

No: 85

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

Com. Sub. For Com. Sub. For

SENATE BILL NO. 85

(By Senator Kaufman)



PASSED MARCH 12, 1988

In Effect 90 DAYS FROM Passage



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COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 85

(SENATOR KAUFMAN, *original sponsor*)

[Passed March 12, 1988; in effect ninety days from passage.]

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.

§20-5H-1. Short title.

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

§20-5H-2. Declaration of policy and purpose.

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,

21 operation and abandonment of underground storage tanks
22 and to provide for corrective action to remedy releases of
23 regulated substances from these tanks. Therefore, the
24 Legislature hereby enacts the West Virginia underground
25 storage tank act to create an underground storage tank
26 program and to assume regulatory primacy for such federal
27 programs in this state.

§20-5H-3. Definitions.

1 (a) "Change in status" means causing an underground
2 storage tank to be no longer in use or a change in the
3 reported uses, contents or ownership of an underground
4 storage tank.

5 (b) "Director" means the director of the West Virginia
6 department of natural resources or his authorized
7 representative.

8 (c) "Operator" means any person in control of, or having
9 responsibility for, the daily operation of an underground
10 storage tank.

11 (d) "Nonoperational storage tank" means an
12 underground storage tank in which regulated substances
13 will not be deposited or from which regulated substances
14 will not be dispensed after the eighth day of November, one
15 thousand nine hundred eighty-four.

16 (e) "Owner" means:

17 (1) In the case of an underground storage tank in use on
18 the eighth day of November, one thousand nine hundred
19 eighty-four, or brought into use after that date, a person
20 who owns an underground storage tank used for the
21 storage, use or dispensing of a regulated substance.

22 (2) In the case of an underground storage tank in use
23 before the eighth day of November, one thousand nine
24 hundred eighty-four, but no longer in use on that date, a
25 person who owned such a tank immediately before the
26 discontinuation of its use.

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

33 (g) "Petroleum" means petroleum, including crude oil

34 or any fraction thereof which is liquid at a temperature of
35 sixty degrees Fahrenheit and a pressure of fourteen and
36 seven-tenths pounds per square inch absolute.

37 (h) "Regulated substance" means:

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

44 (2) Petroleum.

45 (i) "Release" means any spilling, leaking, emitting,
46 discharging, escaping, leaching or disposing from an
47 underground storage tank into groundwater, surface water
48 or subsurface soils.

49 (j) "Subtitle I" means Subtitle I of the federal Resource
50 Conservation and Recovery Act of 1976, as amended.

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

58 (1) Farm or residential tanks with a capacity of eleven
59 hundred gallons or less and used for storing motor fuel for
60 noncommercial purposes;

61 (2) Tanks used for storing heating oil for consumptive
62 use on the premises where stored;

63 (3) Septic tanks;

64 (4) A pipeline facility, including gathering lines,
65 regulated under the Natural Gas Pipeline Safety Act of
66 1968, or the Hazardous Liquid Pipeline Safety Act of 1968,
67 or an intrastate pipeline facility regulated under state laws
68 comparable to the provisions of either of those acts;

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

70 (6) Storm water or waste water collection systems;

71 (7) Flow-through process tanks;

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

74 (9) Storage tanks situated in an underground area such
75 as a basement, cellar, mineworking, drift, shaft or tunnel, if

76 the storage tank is situated upon or above the surface of the
77 floor.

78 The term "underground storage tank" shall not include
79 any pipes connected to any tank which is described in
80 subparagraphs (1) through (9).

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

1 The department of natural resources is hereby designated
2 as the state underground storage tank program lead agency
3 for purposes of Subtitle I and is hereby authorized to take
4 all actions necessary or appropriate to secure to this state
5 the benefits of said legislation. In carrying out the purposes
6 of this article, the director is hereby authorized to cooperate
7 with the United States environmental protection agency,
8 other agencies of the federal government, agencies of this
9 state or other states, and other interested persons in all
10 matters relating to underground storage tank regulation.

**§20-5H-5. Powers and duties of director; integration with
other acts.**

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

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

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

**§20-5H-6. Promulgation of rules, regulations and standards by
director.**

1 (a) The director has overall responsibility for the
2 promulgation of rules and regulations under this article. In

3 promulgating and revising such rules and regulations the
4 director shall comply with the provisions of chapter
5 twenty-nine-a of this code. Such rules and regulations shall
6 be no more stringent than the rules and regulations
7 promulgated by the United States environmental
8 protection agency pursuant to Subtitle I.

