

Senate/ House Bill No.

(By Senators / Delegates)

(By Request of the Executive)

[Introduced; referred to the Committee on]

A BILL to amend the Code of West Virginia, 1931, as 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, §22-30-25, §22-30-26, §22-30-27, and §22-30-28, all relating to the protection of source water supplies and systems generally through regulation of industrial aboveground storage tanks; short title; applicability; legislative findings and purposes; defining terms; authorizing a source water protection program; requiring public water systems to remit an annual fee and submit

a source water protection plan for joint approval by the secretary of the department of environmental protection (DEP) and the secretary of the department of health and human resources (DHHR) every three years; permitting the secretary of DEP to request studies from public water systems regarding potential contaminant sources; providing emergency and legislative rule-making authority to the secretary to adopt and implement an industrial aboveground storage tank program; setting forth powers and duties of the secretary to implement an industrial aboveground storage tank program; setting forth notification requirements for owners and operators of industrial aboveground storage tanks; providing emergency and legislative rule-making authority; setting forth registration requirements, including an annual registration fee, for industrial aboveground storage tanks; prohibiting the operation or use of an unregistered industrial aboveground storage tank; prohibiting the delivery or deposit of regulated material into an unregistered industrial aboveground storage tank; requiring annual inspection and certification by a registered professional engineer of minimum safety standards for industrial aboveground storage tanks, associated equipment, leak detection systems, and secondary containment structures; providing rule-making authority to ensure financial responsibility for corrective action for releases of regulated material from industrial aboveground storage tanks; providing rule-making authority for performance standards for new and existing industrial aboveground storage

tanks; authorizing the secretary to ensure corrective action be taken regarding a release or threatened release of regulated material from an industrial aboveground storage tank; permitting the secretary to use funds from the Leaking Industrial Aboveground Storage Tank Response Fund to pay for the costs of corrective action to prevent contamination of a source water supply; requiring written notice from the secretary to a responsible party regarding liability for reimbursement to the Leaking Industrial Aboveground Storage Tank Response Fund; requiring spill prevention response plans for each industrial aboveground storage tank to be submitted for approval by the secretary; requiring owners or operators of industrial aboveground storage tanks to provide public notice to certain public water systems, the local municipality, and the local county regarding regulated material; requiring signage on industrial aboveground storage tanks; providing rule-making authority; creating a special revenue fund entitled the Industrial Aboveground Storage Tank Administrative Fund and authorizing the secretary to collect an annual registration fee for deposit into this fund; creating a special revenue fund entitled the Leaking Industrial Aboveground Storage Tank Response Fund and authorizing the secretary to collect an annual fee for deposit into this fund; authorizing expenditures from the funds; providing public access to information collected under this article pursuant to the Freedom of Information Act; permitting the secretary to require the owners or operators

of industrial aboveground storage tanks to furnish information, conduct reasonable monitoring or testing, and allow access to records to facilitate implementation of the provisions of this article; permitting the secretary to issue orders to enforce this article, including temporary and permanent injunctions; providing for civil and criminal penalties; providing for appeals to the environmental quality board; prohibiting duplicative enforcement; requiring the secretary to report to the legislature every three years on the effectiveness of this article and annually on the accounting of the funds; requiring interagency coordination; permitting the secretary to bring a civil action against an owner or operator of an industrial aboveground storage tank upon receipt of evidence of imminent and substantial endangerment to human health or the environment; providing for immediate notice to appropriate state and local agencies and public water systems; and severability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, 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, §22-30-25, §22-30-26, §22-30-27, and §22-30-28, all to read as follows:

Chapter 22. ENVIRONMENTAL RESOURCES

ARTICLE 30. WEST VIRGINIA SOURCE WATER PROTECTION ACT.

§22-30-1. Short title.

This article shall be known and may be cited as the “West Virginia Source Water Protection Act.”

§22-30-2. Applicability.

