WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED
Sen. Bill No. 85

(Passed March 12, 1988)
In Effect 90 Days from Passage

(By Senator)

Kaufman
AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-h, relating to regulation of underground storage tanks; making legislative declarations and findings; providing definitions; designating the department of natural resources as lead agency for implementing federal program; specifying powers and duties of director of said department; requiring director to promulgate rules, regulations and performance standards; creating advisory committee; imposing certain notification and registration requirements; specifying confidentiality of certain information; creating crime and criminal penalty for violation of confidentiality requirements; providing for inspections, monitoring and testing of underground storage tanks; authorizing director to take corrective action in certain circumstances and specifying procedures for same; providing for administrative orders and enforcement procedure; imposing

civil penalties upon violators of said article; providing for
public participation in administrative proceedings;
providing for administrative appeals and judicial review;
requiring disclosure of certain information in deeds and
leases; providing for assessment and collection of certain
fees; creating certain special funds from proceeds of such
fees; specifying the purposes of such funds and procedure for
expenditures therefrom, and stating legislative intent in
event of conflicting provisions.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, be amended by adding
thereto a new article, designated article five-h, to read as
follows:

ARTICLE 5H. WEST VIRGINIA UNDERGROUND STORAGE TANK ACT.

§20-SH-1. Short title.

1 This article may be known and cited as the "West Virginia
2 Underground Storage Tank Act."


1 The Legislature recognizes that large quantities of
2 petroleum and hazardous substances are stored in
3 underground storage tanks within the state of West
4 Virginia and that emergency situations involving these
5 substances can and will arise which may present a hazard to
6 human health, safety or the environment. The Legislature
7 also recognizes that some of these substances have been
8 stored in underground storage tanks in the state in a
9 manner insufficient to protect human health, safety or the
10 environment. The Legislature further recognizes that the
11 federal government has enacted Subtitle I of the federal
12 Resource Conservation and Recovery Act of 1976, as
13 amended, which provides for a federal program to remove
14 the threat and remedy the effects of releases from leaking
15 underground storage tanks and authorizes federal
16 assistance to respond to releases of petroleum from
17 underground storage tanks. The Legislature declares that
18 the state of West Virginia desires to produce revenue for
19 matching the federal assistance provided under the federal
20 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.


(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
department of natural resources or his authorized
representative.

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

(d) “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 the eighth day of November, one
thousand nine hundred eighty-four.

(e) “Owner” means:

1. In the case of an underground storage tank in use on
the eighth day of November, one thousand nine hundred
eighty-four, 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 the eighth day of November, one thousand nine
hundred eighty-four, 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 soils.


(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 1968, 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 waste water 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" shall not include any pipes connected to any tank which is described in subparagraphs (1) through (9).

§20-5H-4. Designation of department of natural resources as the state underground storage tank program lead agency.

The department of natural resources 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.

§20-5H-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 as of the effective date of this article.

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

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


(a) The director has overall responsibility for the promulgation of rules and regulations under this article. In
promulgating and revising such rules and regulations the director shall comply with the provisions of chapter twenty-nine-a of this code. Such rules and regulations 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 and regulations 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 regulations 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. Regulations 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: Provided, That except for those regulations assessing fees for calendar year one thousand nine hundred eighty-eight, none of the regulations authorized under this subsection shall become effective until one hundred and eighty days after the date of final promulgation: Provided, however, That fees assessed pursuant to said regulations shall be consolidated so that no more than one payment shall be due from any tank owner or operator in any one year;
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;
(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
shall determine if information obtained by any agency
under this article is confidential;
(15) Standards of performance for new underground
storage tanks; or
(16) Any other rules, regulations or standards necessary
and appropriate for the effective implementation and
administration of this article.

§20-5H-7. Underground storage tank advisory committee
created; purpose.

There is hereby established an underground storage tank
advisory committee. The committee shall be 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 of
the department of natural resources, a member of the West
Virginia manufacturers association, the West Virginia
insurance commissioner, and a representative from the
citizenry-at-large who shall be appointed by the governor.
The committee shall be advisory to the director and the
department of natural resources 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 of the
department of natural resources 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.


