WEST VIRGINIA CODE CHAPTER 22 ARTICLE 17

WV Legislature

§22-17-1. Short title.

This article may be known and cited as the “Underground Storage Tank Act”.

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§22-17-2. Declaration of policy and purpose.

The Legislature recognizes that large quantities of petroleum and hazardous substances are stored in underground storage tanks within the State of West Virginia and that emergency situations involving these substances can and will arise which may present a hazard to human health, safety or the environment. The Legislature also recognizes that some of these substances have been stored in underground storage tanks in the state in a manner insufficient to protect human health, safety or the environment. The Legislature further recognizes that the federal government has enacted Subtitle I of the federal Resource Conservation and Recovery Act of 1976, as amended, which provides for a federal program to remove the threat and remedy the effects of releases from leaking underground storage tanks and authorizes federal assistance to respond to releases of petroleum from underground storage tanks. The Legislature declares that the State of West Virginia desires to produce revenue for matching the federal assistance provided under the federal act; to create a program to control the installation, operation and abandonment of underground storage tanks and to provide for corrective action to remedy releases of regulated substances from these tanks. Therefore, the Legislature hereby enacts the West Virginia underground storage tank act to create an underground storage tank program and to assume regulatory primacy for such federal programs in this state.

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§22-17-3. Definitions.

(a) “Change in status” means causing an underground storage tank to be no longer in use or a change in the reported uses, contents or ownership of an underground storage tank.

(b) “Director” means the director of the West Virginia Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to section six or eight, article one of this chapter.

(c) “Nonoperational storage tank” means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.

(d) “Operator” means any person in control of, or having responsibility for, the daily operation of an underground storage tank.

(e) “Owner” means:

(1) In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, a person who owns an underground storage tank used for the storage, use or dispensing of a regulated substance.

(2) In the case of an underground storage tank in use before November 8, 1984, but no longer in use on that date, a person who owned such a tank immediately before the discontinuation of its use.

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

(g) “Petroleum” means petroleum, including crude oil or any fraction thereof which is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute.

(h) “Regulated substance” means:

(1) Any substance defined in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; or

(2) Petroleum.

(i) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water or subsurface

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soils.

(j) “Subtitle I” means Subtitle I of the federal Resource Conservation and Recovery Act of 1976, as amended.

(k) “Underground storage tank” means one tank or a combination of tanks, and the underground pipes connected thereto, which is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground, but does not include:

(1) Farm or residential tanks with a capacity of eleven hundred gallons or less and 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 under state laws comparable to the provisions of either of those acts;

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

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

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

(9) Storage tanks situated in an underground area such as a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

The term “underground storage tank” does not include any pipes connected to any tank which is described in subparagraphs (1) through (9).

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§22-17-4. Designation of Division of Environmental Protection as the state underground storage tank program lead agency.

The Division of Environmental Protection is hereby designated as the state underground storage tank program lead agency for purposes of Subtitle I and is hereby authorized to take all actions necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the United States environmental protection agency, other agencies of the federal government, agencies of this state or other states, and other interested persons in all matters relating to underground storage tank regulation.

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§22-17-5. Powers and duties of director; integration with other acts.

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle I.

(b) The director shall cooperate with and may receive and expend money from the federal government or other source.

(c) The director may accept applications for and issue policies of insurance to owners or operators of petroleum underground storage tanks that are subscribers to the underground storage tank insurance fund and may accept, review, pay and settle claims pursuant to those policies of insurance under such terms as the director may establish by rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(d) The director may enter into any agreements, including reimbursement or subrogation agreements, contracts and cooperative arrangements under such terms and conditions as he or she deems appropriate, with other state agencies, educational institutions or other organizations and individuals as necessary to implement the provisions of this article.

(e) The director may take such actions as are necessary and appropriate to carry out and enforce any agreements, contracts or cooperative arrangements entered into as provided in subsection (d) of this section, including the institution and prosecution of suits in any state or federal court or administrative tribunal, whether in the director's name or in the name of an insured or a subrogor.

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§22-17-6. Promulgation of rules and standards by director.

(a) The director has overall responsibility for the promulgation of rules under this article. In promulgating and revising such rules the director shall comply with the provisions of chapter twenty-nine-a of this code. Such rules shall be no more stringent than the rules and regulations promulgated by the United States environmental protection agency pursuant to Subtitle I.

