursuant to this section is a violation of this article.

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

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

(g) Any public water utility required to file a complete or updated plan in accordance with the provisions of this section

shall review any source water protection plan it may currently have on file with the bureau and update it to ensure it conforms with the requirements of subsection (b) of this section on or before July 1, 2016.

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

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

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

(b) The fund heretofore created to provide funds for the Wellhead and Source Water Protection Grant Program is continued in the State Treasury and shall be known as the Wellhead and Source Water Protection Grant Fund. The fund shall be administered by the commissioner and shall consist of all moneys made available for the program from any source, including, but not limited to, all fees, civil penalties and assessed costs, all gifts, grants, bequests or transfers from any source, any

moneys that may be appropriated and designated for the program by the Legislature and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the purposes set forth in this article to provide water source protection pursuant to the program and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided*, That for the fiscal years ending June 30, 2014 and 2015, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(c) In prospectively awarding any grants under the Wellhead and Source Water Protection Grant Program, the commissioner shall prioritize those public water systems where there is the highest probability of contamination of the water source based

on the source water assessment report or the source water protection plans which were previously performed. Priority shall also be extended to publicly owned public water systems over privately owned public water systems.

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

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

§16-1-9e. Long-term medical study.

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

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

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

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 26. WATER RESOURCES PROTECTION AND MANAGEMENT ACT.

§22-26-2. Definitions.

For purposes of this article:

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

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

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

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

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

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

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

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

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

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

user" excludes farm use, including watering livestock or poultry on a farm, though farms may voluntarily report water withdrawals to assist with the accuracy of the survey.

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

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

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

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

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

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

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

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

(19) "Watershed" means a hydrologic unit utilized by the United States Department of Interior's Geological Survey,

adopted in 1974, as a framework for detailed water and related land-resources planning.

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

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

(a) The waters of the State of West Virginia are claimed as valuable public natural resources held by the state for the use and benefit of its citizens. The state shall manage and protect its waters effectively for present and future use and enjoyment and for the protection of the environment. Therefore, it is necessary for the state to determine the nature and extent of its water resources, the quantity of water being withdrawn or

otherwise used and the nature of the withdrawals or other uses:
Provided, That no provisions of this article may be construed to amend or limit any other rights and remedies created by statute or common law in existence on the date of the enactment of this article.

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

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

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

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

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

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

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

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

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

(j) The secretary shall, to the extent reliable water withdrawal data is reasonably available from sources other than persons required to provide data and participate in the survey and registration, utilize that data to fulfill the requirements of this section. If the data is not reasonably available to the secretary, persons required to participate in the survey and registration are required to provide the data. Altering locations of intakes and discharge points that result in an impact to the withdrawal of the water resources shall also be reported.

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

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

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

requiring the development of a strategy for management of these water resources.

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

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

(p) The department, the Division of Natural Resources, the Division of Highways and the Conservation Agency (cooperating state agencies) shall continue providing matching funds for the United States Geological Survey's (USGS) stream-gauging network to the maximum extent practicable. Should a cooperating state agency become unable to maintain its contribution level, it should notify the USGS and the commission of its inability to continue funding for the subsequent federal fiscal year by July

1 in order to allow for the possible identification of alternative funding resources.

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

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

(b) The expenses of the commission, including the cost of conducting the survey and monitoring any subsequent strategy and those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other

personnel, are to be approved by the Joint Committee on Government and Finance and paid from legislative appropriations.

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

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

(b) All large-quantity users who withdraw water from a West Virginia water resource shall complete the survey and register use with the department. Any person who fails to complete the survey or register, provides false or misleading information on the survey or registration, or fails to provide other information as required by this article may be subject to a civil administrative penalty not to exceed \$5,000 to be collected by the secretary consistent with the secretary's authority pursuant to this chapter. Every thirty days after the initial imposition of the civil administrative penalty, another penalty may be assessed if the information is not provided. The secretary shall provide written notice of failure to comply with

this section thirty days prior to assessing the first administrative penalty.

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

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

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

(c) The secretary has the authority to gather data, including driller and geologist logs, run electric and other remote-sensing logs and devices and perform physical

characteristics tests on nonresidential and multifamily water wells.

