

# WEST VIRGINIA CODE: §22-17-22

## **§22-17-22. Underground Storage Tank Insurance Fund.**

(a) The secretary may establish an Underground Storage Tank Insurance Fund for the purpose of satisfying the financial responsibility requirements established pursuant to section ten of this article. In addition to the capitalization fee to be assessed against all owners or operators of underground storage tanks provided by subdivision (6), subsection (b), section six of this article, the secretary shall promulgate rules establishing an annual financial responsibility assessment to be assessed on and paid by owners or operators of underground storage tanks who are unable to obtain insurance or otherwise meet the financial responsibility requirements established pursuant to section ten of this article. Assessments shall be paid into the State Treasury into a special fund designated the Underground Storage Tank Insurance Fund.

(b) At the end of each fiscal year, any unexpended balance of such assessment shall not be transferred to the General Revenue Fund but shall remain in the Underground Storage Tank Insurance Fund. Upon the effective date of the enactment of the amendment to this section passed during the 2007 regular session of the West Virginia Legislature, the Underground Storage Tank Insurance Fund shall cease to operate as an insurance fund. Any remaining assets of the fund shall be administered by the secretary pursuant to subsections (c), (d), (e), (f), (g) and (h) of this section. Because the fund was intended to be self funding, the secretary is not bound by any terms, limitations or conditions contained in any insurance policies issued by the fund, but in no case may reimburse any person for an amount in excess of the limits of liability.

(c) Legislative Findings Regarding Cessation of the Fund. -- The Underground Storage Tank Insurance Fund was established by the Legislature to assist storage tank owners who were mandated by federal law to have insurance but were unable to find insurance in the private market, and was funded solely by assessments of policyholders paid to the fund. Policies were issued from the years 1990 to 2000. As private insurance coverage became available and a number of the insured left the business, premiums paid into the fund decreased. These factors, combined with greater than anticipated remediation costs at sites remediated during the fund's solvency, caused claims against the fund to exceed moneys collected. As a result, the fund became insolvent. Although the fund was not intended to and does not create any legal obligation for the state for any claims made against the fund, it is the sense of the Legislature that to the extent public funds are determined by the Legislature to be available, they may be appropriated to assist individuals with the remediation of these sites and to prevent potential adverse environmental impacts and harm to human health that could result from a failure to remediate. This assistance by the state in funding these remediations would be intended to provide an option for the insured to fulfill their legal duty to reclaim these sites and the Department of Environmental Protection may not assume any legal liability for remediation of these sites beyond the assistance provided pursuant to

subsections (d), (e), (f), (g) and (h) of this section.

(d) The secretary shall request that the Governor include in each budget submitted to the Legislature funding to cause remediation of these existing sites as identified by the secretary. The secretary shall submit a proposal to undertake or cause to be undertaken these remediations to the Joint Committee of Government and Finance by November 1, 2007. The secretary's proposal shall provide, at a minimum, budget amounts needed each year for completing these remediation activities by December 31, 2009, but in no case later than December 31, 2012.

(e) The secretary shall also request funding to reimburse insured persons and vendors who have incurred costs not yet reimbursed as of the effective date of this section by the fund for work undertaken at insured sites previously authorized by the secretary.

(f) Any agreements with insured persons for payment of remediations shall provide that, prior to any remediation activities on any site or for reimbursement for expenses previously incurred, an agreement be executed that provides that the insured person or persons agree that the site will be remediated pursuant to either subsection (g) or (h) of this section.

(g) The secretary may cause remediation of an insured site to a voluntary remediation standard as provided in article twenty-two of this chapter, including any appropriate land-use covenant and other deed restrictions and any other conditions as established by the secretary prior to payment for any costs associated with a site remediation.

(h) If an insured person demonstrates to the secretary that it is more cost effective to clean up a site through an alternative program or method that will result in remediation at a standard equal to or greater than provided for in subsection (g) of this section, then the secretary may, as an alternative, authorize use of that method or program. The secretary may place any appropriate requirements upon the insured person as a condition for undertaking a remediation by an alternative program or method.