(a) Underground storage tank owners shall notify the
director of any underground storage tank brought into use
on or after the effective date of this article 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 shall upon
the effective date of such transfer become subject to all provisions of this article. The director may prescribe by regulation the appropriate form and timing for such notification.

§20-5H-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.

(c) Subsections (a) and (b) of this section shall not become operative prior to promulgation of rules and regulations governing registration procedures and forms, as provided in section six of this article.


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.


(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.


(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 shall be considered 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 this state 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 five thousand dollars, 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 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.

§20-5H-13. Inspections, monitoring and testing.

(a) For the purposes of developing or assisting in the
development of any regulation, 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 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
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 regulation, conducting any study,
taking corrective action or enforcing the provisions of this
article, the director or his 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.

§20-5H-14. Corrective action for underground petroleum
storage tanks.

(a) Prior to the effective date of regulations
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) of 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 regulations
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 regulations. 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
regulations 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 board under section eighteen of this article to comply with the corrective action regulations.

(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 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 subsections (a) or (b) of this section, he 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.

§20-5H-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 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 issues upon application, until the order is reviewed by the water resources 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.


(a) Any violator who fails to comply with an order of the director issued under subsection (a) of section fifteen of this article within the time specified in the order shall be liable for a civil penalty of not more than twenty-five thousand dollars for each day of continued noncompliance.

(b) Any owner who knowingly fails to register or knowingly submits false information pursuant to this article shall be liable for a civil penalty not to exceed ten thousand dollars 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 shall be subject to a civil penalty not to exceed ten thousand dollars for each tank for each day of violation.

§20-5H-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 ability to protect that interest.

§20-5H-18. Appeal to water resources board; notice; hearings, orders.

(a) 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 water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as such person believes that the director should have entered, taken or imposed. The person so appealing is the appellant and the director is the appellee.

(b) An appeal is perfected by filing a notice of appeal on the form prescribed by the water resources board for such purpose with such board within thirty days after the date upon which the appellant received the copy of such order. The filing of the notice of appeal does not stay or suspend the execution of the order appealed from. If it appears to the water resources board that an unjust hardship to the appellant will result from the execution of the director's order pending determination of the appeal, the board may grant a suspension of such order and fix its terms. The notice of appeal shall set forth the order, action or terms and conditions complained of, the grounds upon which the appeal is based and the action sought by the appellant. A copy of the notice of appeal shall be filed by the water resources board with the director within three days after the notice of appeal is filed with such board.

(c) Within ten days after receipt of his copy of the notice of appeal, the director shall prepare and certify to the water resources board a complete record of the proceedings out of which the appeal arises, including all documents and
correspondence in the possession of the director relating to
the matter in question. With the consent of the board and
upon such terms and conditions as the board may prescribe,
any person affected by any such activity may by petition
intervene as a party appellant or appellee. The board shall
hear the appeal de novo and evidence may be offered on
behalf of the appellant, the appellee and by any intervenors.

(d) All of the pertinent provisions of article five, chapter
twenty-nine-a of this code apply to and govern the hearing
on appeal authorized by this section and the administrative
procedures in connection with and following such hearing,
with like effect as if the provisions of article five were set
forth in extenso in this section, with the following
modifications or exceptions:

(1) Unless the board directs otherwise, the appeal
hearing shall be held in or near the city of Charleston,
Kanawha County; and

(2) In accordance with the provisions of section one,
article five of said chapter twenty-nine-a, all of the
testimony at any such hearing shall be recorded by
stenographic notes and characters or by mechanical means.
Such reported testimony in every appeal hearing under this
article shall be transcribed.