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

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

(f) Any well contracted for construction by the secretary for groundwater or geological testing must be constructed at a minimum to well design standards as promulgated by the Bureau for Public Health. Any wells contracted for construction by the secretary for groundwater or geological testing that would at a

later date be converted to a public use water well must be constructed to comport to state public water design standards.

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

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

(b) The secretary shall develop definitions for use in the State Water Resources Management Plan for terms that are defined differently by various state and federal governmental entities

as well as other terms necessary for implementation of this article.

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

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

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

(3) A plan for the development of the infrastructure necessary to identify the groundwater resources of each region of this state, including an identification of aquifers and

groundwater basins and an assessment of their safe yield, prime recharge areas, recharge capacity, consumptive limits and relationship to stream base flows.

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) A review and evaluation of water resources management alternatives and recommended programs, policies, institutional

arrangements, projects and other provisions to meet the water resources needs of each region and of this state.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-1. Short title.

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

§22-30-2. Legislative findings.

(a) The West Virginia Legislature finds the public policy of the State of West Virginia is to protect and conserve the water resources for the state and its citizens. The state's water resources are vital natural resources that are essential to

maintain, preserve and promote human health, quality of life and economic vitality of the state.

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

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

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

§22-30-3. Definitions.

For purposes of this article:

(1) "Aboveground storage tank" or "tank" means a device made to contain an accumulation of more than one thousand three hundred twenty gallons of fluids that are liquids at standard temperature and pressure, which is constructed primarily of noncarbon materials, including wood, concrete, steel, plastic or fiberglass reinforced plastic, which provide structural support, more than ninety percent capacity of which is above the surface of the ground, but does not include any process vessel. The term includes stationary devices which are permanently affixed, and

mobile devices which remain in one location on a continuous basis for sixty or more days, and includes all ancillary aboveground pipes and dispensing systems up to the first point of isolation and all ancillary underground pipes and dispensing systems connected to the aboveground containers to the first point of isolation. Notwithstanding any other provision of this code to the contrary, shipping containers, including railroad freight cars, subject to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended, including but not limited to federal regulations promulgated thereunder at 49 CFR 172, 173 or 174, or subject to other federal law governing the transportation of hazardous materials are not subject to any provision of this article or of article thirty-one of this chapter. Notwithstanding any other provision of this code to the contrary, barges or boats subject to federal regulation under the United States Coast Guard, United States Department of Homeland Security, including, but not limited to, federal regulations promulgated at 33 CFR 1, et seq, or subject to other federal law governing the transportation of hazardous materials are not subject to any provision of this article or of article thirty-one of this chapter. Notwithstanding any other

provision of this code to the contrary, swimming pools are not subject to any provision of this article or article thirty-one of this chapter.

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

(3) "Nonoperational storage tank" means an empty aboveground storage tank in which fluids will not be deposited or from which fluids will not be dispensed on or after the effective date of this article.

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

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

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

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

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

(9) "Public surface water supply source" means a primary source of water supply for a public water system which is

directly drawn from rivers, streams, lakes, ponds, impoundments or other primary sources of water supplies which are found on the surface of the state.

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

(11) "Public water system" means:

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

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

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

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

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

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

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

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

(12) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of fluids from an

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

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

basin or holding pond. (14) "Secretary" means the Secretary of the Department of Environmental Protection, or his or her designee.

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

(16) "Zone of critical concern" for a public surface water supply is a corridor along streams within a watershed that warrants more detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below the water intake. The width

of the zone of critical concern is one thousand feet measured horizontally from each bank of the principal stream and five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

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

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

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

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

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

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

(f) The secretary may charge a reasonable fee to cover the cost of maintaining and overseeing the inventory and

registration program. The fee may be set by emergency and legislative rules proposed for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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

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

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

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

new and existing aboveground storage tanks incorporating nationally recognized tank standards such as those standards developed by the American Petroleum Institute (API), the Steel Tank Institute (STI) or comparable authorities, and taking into account the size, location and contents of the tanks. At a minimum, the program shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Permit issuance only after the application and any other supporting documents have been submitted, reviewed and

approved by the secretary, and that permits may be issued with certain conditions or contingencies;

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

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

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

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

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

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

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

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

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

§22-30-7. Financial responsibility.