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

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

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

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

22 (4) Requirements for maintaining a leak detection
23 system, inventory control systems together with tank
24 testing, or a comparable system or method designed to
25 identify releases from underground storage tanks in a
26 manner consistent with the protection of human health and
27 the environment;

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

31 (6) Regulations for procedures and amount of fees to be
32 assessed for the underground storage tank administrative
33 fund, the leaking underground storage tank response fund
34 and the underground storage tank insurance fund
35 established pursuant to this article: *Provided*, That except
36 for those regulations assessing fees for calendar year one
37 thousand nine hundred eighty-eight, none of the
38 regulations authorized under this subsection shall become
39 effective until one hundred and eighty days after the date of
40 final promulgation: *Provided, however*, That fees assessed
41 pursuant to said regulations shall be consolidated so that no
42 more than one payment shall be due from any tank owner or
43 operator in any one year;

44 (7) Procedures for making expenditures from the

45 underground storage tank administrative fund, the leaking
46 underground storage tank response fund and the
47 underground storage tank insurance fund;

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

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

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

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

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

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

63 (14) Procedures establishing when and how the director
64 shall determine if information obtained by any agency
65 under this article is confidential;

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

68 (16) Any other rules, regulations or standards necessary
69 and appropriate for the effective implementation and
70 administration of this article.

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

1 There is hereby established an underground storage tank
2 advisory committee. The committee shall be composed of
3 seven members, which shall include a member of the West
4 Virginia petroleum council, a member of the West Virginia
5 service station dealers association, a member of the West
6 Virginia petroleum marketers association, the director of
7 the department of natural resources, a member of the West
8 Virginia manufacturers association, the West Virginia
9 insurance commissioner, and a representative from the
10 citizenry-at-large who shall be appointed by the governor.

11 The committee shall be advisory to the director and the
12 department of natural resources regarding the expenditure
13 of funds from the leaking underground storage tank

14 response fund and the underground storage tank insurance
15 fund created by this article. The director shall deliver to the
16 committee annually a report on expenditures made from
17 each fund. The committee shall consider any matter
18 brought before it by the director or any member of the
19 committee and may consider any matter referred to it by a
20 person not a member of the committee. At the conclusion of
21 its consideration of any proposal, the committee shall make
22 its recommendation to the director. The director is not
23 bound by any recommendations of the committee. The
24 committee may also formulate general or long-range plans
25 for improvements in the administration of the funds for the
26 consideration of the director.

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

§20-5H-8. Notification requirements.

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

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

16 (c) A new owner of any underground storage tank shall
17 notify the director in writing of the transfer of ownership of
18 any underground storage tank. The new owner shall upon

19 the effective date of such transfer become subject to all
20 provisions of this article. The director may prescribe by
21 regulation the appropriate form and timing for such
22 notification.

§20-5H-9. Registration requirements; undertaking activities without registration.

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

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

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

§20-5H-10. Financial responsibility.

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

§20-5H-11. Performance standards for new underground storage tanks.

1 (a) The director shall promulgate performance

2 standards for new underground storage tanks as provided
3 in section six of this article. The performance standards for
4 new underground storage tanks shall include, but not be
5 limited to, design, construction, installation, release
6 detection and compatibility standards.

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

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

13 (2) That an underground storage tank will be
14 cathodically protected against corrosion, constructed of
15 noncorrosive material, steel clad with a noncorrosive
16 material or designed in a manner to prevent the release or
17 threatened release of stored regulated substances; and

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

§20-5H-12. Confidentiality.

1 (a) Any records, reports or information obtained from
2 any persons under this article shall be available to the
3 public, except that upon a showing satisfactory to the
4 director by any person that records, reports or information,
5 or a particular part thereof, to which the director or any
6 officer, employee, or representative thereof has access
7 under this section, if made public, would divulge
8 information entitled to protection under section 1905 of
9 title 18 of the United States Code, such information or
10 particular portion thereof shall be considered confidential
11 in accordance with the purposes of this section, except that
12 such record, report, document, or information may be
13 disclosed to other officers, employees, or authorized
14 representatives of this state implementing the provisions of
15 this article.

16 (b) Any person who knowingly and willfully divulges or
17 discloses any information entitled to protection under this
18 section is guilty of a misdemeanor, and, upon conviction
19 thereof, shall be fined not more than five thousand dollars,
20 or imprisoned in the county jail for not more than one year,
21 or both fined and imprisoned.

22 (c) In submitting data under this article, a person

23 required to provide such data may designate the data which
24 he believes is entitled to protection under this section and
25 submit such designated data separately from other data
26 submitted under this article. A designation under this
27 subsection shall be made in writing and in such manner as
28 the director may prescribe.

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

1 (a) For the purposes of developing or assisting in the
2 development of any regulation, conducting any study,
3 taking any corrective action or enforcing the provisions of
4 this article, any owner or operator of an underground
5 storage tank shall, upon request of the director, furnish
6 information relating to such tanks, their associated
7 equipment and contents, conduct reasonable monitoring or
8 testing, permit the director or his authorized representative
9 at all reasonable times to have access to, and to copy all
10 records relating to such tanks and permit the director or his
11 authorized representative to have access to the
12 underground storage tank for corrective action.