This article shall apply to all new and existing industrial aboveground storage tanks located within a zone of critical concern and to all public water systems located within the state.

§22-30-3. Legislative findings and purpose.

(a) The Legislature recognizes that industrial businesses are vital to our economy, create good-paying jobs with benefits for our citizens, and ensure that commerce will continue to flourish in West Virginia. The Legislature also recognizes that many factors go into an industrial facility's selection of a site to do business, including, but not limited to, topography, proximity to workforce, access to necessary infrastructure, access to transportation modalities such as railroads, rivers and highways, a state's regulatory environment, and proximity to raw materials. In connection with the operation of industrial businesses, it is often necessary to store large quantities of petroleum, chemicals, solvents, and other hazardous substances and pollutants in aboveground storage tanks. Recognizing the value that industrial businesses add to our economy and the associated risks of potential harm to human health and the environment posed by storage of significant quantities of regulated material in aboveground storage

tanks, the Legislature finds it is necessary to regulate the industrial storage of regulated material in aboveground storage tanks located within zones of critical concern in the vicinity of public water systems. Further, the Legislature finds that it is also necessary to require public water systems to evaluate potential risks to the water supply and to develop certain contingency and emergency response plans to prepare for potential releases of regulated material from industrial aboveground storage tanks that jeopardize a public water system, human health, or the environment.

(b) Therefore, it is the purpose of this article to:

(1) implement reasonable regulations governing the storage of specified volumes of regulated material in industrial aboveground storage tanks within zones of critical concern in the vicinity of public water systems;

(2) assure that industrial aboveground storage tanks are constructed and maintained in a manner consistent with acceptable industry safety standards;

(3) assure that public water systems properly plan for contingencies and prepare appropriate emergency response plans to implement in the event a leak from an industrial aboveground storage tank jeopardizes one or more public water systems; and

(4) otherwise protect human health and the environment from the dangers posed by the storage of specified volumes of regulated material in industrial aboveground storage tanks located within zones of critical concern in the vicinity of public water systems.

§22-30-4. Definitions.

As used in this article, unless the context clearly requires a different meaning, the term:

(a) "Aboveground storage tank" means a single stationary aboveground container or a set of stationary aboveground containers that are connected in such a manner that the contents thereof can travel between containers. The term 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. The term does not include, however, any of the following:

(1) Farm or residential tanks with a capacity of 1,100 gallons or less that are used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

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

(6) Surface impoundments, pits, ponds or lagoons;

- (7) Stormwater or wastewater collection systems;
- (8) Flow-through process tanks;
- (9) Tanks used for the storage of products that are regulated pursuant to the federal Food, Drug, and Cosmetic Act;
- (10) Oil filled tanks regulated under section 1321 of the federal Water Pollution Control Act (section 311 of the federal Clean Water Act) and the regulations promulgated thereunder, 40 C.F.R. § 112, *et seq.*;
- (11) Farm tanks with a capacity of 1,100 gallons or less used solely to store or contain substances that are used to facilitate the production of crops, livestock, and livestock products on such farm;
- (12) Tanks that are used to store propane gas;
- (13) Tanks that are mobile in nature or that do not remain in one location for more than thirty consecutive calendar days;
- (14) Storage tank systems storing hazardous wastes regulated under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C. § 6921, *et seq.*, or substances regulated under the West Virginia Hazardous Waste Management Act, W. Va. Code § 22-18-1, *et seq.*;
- (15) Tanks otherwise regulated under those provisions of this chapter that necessitate individual site-specific permits that require appropriate containment and diversionary structures or equipment to prevent discharged materials from reaching the waters of the state, including:
 - (A) Tanks regulated under the Surface Coal Mining and Reclamation Act, article three of this chapter;

(B) Tanks that are used to store brines, crude oil, or any other liquid or similar substances or materials that are directly related to the exploration, development, stimulation, completion, or production of crude oil or natural gas regulated under article six or article six-a of this chapter;

(C) Tanks that are located at establishments that have individual permits issued under the National Pollutant Discharge Elimination System, article eleven of this chapter; and

(D) Tanks regulated under the Solid Waste Management Act, article fifteen of this chapter, including, but not limited to, piping, tanks, collection, and treatment systems used for leachate, methane gas, and methane gas condensate management.