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

§22-30-8. Corrective action.

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

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

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

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

(b) The corrective action undertaken or required by this section shall be what may be necessary to protect human health, water resources and the environment from contamination caused by a release, including the ordered cessation or closure of a source of contamination and the ordered remediation of a contaminated site. The secretary shall use funds in the Protect Our Water Fund established pursuant to this article for payment of costs incurred for corrective action taken by the secretary in accordance with this article. In undertaking corrective actions under this section and in issuing orders requiring owners or operators to undertake the actions, the secretary

shall give priority to releases or threatened releases of fluid from aboveground storage tanks that pose the greatest threat to human health, water resources or the environment.

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

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

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

(3) The cost of corrective action to be expended on an aboveground storage tank exceeds the amount of resources that the owner or operator can reasonably be expected to possess based on the information required to be submitted pursuant to this article and, considering the fluid being stored in the aboveground storage tank in question, expenditures from the Protect Our Water Fund are necessary to assure an effective corrective action; or

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

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

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

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

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

(f) If the secretary determines that immediate response to an imminent threat to human health, safety, water resources or the environment is necessary to avoid substantial injury or damage thereto, corrective action may be taken pursuant to this section without the prior written notice required by subdivision

(2), subsection (d) of this section. In that case, the secretary must give subsequent written notice to the owner or operator within fifteen days after the action is taken describing the circumstances that required the action to be taken and setting forth the matters identified in subsection (e) of this section.

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

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

(1) Identify and describe the activity that occurs at the site and identify applicable hazard and process information, including a specific listing and inventory of all types of fluids stored, amount of fluids stored and wastes generated that

are stored in aboveground storage tanks at the facility. The plan shall include the material safety data sheets (MSDS) required by the Occupational Safety and Health Administration for all fluids in use or stored in aboveground storage tanks at the facility. The material safety data sheets must include the health hazard number identified by the National Fire Protection Association. The plan shall also include drawings of the aboveground storage tank facility, including the locations of all drainage pipes and water outlets;

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

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

and plot plans and shall identify specific spill prevention measures for those identified areas;

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

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

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

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

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

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

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

(4) The plan fails in an emergency;

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

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

(c) The secretary shall approve the spill prevention response plan or reject the plan and require modifications as may be necessary and reasonable to assure the protection of the source water of a public water system from a release of fluids

from an aboveground storage tank. If rejected, the owner of the aboveground storage tank shall submit a revised plan to the secretary for approval within thirty days of receipt of notification of the secretary's decision. Failure to comply with a plan approved by the secretary pursuant to this section is a violation of this article.

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

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

The owner or operator of an aboveground storage tank facility shall provide as required by the secretary public notice to any public water system where the facility is located within the system's identified groundwater supply's source water protection area or within the system's surface water supply's zone of critical protection, to the local municipality, if any, and to the county in which the facility is located. The notice shall provide a detailed inventory of the type and quantity of fluid stored in aboveground storage tanks at the facility and

the material safety data sheets (MSDS) associated with the fluid in storage. The owner or operator shall also provide as required by the secretary a copy of the spill prevention response plan and any updates thereto, which have been approved by the secretary pursuant to this act, to the applicable public water systems and county and municipal emergency management agencies.

§22-30-11. Required signage.

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

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

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

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

§22-30-13. Protect Our Water Fund.

(a) Each owner or operator of an aboveground storage tank located in this state shall pay an annual fee to establish a fund to assure adequate response to leaking aboveground storage

tanks. The amount of fees assessed pursuant to this section shall be set forth by rule. The fees must be sufficient to cover the regulatory oversight and services to be provided by designated agencies, including necessary technical and administrative personnel. The proceeds of the assessment shall be paid into a special revenue account, hereby created within the State Treasury, designated the Protect Our Water Fund. The fund shall be administered by the secretary. Expenditures from the fund shall be solely to respond to leaking aboveground storage tanks, and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided*, That for the fiscal years ending June 30, 2014 and 2015, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Protect Our Water Fund shall not be transferred to the General Revenue

Fund, but shall remain in the Protect Our Water Fund for expenditure pursuant to this section.

