

WEST VIRGINIA CODE: §22-17-14

§22-17-14. Corrective action for underground petroleum storage tanks.

(a) Prior to the effective date of rules promulgated pursuant to subdivision (9) or (10), subsection (b), section six of this article, the director is authorized to:

(1) Require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum from said tank when the director determines that such corrective action shall be done properly and promptly by the owner or operator if, in the judgment of the director, such action is necessary to protect human health and the environment; or

(2) Undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if, in the judgment of the director, such action is necessary to protect human health and the environment.

The corrective action undertaken or required under this subsection shall be such as may be necessary to protect human health and the environment. The director shall use funds in the leaking underground storage tank response fund established pursuant to this article for payment of costs incurred for corrective action taken under subparagraph (2) of this subsection in the manner set forth in subsection (e), section twenty-one of this article. The director shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment and where the director cannot identify a solvent owner or operator of the tank who will undertake action properly.

(b) Following the effective date of rules promulgated under subdivision (9) or (10), subsection (b), section six of this article, all actions or orders of the director described in subsection (a) of this section shall be in conformity with such rules. Following such effective date the director may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if, in the judgment of the director, such action is necessary to protect human health and environment and one or more of the following situations exists:

(1) If no person can be found within ninety days, or such shorter period as may be necessary to protect human health and the environment, who is an owner or operator of the tank concerned, subject to such corrective action rules and capable of carrying out such corrective action properly.

(2) A situation exists which requires prompt action by the director under this subsection to protect human health and the environment.

(3) Corrective action costs at a facility exceed the amount of coverage required pursuant to the provisions of section ten of this article and, considering the class or category of underground storage tank from which the release occurred, expenditures from the leaking underground storage tank response fund are necessary to assure an effective corrective action.

(4) The owner or operator of the tank has failed or refused to comply with an order of the director under this section or of the environmental quality board under article one, chapter twenty-two-b of this code to comply with the corrective action rules.

(c) The director is authorized to draw upon the leaking underground storage tank response fund in order to take action under subdivision (1) or (2), subsection (b) of this section if the director has made diligent good faith efforts to determine the identity of the party or parties responsible for the release or threatened release and:

(1) He or she 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 director to be responsible for the release or threatened release have been informed in writing of the director's determination and have been requested by the director to take appropriate corrective action but are unable or unwilling to take such action in a timely manner.

(d) The written notice to a responsible party must inform the responsible party that if that party is subsequently found liable for releases pursuant to subsection (a) or (b) of this section, he or she will be required to reimburse the leaking underground storage tank response fund for the costs of the investigation, information gathering and corrective action taken by the director.

(e) If the director determines that immediate response to an imminent threat to public health and welfare or the environment is necessary to avoid substantial injury or damage to persons, property or resources, corrective action may be taken pursuant to subsections (a) and (b) of this section without the prior written notice required by subdivision (2), subsection (c) of this section. In such a case the director must give subsequent written notice to the responsible party within fifteen days after the action is taken describing the circumstances which required the action to be taken without prior notice.

(f) As used in this section, the term "owner" does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining or marketing, holds indicia of ownership primarily to protect the person's security interest in the tank.