(16) Any other tank excluded by legislative rule promulgated by the secretary pursuant to this article and article three, chapter twenty-nine-a of this code.

(b) "Change in status" means an instance in which the reported uses, contents, or ownership of an industrial aboveground storage tank changes, including discontinuing the use of an industrial aboveground storage tank.

(c) "Industrial aboveground storage tank" means an aboveground storage tank located within a zone of critical concern that contains a volume of regulated material in excess of the applicable threshold established by the secretary by rule pursuant to section six of this article.

(d) "Nonoperational storage tank" means an aboveground storage tank in which regulated material will not be deposited or from which

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

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

(f) "Owner" means a person who holds title to, owns or controls an industrial aboveground storage tank. "Owner" does not include any person who holds indicia of ownership of an industrial aboveground storage tank only for the purpose of protecting the person's security interest in the industrial aboveground storage tank.

(g) "Person" means any individual, trust, firm, joint stock company, corporation (including government corporations), limited liability company, partnership, association, state, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity and the United States government.

(h) "Public water system" means the same in this article as set forth in subsection (p), section two, article one, chapter sixteen of this code.

(i) "Regulated material" means each substance having a health hazard of two, three or four, as set forth on the material safety data sheet (MSDS) applicable to each such substance, or any other substance as determined by the National Fire Protection Association or the secretary.

(j) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated material

from an industrial aboveground storage tank into groundwater, surface water or subsurface soils within a zone of critical concern. The term shall also include spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated material from an industrial 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 within a zone of critical concern.

(k) "Secondary containment" means an additional layer of impervious material creating a space in which a release of a regulated material from an industrial aboveground storage tank may be detected before it enters the environment.

(l) "Secretary" means the cabinet secretary of the department of environmental protection as designated in article one of this chapter or his or her designee.

(m) "Zone of critical concern" means those areas identified as a zone of critical concern in a Source Water Assessment Report, as determined as of the effective date of this article by the department of health and human resources in conjunction with the State of West Virginia Source Water Assessment and Protection Program, as such areas may be revised and as additional areas, if any, may be added from time to time by promulgation of emergency and legislative rule by the secretary in accordance with article three, chapter twenty-nine-a of this code.

§22-30-5. Source water protection.

(a) In addition to all other powers and duties prescribed in

this chapter or otherwise by law, and unless otherwise specifically set forth in this article, the secretary has the sole and exclusive authority to perform any and all acts necessary to implement a source water protection program designed to protect each public water system in the state from contamination of its source water supply caused by the release of regulated material from an industrial aboveground storage tank consistent with the requirements of this article.

(b) Within ninety days of the effective date of this article, each existing public water system shall remit an annual fee in an amount to be specified in an emergency and legislative rule promulgated by the secretary pursuant to this article to be deposited into the Industrial Aboveground Storage Tank Administrative Fund created pursuant to this article and submit a source water protection plan to protect its system from contamination of its source water supply caused by release of regulated material from an industrial aboveground storage tank, which plan, at a minimum, shall include the following:

(1) A contingency plan that documents each public water system's planned response to contamination of the source water supply;

(2) Information pertaining to alternative water sources focusing on long-term source replacement should such system be required to develop a new source of water due to such contamination;

(3) A management plan that identifies specific activities that will be pursued by such system to protect its source water supply

from such contamination, including coordination with government agencies and periodic surveys of the zone of critical concern related to such system; and

(4) A communications plan that documents the manner in which the public shall be notified of information related to any contamination of the source water supply.

(c) Any public water system 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 (a) of this section.