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

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

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

(1) Responding to aboveground storage tank releases when, based on readily available information, the secretary determines that immediate action is necessary to prevent or mitigate significant risk of harm to human health, safety, water resources or the environment from contamination caused by a

release of fluid from aboveground storage tanks in situations for which no federal funds are immediately available for the response, cleanup or containment: *Provided*, That the secretary shall apply for and diligently pursue all available federal funds at the earliest possible time;

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

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

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

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

(a) The public shall have access to all documents and information submitted to the agency, subject to the limitations contained in the state Freedom of Information Act, article one, chapter twenty-nine-b of this code. Records, reports or information obtained from any persons under this article may be disclosed to other officers, employees or authorized representatives of this state or federal agency implementing the provisions of this article or any other applicable law related to releases of fluid from aboveground storage tanks that impact the state's water resources.

(b) A list of the potential sources of significant contamination contained within the zone of critical concern as provided by the Department of Environmental Protection, the Bureau for Public Health and the Division of Homeland Security and Emergency Management may be disclosed. The exact location of the contaminants within the zone of critical concern is not subject to public disclosure in response to a Freedom of Information Act request under article one, chapter twenty-nine-b of this code. However, the location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern shall be made

known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility. In the event of a chemical spill, release or related emergency, information pertaining to any spill or release of contaminant shall be immediately disseminated to any emergency responders responding to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency.

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

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

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

(2) Conduct reasonable monitoring or testing;

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

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

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

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

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

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

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

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

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

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

(a) When the secretary determines, on the basis of any information, that a person is in violation of any requirement of this article or the rules promulgated thereunder, the secretary may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period, or the secretary may commence a civil action in the circuit court of the county in which the violation occurred or in the circuit court of Kanawha County for appropriate relief, including a temporary or permanent injunction. The secretary may, except as provided in subsection

(b) of this section, stay any order he or she issues upon application, until the order is reviewed by the Environmental Quality Board.

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

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

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

(b) Any owner or operator of an aboveground storage tank who knowingly fails to register or obtain a permit required by this article for an aboveground storage tank or submits false

information pursuant to this article is liable for a civil penalty not to exceed \$10,000 for each aboveground storage tank that is not registered or permitted or for which false information is submitted.

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

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

(e) Any person convicted of a second or subsequent willful violation of subsection (d) of this section or knowingly and willfully violates any provision of any permit, rule or order issued under or subject to the provisions of this article is guilty of a felony and, upon conviction, shall be imprisoned in a correctional facility not less than one nor more than three

years, or fined not more than \$50,000 for each day of violation, or both fined and imprisoned.

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

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

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

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

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

§22-30-19. Duplicative enforcement prohibited.

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

§22-30-20. Reporting and accountability.

(a) Every year, the secretary shall submit a report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance which assesses the effectiveness of this article and provides other information as may be requested by the commission to allow it to assess the

effectiveness of this article, including, without limitation, the secretary's observations concerning all aspects of compliance with this article and any legislative rules promulgated pursuant hereto, the regulatory process, and any pertinent changes to federal rules or regulations.

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

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

§22-30-21. Interagency cooperation.

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

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

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

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

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

(b) Upon receipt of information that there is any aboveground storage tank that presents an imminent and substantial danger to human health, safety, water resources or the environment, the secretary shall provide immediate notice to the appropriate state and local government agencies and any affected public water system. In addition, the secretary shall

require notice of any danger to be promptly posted at the aboveground storage tank facility containing the aboveground storage tank at issue.

§22-30-23. Promulgation of rules.

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

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

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

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

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

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

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

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

§22-30-25. Scope of article; waiving additional permitting requirements for certain categories of aboveground storage tanks; establishing a process for granting waivers for additional categories of ground storage tanks, by legislative rule, upon verification that the category of

tanks are regulated under comparable or more rigorous protective state or federal standards.

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

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

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

(3) Septic tanks and home aeration systems;

(4) A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 31. THE PUBLIC WATER SUPPLY PROTECTION ACT.

§22-31-1. Short title.

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

§22-31-2. Legislative findings.

