WEST VIRGINIA CODE: §22-30-8

§22-30-8. Corrective action.

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

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

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

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

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

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

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

(3) The cost of corrective action to be expended on an aboveground storage tank exceeds the

WV Legislature

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

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

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

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

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

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

(f) If the secretary determines that immediate response to an imminent threat to human health, safety, water resources or the environment is necessary to avoid substantial injury or damage thereto, corrective action may be taken pursuant to this section without the prior written notice required by subdivision (2), subsection (d) of this section. In that case, the secretary must give subsequent written notice to the owner or operator within fifteen days after the action is taken describing the circumstances that required the action to be taken and setting forth the matters identified in subsection (e) of this section.

WV Legislature