(d) The secretary and the secretary of the department of health and human resources shall jointly approve any plan submitted pursuant to this section or reject the plan and require such modifications as may be necessary and reasonable to satisfy the purposes of this article. Failure by a public water system to comply with a plan approved pursuant to this section shall constitute a violation of this article.

(e) The secretary may request a public water system to conduct one or more studies to determine the actual risk and consequences related to any potential contaminant sources identified by the secretary.

(f) A public water system shall submit an updated source water protection plan not less frequently than every three years.

§22-30-6. Promulgation of rules and standards by the secretary.

(a) The secretary shall promulgate emergency and legislative rules in accordance with article three, chapter twenty-nine-a of

this code as may be necessary for the effective implementation and administration of this article.

(b) As part of the emergency and legislative rules authorized by subsection a of this section, the secretary shall promulgate emergency and legislative rules in accordance with article three, chapter twenty-nine-a of this code to adopt and implement an industrial aboveground storage tank program that, at a minimum, includes the following subjects:

(1) Payment of an annual registration fee to the department of environmental protection by the owner or operator of each industrial aboveground storage tank;

(2) Registration with the secretary of each industrial aboveground storage tank and the filing of an annual report with the secretary by the owner or operator of each industrial aboveground storage tank regarding changes in status of any such tank;

(3) Methods and procedures for inventory control measures, as appropriate;

(4) The periodic inspection of leak detection systems, the structural integrity of industrial aboveground storage tanks and associated equipment, and release prevention measures;

(5) Corrective actions by owners, operators, or other responsible parties, as applicable, in response to a release of a regulated material from an industrial aboveground storage tank;

(6) The reporting of any release of a regulated material from an industrial aboveground storage tank and corrective action taken

in response to a release of a regulated material from an industrial aboveground storage tank;

(7) The maintenance of records, by owners or operators, as applicable, of periodic inspections of leak detection systems; inspections of structural integrity of the industrial aboveground storage tanks, their associated equipment, and secondary containment systems; and all release prevention measures as may be necessary to protect human health and the environment from contamination of a source water supply used by a public water system caused by a release of a regulated material from an industrial aboveground storage tank;

(8) Minimum standards for the construction, testing, corrosion protection, maintenance, operation, release prevention, and repair and reuse of industrial aboveground storage tanks, their associated equipment, and leak detection systems as may be necessary to protect human health or the environment;

(9) Methods and procedures for the removal of industrial aboveground storage tanks from service;

(10) Requirements for reporting of the planned and completed closure of any industrial aboveground storage tank;

(11) Procedures and amount of fees to be assessed for the Industrial Aboveground Storage Tank Administrative Fund and the Leaking Industrial Aboveground Storage Tank Response Fund established pursuant to this article, which shall include a capitalization fee to be assessed against all owners or operators of industrial aboveground storage tanks to be used for initial establishment of the Industrial Aboveground Storage Tank

Administrative Fund and the Leaking Industrial Aboveground Storage Tank Response Fund;

(12) Procedures for making expenditures from the Industrial Aboveground Storage Tank Administrative Fund and the Leaking Industrial Aboveground Storage Tank Response Fund;

(13) Acceptable methods by which an owner or operator may demonstrate financial responsibility;

(14) Procedures establishing when and how the secretary determines if information obtained by the department under this article is confidential;

(15) Standards of performance for new and existing industrial aboveground storage tanks;

(16) Minimum standards for the construction, testing, operation, maintenance, and repair of secondary containment structures associated with industrial aboveground storage tanks, as may be necessary to protect human health and the environment from contamination of a source water supply used by a public water system caused by a release of a regulated material from an industrial aboveground storage tank; and

(17) The volume of regulated material that must be stored in an industrial aboveground storage tank before such tank is subject to regulation under this article, with such volume being established by the secretary based on his or her assessment of the risk posed by materials having a health hazard of two, three or four, as set forth on the material safety data sheet applicable to such material,

or any other substance as determined by the National Fire Protection Association or the secretary.