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

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

(c) The West Virginia Legislature further finds that it is the public policy of the state that clean, uncontaminated water be available to its businesses and industries that rely on water

for their economic survival, and the well-being of their employees. These include hospitals and the medical industry, schools and educational institutions, the food and hospitality industries, the tourism industry, manufacturing, coal, natural gas and other industries. Businesses and industries searching for places to locate or relocate consider the quality of life for their employees as well as the quality of the raw materials such as clean water.

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

(e) It is important that the public water systems, the responding emergency providers and regulatory inspectors and personnel require complete and accurate information regarding

the volume, identity, characteristics and qualities of each potential source of significant contamination to efficiently and accurately anticipate and respond to any associated threat to the public posed by a leak or spill event.

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

§22-31-3. Definitions.

For the purposes of this article:

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

(2) "Public water system" means:

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

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

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

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

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

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

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

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

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

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

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

or indirectly, by the quantity and quality of surface water in the immediate area.

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

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

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

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

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

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

(e) Any potential source of significant contamination placed into service on and after the effective date of this section, but prior to the establishment of a permit program, may be required to register by the secretary at any time.

(f) The secretary may charge a reasonable fee to cover the cost of the registration and permitting program. The fee may be set by emergency and legislative rules proposed for promulgation

in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§22-31-5. Promulgation of rules.

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

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

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

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

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

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

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

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

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

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

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

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

(c) The Department of Environmental Protection shall provide a copy of the compiled list of contaminants in each zone of

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

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

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

contamination within a zone of critical concern shall, upon request of the secretary:

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

(2) Conduct reasonable monitoring or testing;

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

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

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

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

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

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

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

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

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

(e) Due to the potential impact of contaminants within a zone of critical concern on public drinking water supplies, whenever there is an apparent spill of a chemical or substance within a zone of critical concern for a public water system, the

Director of the Bureau for Public Health, and his or her representatives or designees, shall have the same right to enter, inspect and conduct sampling and monitoring at any site that is extended by this article to the Department of Environmental Protection.

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

Because of the potential public health impact of pollution to downstream public water intakes in a watershed basin designated in an area of critical concern, on and after September 1, 2014, any permittee which presently holds a National Pollutant Discharge Elimination System (NPDES) general permit pursuant to the West Virginia Water Pollution Control Act which has an aboveground storage tank as defined by article thirty of this chapter on a site which is located within any public water system's zone of critical concern must apply for

and hold an individual permit under that act. The secretary shall also have the authority to require other holders of a general NPDES permit to obtain an individual NPDES permit, when deemed appropriate to protect the public water supply. Any general NPDES permit held currently under that act shall remain in effect until the individual NPDES permit is either issued or denied.

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

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

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

(c) Any owner or operator of a site designated as a potential source of significant contamination within a zone of critical concern above a public water intake who fails to comply with any requirement of this article or any standard promulgated by the secretary pursuant to this article is subject to a civil penalty not to exceed \$10,000 for each day of violation.

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

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

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

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

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

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

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

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

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

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

(3) The extent of available financing and funding alternatives which are available to existing public water systems to pursue projects which are designed to create alternate sources of supply or increased stability of supply in

the event of a spill, release or contamination event which impairs the water system's primary source of supply;

(4) A review and consideration of the recommendations of the U. S. Chemical Safety and Hazard and Investigation Board after its investigation of the Bayer CropScience incident of 2008; and (5) Any recommendations or suggestions the study commission may offer to improve the infrastructure of existing public water systems, to provide safe and reliable sources of supplies, and to pursue other measures designed to protect the integrity of public water service.

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

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

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

(3) One representative designated by the Municipal League;

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

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

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

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

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

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

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2G. PUBLIC WATER UTILITIES MONITORING REQUIREMENTS.

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

All public water utilities that provide water to more than one hundred thousand customers, including public service districts providing water service and municipally owned and operated utilities, subject to the requirements and limitations of this article, shall implement a regular monitoring system as specified to the same technical capabilities for detection as utilized by the Ohio River Valley Water Sanitation Commission.

§24-2G-2. Requirements.

(a) Each public water utility, public service district or municipal water system, as set forth in section one of this

article, shall provide testing for contamination of its water supply by the following contaminants:

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

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

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