(b) The director shall promulgate rules applicable to owners or operators of underground storage tanks or other affected persons, as appropriate, as follows:

(1) A requirement for a yearly registration fee for underground storage tanks;

(2) A requirement that an owner or operator register with the director each underground storage tank after the effective date of the rules and that an owner or operator report annually on changes in status of any underground storage tank;

(3) Such release detection, prevention and correction rules applicable to underground storage tanks as may be necessary to protect human health and the environment;

(4) 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 underground storage tanks in a manner consistent with the protection of human health and the environment;

(5) Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(6) Rules for procedures and amount of fees to be assessed for the underground storage tank administrative fund, the leaking underground storage tank response fund and the underground storage tank insurance fund established pursuant to this article, which shall include a capitalization fee to be assessed against all owners or operators of underground tanks to be used for initial establishment of the underground storage tank insurance fund;

(7) Procedures for making expenditures from the underground storage tank administrative fund, the leaking underground storage tank response fund and the underground storage tank insurance fund;

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

(9) Requirements for reporting of releases and corrective action taken in response to a release;

(10) Requirements for taking corrective action in response to a release from an underground storage tank;

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(11) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(12) Requirements for certification of installation, removal, retrofit, testing and inspection of underground storage tanks and leak detection systems by a registered professional engineer or other qualified person;

(13) Requirements for public participation in the enforcement of the state underground storage tank program;

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

(15) Standards of performance for new underground storage tanks;

(16) Procedures for the review, acceptance, settlement and payment of claims under policies issued by the director pursuant to subsection (c) of section five of this article; or

(17) Any other rules or standards necessary and appropriate for the effective implementation and administration of this article.

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§22-17-7. Underground storage tank advisory committee; purpose.

The underground storage tank advisory committee is continued. The committee is composed of seven members, which shall include a member of the West Virginia petroleum council, a member of the West Virginia service station dealers association, a member of the West Virginia petroleum marketers association, the director, a member of the West Virginia manufacturers association, the West Virginia Insurance Commissioner, and a representative from the citizenry-at-large who is appointed by the Governor.

The committee is advisory to the director and the Division of Environmental Protection regarding the expenditure of funds from the leaking underground storage tank response fund and the underground storage tank insurance fund created by this article. The director shall deliver to the committee annually a report on expenditures made from each fund. The committee shall consider any matter brought before it by the director or any member of the committee and may consider any matter referred to it by a person not a member of the committee. At the conclusion of its consideration of any proposal, the committee shall make its recommendation to the director. The director is not bound by any recommendations of the committee. The committee may also formulate general or long-range plans for improvements in the administration of the funds for the consideration of the director.

By the second Wednesday of January of each year the committee shall prepare and deliver to the director and to the Legislature a report of all matters it considered, recommendations it made and plans it formulated during the preceding calendar year. The report shall include any recommendation it may have for changes in the law which would be necessary to implement any of its administrative recommendations.

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§22-17-8. Notification requirements.

(a) Underground storage tank owners shall notify the director of any underground storage tank brought into use on or after June 10, 1988, within thirty days of such use, on a form prescribed by the director. The notice shall specify the date of tank installation, tank location, type of construction, size and age of such tank and the type of regulated substance to be stored therein. If, at the time this information is required to be submitted, the director has not prepared the form required by this section, the owner shall nevertheless submit the information in writing to the director.

(b) A person who sells a tank intended to be used as an underground storage tank shall reasonably notify the owner or operator of such tank of the owner's notification requirements of this section.

(c) A new owner of any underground storage tank shall notify the director in writing of the transfer of ownership of any underground storage tank. The new owner upon the effective date of such transfer becomes subject to all provisions of this article. The director may prescribe by rule the appropriate form and timing for such notification.

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§22-17-9. Registration requirements; undertaking activities without registration.

(a) No person may operate any underground storage tank for the purpose of storing any regulated substance identified or listed under this article without registering with the director and paying a registration fee for such underground storage tank.

(b) No person may install any underground storage tank after the effective date of this article without first registering said tank in a form and manner prescribed by the director.

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§22-17-10. Financial responsibility.