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

(a) In addition to all other powers and duties prescribed in this chapter or otherwise provided by law, and unless otherwise specifically set forth in this article, the secretary has the sole and exclusive authority to perform any and all acts necessary to implement an industrial aboveground storage tank program consistent with the requirements of this article.

(b) The secretary may receive and expend money from the federal government or any other sources to implement the industrial aboveground storage tank program required by this article.

(c) The secretary may revoke any registration provided for in this article for any violation of this article or the legislative rules promulgated hereunder.

(d) The secretary, in accordance with this article, may issue orders, assess civil penalties, institute enforcement proceedings, and prosecute violations of this article as the secretary determines to be necessary and appropriate.

(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 those costs associated with authorizing third parties to perform corrective action. These costs may not include the cost of routine inspection and administrative activities not

associated with a release or threatened release of a regulated material from an industrial aboveground storage tank.

§22-30-8. Notification requirements.

(a) Industrial aboveground storage tank owners and operators shall notify the secretary of any industrial aboveground storage tank placed into service on or after January 1, 2014, within thirty days of such placement or by June 30, 2014, whichever is later, on a form prescribed by the secretary. The notice shall specify the date of tank installation, tank location, type of construction, size and age of the tank, and the type and volume of regulated material to be stored therein. If, at the time this information is required to be submitted, the secretary has not prepared the form required by this section, the owner shall nevertheless submit the information in writing to the secretary.

(b) For an industrial aboveground storage tank that was in existence, whether in service or out of service, prior to January 1, 2014, the owner or operator shall notify the secretary in writing by June 30, 2014, specifying the date of tank installation, tank location, type of construction, size and age of the tank, and the type and volume of regulated material stored therein.

(c) A new owner of any industrial aboveground storage tank shall notify the secretary in writing of the transfer of ownership of any industrial aboveground storage tank. Upon the effective date of the transfer, the new owner becomes subject to all provisions of this article. The secretary may prescribe by emergency and legislative rule the appropriate form and timing for the notifications required

by this section.

§22-30-9. Registration.

(a) Every owner of an industrial aboveground storage tank shall register each industrial aboveground storage tank by completing and submitting the form provided by the secretary and by paying the annual registration fee prescribed by the secretary for each industrial aboveground storage tank.

(b) It shall be unlawful for any owner or operator to operate or use, in any way, any industrial aboveground storage tank which has not been properly registered or for which the annual registration fee has not been timely paid as required by this section.

(c) It shall be unlawful for any person to approve a delivery order, or deliver or deposit a regulated material into an industrial aboveground storage tank unless the industrial aboveground storage tank owner or operator provides proof of valid registration of the industrial aboveground storage tank into which the regulated material is delivered or deposited.

§22-30-10. Annual inspection and certification by registered professional engineer.

(a) Every owner or operator of an industrial aboveground storage tank shall be required to have an annual inspection of each industrial aboveground storage tank performed by a registered professional engineer and shall be required to submit, on a form prescribed by rule by the secretary, a certification from a registered professional engineer certifying that the industrial aboveground

storage tank, associated equipment, leak detection systems, and secondary containment structures associated therewith meet the minimum standards established by the secretary by emergency and legislative rule for such structures.

(b) This certification form must be submitted to the secretary by January 1st of each year, beginning January 1, 2015.

§22-30-11. Financial responsibility.

The secretary shall promulgate rules, as provided in this article, containing requirements for owners and operators to provide evidence satisfactory to the secretary of adequate financial resources to undertake reasonable corrective action for releases of regulated material from industrial 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.

§22-30-12. Performance standards.

(a) The secretary shall propose legislative rules regarding performance standards for new and existing industrial aboveground storage tanks. The performance standards for new and existing industrial aboveground storage tanks shall include, but not be limited to, design, construction, installation, maintenance, repair, release detection, and compatibility standards.