13 (b) For the purposes of developing or assisting in the
14 development of any regulation, conducting any study,
15 taking corrective action or enforcing the provisions of this
16 article, the director or his authorized representative may:

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

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

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

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

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

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

1 (a) Prior to the effective date of regulations
2 promulgated pursuant to subdivision (9) or (10), subsection

3 (b), section six of this article, the director is authorized to:

4 (1) Require the owner or operator of an underground
5 storage tank to undertake corrective action with respect to

6 any release of petroleum from said tank when the director
7 determines that such corrective action shall be done
8 properly and promptly by the owner or operator if, in the
9 judgment of the director, such action is necessary to protect
10 human health and the environment; or

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

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

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

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

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

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

59 (4) The owner or operator of the tank has failed or
60 refused to comply with an order of the director under this
61 section or of the board under section eighteen of this article
62 to comply with the corrective action regulations.

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

69 (1) He is unable to determine the identity of the
70 responsible party or parties in a manner consistent with the
71 need to take timely corrective action; or

72 (2) The party or parties determined by the director to be
73 responsible for the release or threatened release have been
74 informed in writing of the director's determination and
75 have been requested by the director to take appropriate
76 corrective action but are unable or unwilling to take such
77 action in a timely manner.

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

85 (e) If the director determines that immediate response
86 to an imminent threat to public health and welfare or the
87 environment is necessary to avoid substantial injury or
88 damage to persons, property or resources, corrective action
89 may be taken pursuant to subsections (a) and (b) of this
90 section without the prior written notice required by

91 subdivision (2), subsection (c) of this section. In such a case
92 the director must give subsequent written notice to the
93 responsible party within fifteen days after the action is
94 taken describing the circumstances which required the
95 action to be taken without prior notice.

**§20-5H-15. Administrative orders; injunctive relief; requests
for reconsideration.**

1 (a) Whenever on the basis of any information, the *new*
2 director determines that any person is in violation of any
3 requirement of this article, he may issue an order stating
4 with reasonable specificity the nature of the violation and
5 requiring compliance within a reasonable specified time
6 period or the director may commence a civil action in the
7 circuit court of the county in which the violation occurred
8 or in the circuit court of Kanawha County for appropriate
9 relief, including a temporary or permanent injunction. The
10 director may, except as provided in subsection (b) of this
11 section, stay any order he issues upon application, until the
12 order is reviewed by the water resources board.

13 (b) Any person issued an order may file a notice of
14 request for reconsideration with the director not more than
15 seven days from the issuance of such order. The notice of
16 request for reconsideration shall identify the order to be
17 reconsidered and shall set forth in detail the reasons for
18 which reconsideration is requested. The director shall grant
19 or deny the request for reconsideration within twenty days
20 of the filing of the notice of request of reconsideration.

§20-5H-16. Civil penalties.

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

6 (b) Any owner who knowingly fails to register or
7 knowingly submits false information pursuant to this
8 article shall be liable for a civil penalty not to exceed ten
9 thousand dollars for each tank which is not registered or for
10 which false information is submitted.

11 (c) Any owner or operator of an underground storage
12 tank who fails to comply with any requirement or standard

13 promulgated by the director under section six of this article
14 shall be subject to a civil penalty not to exceed ten thousand
15 dollars for each tank for each day of violation.

§20-5H-17. Public participation.

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

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

1 (a) Any person aggrieved or adversely affected by an
2 order of the director made and entered in accordance with
3 the provisions of this article may appeal to the water
4 resources board for an order vacating or modifying such
5 order, or for such order, action or terms and conditions as
6 such person believes that the director should have entered,
7 taken or imposed. The person so appealing is the appellant
8 and the director is the appellee.

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

25 (c) Within ten days after receipt of his copy of the notice
26 of appeal, the director shall prepare and certify to the water
27 resources board a complete record of the proceedings out of
28 which the appeal arises, including all documents and

29 correspondence in the possession of the director relating to
30 the matter in question. With the consent of the board and
31 upon such terms and conditions as the board may prescribe,
32 any person affected by any such activity may by petition
33 intervene as a party appellant or appellee. The board shall
34 hear the appeal de novo and evidence may be offered on
35 behalf of the appellant, the appellee and by any intervenors.