(e) Any such appeal hearing shall be conducted by a
quorum of the board but the parties by stipulation may
agree to take evidence before a hearing examiner employed
by the board. For the purpose of conducting such appeal
hearing, any member of the board and the secretary thereof
may issue subpoenas and subpoenas duces tectum. Such
subpoenas shall be issued and served within the time and
for the fees and shall be enforced as specified in section one,
article five of chapter twenty-nine-a and all of the
provisions of section one of said article dealing with
subpoenas and subpoenas duces tectum shall apply to
subpoenas and subpoenas duces tectum issued for the
purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days
after the date upon which the board received the notice of
appeal unless there is a postponement or continuance. The
board may postpone or continue any hearing upon its own
motion or upon application of the appellant, the appellee or
any intervenors for good cause shown. The director shall be
represented at any such hearing by the attorney general or
his assistants, or the director, with the written approval of
the attorney general, may employ counsel to represent him.
At any such hearing the appellant and any intervenor may
represent himself or be represented by an attorney-at-law
admitted to practice before any circuit court of this state.
(g) After such hearing and consideration of all the
testimony, evidence and record in the case, the board shall
make and enter an order affirming, modifying or vacating
the order of the director or, shall make and enter such order
as the director should have entered, or shall make and enter
an order taking such action as the director should have
taken.
(h) Such order shall be accompanied by findings of fact
and conclusions of law as specified in section three, article
five, chapter twenty-nine-a of this code, and a copy of such
order and accompanying findings and conclusions shall be
served upon the appellant, the appellee, any intervenors
and their respective attorneys of record, if any, in person or
by registered or certified mail.
(i) The board shall also cause a notice to be served with
the copy of such order, which notice shall advise the
appellant, the appellee and any intervenors of their right to
judicial review. The order of the board is final unless
vacated or modified upon judicial review.
(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.
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.

§20-5H-20. Appropriation of funds; underground storage tank administrative fund created.

(a) The director shall collect annual registration fees from owners of underground storage tanks. The registration fee collected under this section shall not exceed twenty-five dollars 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 fund designated "the underground storage tank administrative fund" to be used to defray the cost of administering this article in accordance with regulations promulgated pursuant to section six of this article.

(b) For the year one thousand nine hundred eighty-eight, the total fee assessed pursuant to subsection (a) of this section shall be sufficient to assure an initial balance in the underground storage tank administrative fund not to exceed fifty thousand dollars at the beginning of the next calendar year. For the year one thousand nine hundred eighty-nine, the total fee assessed shall be sufficient to assure a balance in the fund not to exceed one hundred fifty thousand dollars at the beginning of the next calendar year. For the year one thousand nine hundred ninety, the total fee assessed shall be sufficient to assure a balance in the fund of not to exceed two hundred fifty thousand dollars at the beginning of the next calendar year. For the year one thousand nine hundred ninety-one, and each year thereafter, the total fee assessed shall be sufficient to assure a balance in the fund of not to exceed four hundred thousand dollars at the beginning of each subsequent 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 therein.

(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 therefrom 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 such special fund prior to deducting such additional sums as may be needed from the fines, penalties and forfeitures collected pursuant to this article. At the end of each fiscal year any unexpended balance of such collected fines, penalties, forfeitures and registration fees shall not be transferred to the general revenue fund but shall remain in the fund.


1. (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 twenty-five dollars 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."

2. (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 owns. For the year one thousand nine hundred eighty-eight, the total fee assessed shall be sufficient to assure a balance of two hundred fifty thousand dollars, taking into account those amounts deposited in the fund pursuant to subsection (c) of section twenty of this article. For the year one thousand nine hundred eighty-nine, the total fee assessed shall be sufficient to assure a
balance of five hundred thousand dollars taking into account those amounts deposited in the fund pursuant to subsection (c) of section twenty of this article. For subsequent years, the director shall vary the fees annually to a level necessary to produce a fund of at least seven hundred fifty thousand dollars at the beginning of each calendar year taking into account those amounts deposited in the fund pursuant to subsection (c) of section twenty of this article. In no event shall the fees assessed in this section be set to produce revenues exceeding two hundred fifty thousand dollars in any year.

(c) When the unobligated balance of the leaking underground storage tank response fund exceeds one million dollars 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 seven hundred fifty thousand dollars.

(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 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.


(a) The director 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. The director shall promulgate rules and regulations 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. Such 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.


This article is intended to supplement existing law and it is not the intention of the Legislature in enacting this article to repeal, expressly or by implication, any other provision of this code. In the event that some provision herein is inconsistent with any other provisions of the code, making it impossible to comply with both, the provisions of this article shall control: Provided, That 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
11 respect to the same transaction or event unless such
12 subsequent proceeding involves the violation of a permit or
13 permitting requirement of such other article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ..................this the ..................
day of .................... 1988.

Governor