(b) New and existing industrial aboveground storage tank construction standards must include at least the following

requirements:

(1) That an industrial aboveground storage tank will prevent releases of regulated material stored therein that may occur as a result of corrosion or structural failure for the operational life of the tank;

(2) That an industrial aboveground storage tank will be cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of stored regulated material; and

(3) That materials used in the construction or lining of an industrial aboveground storage tank are compatible with the regulated material to be stored therein.

§22-30-13. 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, as applicable, of an industrial aboveground storage tank to undertake corrective action with respect to any release or threatened release of a regulated material from the industrial aboveground storage tank when the secretary determines that corrective action shall be undertaken promptly by the owner or operator thereof to protect human health or the environment from contamination of a source water supply used by a public water system caused by a release of a regulated material from an industrial aboveground storage tank; or

(2) Undertake corrective action with respect to any release or threatened release of a regulated material from an industrial aboveground storage tank when, in the judgment of the secretary, the action is necessary to protect human health or the environment from contamination of a source water supply used by a public water system caused by a release of a regulated material from an industrial aboveground storage tank.

(b) The corrective action undertaken or required by this section shall be such as may be necessary to protect human health and the environment from contamination of a source water supply used by a public water system caused by a release of a regulated material from an industrial aboveground storage tank. The secretary shall use funds in the Leaking Industrial Aboveground Storage Tank Response 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 such actions, the secretary shall give priority to releases or threatened releases of regulated material from industrial aboveground storage tanks that pose the greatest threat to human health or the environment from contamination of a source water supply used by a public water system.

(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. Further, following the effective date of such rules, the secretary may undertake corrective action with

respect to any release or threatened release of a regulated material from an industrial aboveground storage tank only if, in the judgment of the secretary, the action is necessary to protect human health or environment from contamination of a source water supply used by a public water system, and one or more of the following situations exists:

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

(2) A situation exists that requires prompt action by the secretary under this section to protect human health or the environment;

(3) The cost of corrective action to be expended on an industrial 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 regulated material being stored in the industrial aboveground storage tank in question, expenditures from the Leaking Industrial Aboveground Storage Tank Response 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 Leaking Industrial Aboveground Storage Tank Response 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 party or parties responsible for the release or threatened release of regulated material and:

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

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

(e) The written notice to a responsible party must inform the responsible party that if that party is subsequently found liable for releases pursuant to this section, he or she will be required to reimburse the Leaking Industrial Aboveground Storage Tank Response 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 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 responsible party 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.

§22-30-14. Spill prevention response plan.

(a) Within ninety days of the effective date of this article, each owner or operator of an industrial aboveground storage tank shall submit a spill prevention response plan for each industrial aboveground storage tank. Owners and operators of industrial 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 county and municipal emergency management agencies. The spill prevention response plan shall contain, at a minimum, the following:

(1) Description of the facility - The plan shall identify and describe the industrial or commercial activity that occurs at the site and identify applicable hazard and process information, including a specific listing and inventory of all types of regulated materials stored, amount of regulated material stored, and wastes generated that are stored in industrial aboveground storage tanks at the facility. The plan shall include the material safety data sheets (MSDS) for all regulated material in use or stored in industrial 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 industrial aboveground storage tank facility, including the locations of all drainage pipes and water outlets;

(2) Description of the organizational structure for plan implementation - The plan shall identify all facility-related individuals and their duties and responsibilities for developing, implementing, and maintaining the facility's plan. The plan shall describe in detail the chain of command at the industrial aboveground storage tank facility and list all facility emergency coordinators and emergency response contractors;

(3) Spill leak prevention and response - The plan shall provide a preventive maintenance program that includes monitoring and inspection procedures, including identification of stress points, employee training program(s), and security system(s). 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) Countermeasures - The plan shall explain in detail the specific response that industrial aboveground storage tank facility and contract emergency personnel shall take upon the occurrence of any release of a regulated material from an industrial aboveground storage tank at the facility;

(5) Emergency spill control network - The plan shall include pertinent information obtained by the owner or operator of the industrial aboveground storage tank facility from the county and municipal emergency management agencies and designate the person or

persons to be notified in the event of a release of a regulated material from an industrial aboveground storage tank; and

(6) Other information - The owner or operator shall provide the secretary with all other information requested by the secretary to carry out his or her duties under this article.