The director shall promulgate rules, as provided in section six of this article, containing requirements for maintaining evidence of financial responsibility as deemed necessary and desirable for taking reasonable corrective action and for compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank. Such means of financial responsibility may include, but not be limited to, insurance, guarantee, surety bond, letter of credit, proof of assets or qualification as a self-insurer. In promulgating rules under this section, the director is authorized to specify policy or other contractual terms, conditions or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this article.

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§22-17-11. Performance standards for new underground storage tanks.

(a) The director shall promulgate performance standards for new underground storage tanks as provided in section six of this article. The performance standards for new underground storage tanks shall include, but not be limited to, design, construction, installation, release detection and compatibility standards.

(b) New underground storage tank construction standards must include at least the following requirements:

(1) That an underground storage tank will prevent releases of regulated substances stored therein, which may occur as a result of corrosion or structural failure, for the operational life of the tank;

(2) That an underground 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 substances; and

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

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§22-17-12. Confidentiality.

(a) Any records, reports or information obtained from any persons under this article shall be available to the public, except that upon a showing satisfactory to the director by any person that records, reports or information, or a particular part thereof, to which the director or any officer, employee, or representative thereof has access under this section, if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof is confidential in accordance with the purposes of this section, except that such record, report, document or information may be disclosed to other officers, employees or authorized representatives of the United States environmental protection agency or of this state if such officers, employees or authorized representatives are implementing the provisions of this article.

(b) Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in the county jail for not more than one year, or both fined and imprisoned.

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

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§22-17-13. 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 the provisions of this article, any owner or operator of an underground storage tank shall, upon request of the director, furnish information relating to such tanks, their associated equipment and contents, conduct reasonable monitoring or testing, permit the director or his or her authorized representative at all reasonable times to have access to, and to copy all records relating to such tanks and permit the director or his or her authorized representative to have access to the underground 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 the provisions of this article, the director or his or her authorized representative may:

(1) Enter at reasonable times any establishment or other place where an underground storage tank is located;

(2) Inspect and obtain samples from any person of any regulated substances contained in such tank;

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

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

Each such inspection shall be commenced and completed with reasonable promptness.

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§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

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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.

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§22-17-15. Administrative orders; injunctive relief; requests for reconsideration.

(a) Whenever on the basis of any information, the director determines that any person is in violation of any requirement of this article, he or she may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period or the director 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 director 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) Any person issued an order may file a notice of request for reconsideration with the director not more than seven days from the issuance of such order. The notice of request for reconsideration shall identify the order to be reconsidered and shall set forth in detail the reasons for which reconsideration is requested. The director shall grant or deny the request for reconsideration within twenty days of the filing of the notice of request of reconsideration.

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§22-17-16. Civil penalties.

(a) Any violator who fails to comply with an order of the director issued under subsection (a), section fifteen 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 who knowingly: (1) Fails to register; or (2) submits false information pursuant to this article is liable for a civil penalty not to exceed $10,000 for each tank which is not registered or for which false information is submitted.

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

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§22-17-17. Public participation.

Any adversely affected person may intervene in any civil or administrative proceeding under this article when such person claims an interest relating to the property or transaction which is the subject of the action and such person is so situated that the disposition of the action may as a practical matter impair or impede his or her ability to protect that interest.

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§22-17-18. Appeal to environmental quality board.

Any person aggrieved or adversely affected by an order of the director 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.

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§22-17-19. Disclosures required in deeds and leases.

(a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property, or the substrata of such property whether or not the grantor or lessor is at time of such conveyance or lease the owner of such substrata, contains an underground storage tank. The provisions of this subsection only apply to those grantors or lessors who owned or had an interest in the real property when the same or the substrata thereof contained an underground storage tank which was being actively used for storing any regulated substance or who have actual knowledge or reason to believe that such real property or the substrata thereof contains an underground storage tank.

(b) Any lessee of real estate or of any substratum underlying said real estate who intends to install an underground storage tank in the leased real estate or any substratum underlying the same shall disclose in writing at the time of such lease, or within thirty days prior to such installation, such fact to the lessor of such real estate or substratum. Such disclosure shall describe the proposed location upon said property where the tank is to be located and all other information required by the director.

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§22-17-20. Appropriation of funds; Underground Storage Tank Administrative Fund.