(b) Each owner of an industrial 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 industrial aboveground storage tank or associated equipment, or there are other circumstances that increase the potential for fires, explosions or releases of regulated material;

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

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

(4) The plan fails in an emergency;

(5) The removal or the addition of any industrial 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 such modifications as may be necessary and reasonable to assure the protection of the source water

of a public water system from a release of a regulated material from an industrial aboveground storage tank. If rejected, the owner of the industrial 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 shall constitute a violation of this article.

(d) Nothing contained in this section relieves the owner or operator of an industrial aboveground storage tank from his or her obligation to report any release immediately to the department of environmental protection's emergency notification telephone number, 1-800-642-3074.

§22-30-15. Notice to local governments, water companies, and other industrial users.

The owner or operator of an industrial aboveground storage tank facility shall annually provide public notice to public water systems located within a twenty-five mile radius of the industrial aboveground storage tank facility site and the local municipality, if any, and county in which the facility is located. The notice shall provide a detailed inventory of the type and quantity of regulated material stored in industrial aboveground storage tanks at the facility and the material safety data sheets associated with the regulated material in storage. The owner or operator shall also annually provide a copy of the spill prevention response plan and any updates thereto, which have been approved by the secretary pursuant to this article, to the

applicable public water systems and county and municipal emergency management agencies.

§22-30-16. Required signage.

Every industrial aboveground storage tank shall have prominently posted signage thereupon disclosing the contents of the tank and the hazards, if any, associated with the regulated material stored therein. If the industrial aboveground storage tank is empty, the signage shall so state. For the purposes of this section, the requirements for prominently posted signage shall be specified in the rules promulgated by the secretary pursuant to this article and article three, chapter twenty-nine-a of this code.

§22-30-17. Industrial aboveground storage tank administrative fund.

(a) The secretary shall collect annual registration fees from owners or operators of each industrial aboveground storage tanks in an amount sufficient to cover the regulatory oversight and services to be provided by designated agencies, including necessary technical and administrative personnel, as provided in legislative rules promulgated by the secretary pursuant to this article. All registration fees and the net proceeds of all fines, penalties, and forfeitures collected under this article, including accrued interest, shall be paid into the State Treasury into a special revenue fund designated the "Industrial Aboveground Storage Tank Administrative Fund," and shall be used solely to defray the cost of administering this article.

(b) At the end of each fiscal year, any unexpended balance,

including accrued interest, on deposit in the Industrial Aboveground Storage Tank Administrative Fund shall not be transferred to the general revenue fund, but shall remain in the Industrial Aboveground Storage Tank Administrative Fund.

§22-30-18. Leaking industrial aboveground storage tank response fund.

(a) Each industrial aboveground storage tank owner or operator within this state shall pay an annual fee to establish a fund to assure adequate response to leaking industrial aboveground storage tanks.

The amount of fees assessed pursuant to this section shall be specified in legislative rules promulgated in pursuant to this article. 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 the State Treasury into a special fund designated the "Leaking Industrial Aboveground Storage Tank Response Fund."

(b) Each owner or operator of an industrial aboveground storage tank subject to a fee assessment under subsection (a) of this section shall pay a fee based on the number of industrial 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 Leaking Industrial

Aboveground Storage Tank Response Fund shall not be transferred to the general revenue fund, but shall remain in the Leaking Industrial Aboveground Storage Tank Response 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 industrial 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 or the environment from contamination of a source water supply used by a public water system caused by a release of regulated material from industrial 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 non-responsible parties for reasonable cleanup costs incurred with the authorization of the secretary in responding to an industrial aboveground storage tank release of regulated material.

(3) Reimbursing any non-responsible parties for reasonable costs incurred with the authorization of the secretary responding to perceived, potential or threatened releases of regulated material from industrial 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 over an industrial aboveground storage tank facility regulated pursuant to this article.

§22-30-19. 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.

(b) Any 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 regulated material from industrial aboveground storage tanks that impact the source water supply used by a public water system.

(c) 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.

§22-30-20. 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 industrial aboveground storage tank shall, upon request of the secretary, furnish information relating to the industrial aboveground storage tanks; their associated equipment and contents; conduct reasonable monitoring or testing; permit the secretary, at all reasonable times, to have access to and to copy all records relating to the industrial aboveground storage tanks; and permit the secretary to have access to the industrial aboveground storage tank 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 industrial aboveground storage tank is located;

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

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

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

Each inspection shall be commenced and completed with reasonable promptness.

§22-30-21. Administrative orders; injunctive relief.

(a) Whenever the secretary determines, on the basis of any

information, that any 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, in accordance with article three, chapter twenty-nine-a of this code, 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.

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

(a) Any person who fails to comply with an order of the secretary issued under subsection (a), section twenty-two 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 industrial aboveground storage tank who knowingly fails to register an industrial aboveground storage

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

(c) Any owner or operator of an Industrial 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 fails to comply with any requirement of section five of this article or any standard promulgated by the secretary pursuant to that section is subject to a civil penalty not to exceed \$10,000.

(e) 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 the penitentiary for a period of time not exceeding one year, and be fined an amount not to exceed \$25,000.

§22-30-23. 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.

§22-30-24. 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 such subsequent proceeding involves the violation of a permit or permitting requirement of such other article.

§22-30-25. Reporting and accountability.

(a) Every three years, the secretary shall submit a report to the Legislature which assesses the effectiveness of this article and provides such other information as may be requested by the Legislature 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 Industrial Aboveground Storage Tank Administrative Fund and shall make a specific annual report addressing the administration of the fund.

(c) The secretary shall keep accurate accounts of all receipts and disbursements related to the administration of the Leaking Industrial Aboveground Storage Tank Response Fund and shall make a specific annual report addressing the administration of the fund.

§22-30-26. Interagency cooperation.

(a) In implementation of this article, the secretary shall coordinate with the state department of health and human resources, the West Virginia public service commission, and local health

departments to ensure the successful planning, implementation, emergency notification and response, corrective action, and enforcement relating to this article, including consideration of the role of those agencies in providing services to owners and operators of industrial 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 address facility emergency response and incident command when such functions are provided by the owner or operator of the industrial aboveground storage tank and the 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.

§22-30-27. Imminent and substantial endangerment.

(a) Notwithstanding any other provision in this chapter, upon receipt of evidence that an industrial aboveground storage tank may present an imminent and substantial endangerment to human health 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 industrial aboveground storage tank who has contributed or who is contributing to such imminent and substantial endangerment to public health or the environment to order such person to take such action as may be necessary to abate the situation and

protect public health and the environment from contamination of a source water supply of a public water system caused by a release of a regulated material from an industrial aboveground storage tank.

(b) Upon receipt of information that there is any industrial aboveground storage tank that presents an imminent and substantial endangerment to human health or the environment, the secretary shall provide immediate notice to the appropriate state and local government agencies and public water system. In addition, the secretary shall require notice of such endangerment to be promptly posted at the industrial aboveground storage tank facility containing the industrial aboveground storage tank at issue.

§22-30-28. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

NOTE: The purpose of this bill is to create a source water protection program and an industrial aboveground storage tank program to protect source water supplies and systems.

This article is completely new; therefore, underscoring has been omitted.