(a) The secretary shall collect annual registration fees from owners of underground storage tanks. The registration fee collected under this section may not exceed $65 per tank per year. All such 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 "Underground Storage Tank Administrative Fund" to be used to defray the cost of administering this article in accordance with rules promulgated pursuant to section six of this article. The secretary shall promulgate an emergency rule in accordance with article three, chapter twenty-nine-a of this code, implementing the increase in registration fees. This fee of up to $65 is effective for the fiscal year ending June 30, 2004.

(b) The total fee assessed shall be sufficient to assure a balance in the fund not to exceed one million dollars at the beginning of each year.

(c) Any amount received pursuant to subsection (a) of this section which exceeds the annual balance required in subsection (b) of this section shall be deposited into the Leaking Underground Storage Tank Response Fund established pursuant to this article to be used for the purposes set forth for expenditure of moneys in the fund.

(d) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by article XII, section 5 of the Constitution of West Virginia. For the purposes of this section, the net proceeds of such fines, penalties and forfeitures are the proceeds remaining after deducting from the proceeds those sums appropriated by the Legislature for defraying the cost of administering this article. In making the appropriation for defraying the cost of administering this article, the Legislature shall first take into account the sums included in the special fund prior to deducting additional sums as may be needed from the civil fines, civil penalties and forfeitures collected pursuant to this article. At the end of each fiscal year any unexpended balance of the collected civil fines, civil penalties, forfeitures and registration fees shall not be transferred to the General Revenue Fund but shall remain in the fund.

(e) The secretary shall submit an annual report to the Joint Committee on Government and Finance on or before January 1 each year providing information as to the status of the Underground Storage Tank Fund, the registration fees or forfeitures collected and any fines and penalties assessed pursuant to this article, the amount of net proceeds of fines, penalties and forfeitures paid into the fund and information as to the progress of the underground storage tank program in the protection of human health and the environment.

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§22-17-21. Leaking underground storage tank response fund.

(a) Each underground petroleum storage tank owner within this state shall pay an annual fee, if assessed by the director, to establish a fund to assure adequate response to leaking underground petroleum storage tanks. The fees assessed pursuant to this section shall not exceed $25 per tank per year. The proceeds of such assessment shall be paid into the State Treasury into a special fund designated “the leaking underground storage tank response fund”, which is hereby continued.

(b) Each owner of an underground petroleum storage tank subject to a fee assessment under subsection (a) of this section shall pay a fee based on the number of underground petroleum storage tanks he or she owns. The director shall vary the fees annually to a level necessary to produce a fund of at least $750,000 at the beginning of each calendar year taking into account those amounts deposited in the fund pursuant to subsection (c), section twenty of this article. In no event shall the fees assessed in this section be set to produce revenues exceeding $250,000 in any year.

(c) When the unobligated balance of the leaking underground storage tank response fund exceeds $1 million at the end of a calendar year, fee assessment under this section shall cease until such time as the unobligated balance at the end of any year is less than $750,000.

(d) At the end of each fiscal year, any unexpended balance including accrued interest of such collected fees shall not be transferred to the General Revenue Fund but shall remain in the fund.

(e) The director is authorized to enter into agreements and contracts and to expend the moneys in the fund for the following purposes:

(1) Responding to underground petroleum storage tank releases when, based on readily available information, the director determines that immediate action may prevent or mitigate significant risk of harm to human health, safety or the environment from regulated substances in situations for which no federal funds are immediately available for such response, cleanup or containment: Provided, That the director shall apply for and diligently pursue available federal funds for such releases at the earliest possible time.

(2) Reimbursing any person for reasonable cleanup costs incurred with the authorization of the director in responding to an underground petroleum storage tank release.

(3) Reimbursing any person for reasonable costs incurred with the authorization of the director responding to perceived, potential or threatened releases from underground petroleum storage tanks where response activities do not indicate that any release has occurred.

(4) Financing the nonfederal share of the cleanup and site reclamation activities pursuant to

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Subtitle I of the federal Resource Conservation and Recovery Act, as amended, as well as future operation and maintenance costs for these sites: Provided, That no portion of the moneys in the leaking underground storage tank response fund shall be used for defraying the costs of administering this article.

(5) Financing the nonfederal share of costs incurred in compensating third parties, including payment of judgments, for bodily injury and property damage, caused by release of petroleum into the environment from an underground storage tank.

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§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

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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.

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§22-17-23. 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.

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