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

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

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

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

65 (f) Any such hearing shall be held within twenty days
66 after the date upon which the board received the notice of
67 appeal unless there is a postponement or continuance. The
68 board may postpone or continue any hearing upon its own
69 motion or upon application of the appellant, the appellee or
70 any intervenors for good cause shown. The director shall be

71 represented at any such hearing by the attorney general or
72 his assistants, or the director, with the written approval of
73 the attorney general, may employ counsel to represent him.
74 At any such hearing the appellant and any intervenor may
75 represent himself or be represented by an attorney-at-law
76 admitted to practice before any circuit court of this state.

77 (g) After such hearing and consideration of all the
78 testimony, evidence and record in the case, the board shall
79 make and enter an order affirming, modifying or vacating
80 the order of the director or, shall make and enter such order
81 as the director should have entered, or shall make and enter
82 an order taking such action as the director should have
83 taken.

84 (h) Such order shall be accompanied by findings of fact
85 and conclusions of law as specified in section three, article
86 five, chapter twenty-nine-a of this code, and a copy of such
87 order and accompanying findings and conclusions shall be
88 served upon the appellant, the appellee, any intervenors
89 and their respective attorneys of record, if any, in person or
90 by registered or certified mail.

91 (i) The board shall also cause a notice to be served with
92 the copy of such order, which notice shall advise the
93 appellant, the appellee and any intervenors of their right to
94 judicial review. The order of the board is final unless
95 vacated or modified upon judicial review.

§20-5H-19. Disclosures required in deeds and leases.

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

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

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

1 (a) The director shall collect annual registration fees
2 from owners of underground storage tanks. The
3 registration fee collected under this section shall not exceed
4 twenty-five dollars per tank per year. All such registration
5 fees and the net proceeds of all fines, penalties and
6 forfeitures collected under this article including accrued
7 interest shall be paid into the state treasury into a special
8 fund designated "the underground storage tank
9 administrative fund" to be used to defray the cost of
10 administering this article in accordance with regulations
11 promulgated pursuant to section six of this article.

12 (b) For the year one thousand nine hundred eighty-
13 eight, the total fee assessed pursuant to subsection (a) of this
14 section shall be sufficient to assure an initial balance in the
15 underground storage tank administrative fund not to
16 exceed fifty thousand dollars at the beginning of the next
17 calendar year. For the year one thousand nine hundred
18 eighty-nine, the total fee assessed shall be sufficient to
19 assure a balance in the fund not to exceed one hundred fifty
20 thousand dollars at the beginning of the next calendar year.
21 For the year one thousand nine hundred ninety, the total fee
22 assessed shall be sufficient to assure a balance in the fund of
23 not to exceed two hundred fifty thousand dollars at the
24 beginning of the next calendar year. For the year one
25 thousand nine hundred ninety-one, and each year
26 thereafter, the total fee assessed shall be sufficient to assure
27 a balance in the fund of not to exceed four hundred
28 thousand dollars at the beginning of each subsequent year.

29 (c) Any amount received pursuant to subsection (a) of
30 this section which exceeds the annual balance required in

31 subsection (b) of this section shall be deposited into the
32 leaking underground storage tank response fund
33 established pursuant to this article to be used for the
34 purposes set forth therein.

35 (d) The net proceeds of all fines, penalties and
36 forfeitures collected under this article shall be
37 appropriated as directed by article XII, section 5 of the
38 constitution of West Virginia. For the purposes of this
39 section, the net proceeds of such fines, penalties and
40 forfeitures are the proceeds remaining after deducting
41 therefrom those sums appropriated by the Legislature for
42 defraying the cost of administering this article. In making
43 the appropriation for defraying the cost of administering
44 this article, the Legislature shall first take into account the
45 sums included in such special fund prior to deducting such
46 additional sums as may be needed from the fines, penalties
47 and forfeitures collected pursuant to this article. At the end
48 of each fiscal year any unexpended balance of such
49 collected fines, penalties, forfeitures and registration fees
50 shall not be transferred to the general revenue fund but
51 shall remain in the fund.

**§20-5H-21. Leaking underground storage tank response fund
created.**

1 (a) Each underground petroleum storage tank owner
2 within this state shall pay an annual fee, if assessed by the
3 director, to establish a fund to assure adequate response to
4 leaking underground petroleum storage tanks. The fees
5 assessed pursuant to this section shall not exceed twenty-
6 five dollars per tank per year. The proceeds of such
7 assessment shall be paid into the state treasury into a
8 special fund designated "the leaking underground storage
9 tank response fund."

10 (b) Each owner of an underground petroleum storage
11 tank subject to a fee assessment under subsection (a) of this
12 section shall pay a fee based on the number of underground
13 petroleum storage tanks he owns. For the year one thousand
14 nine hundred eighty-eight, the total fee assessed shall be
15 sufficient to assure a balance of two hundred fifty thousand
16 dollars, taking into account those amounts deposited in the
17 fund pursuant to subsection (c) of section twenty of this
18 article. For the year one thousand nine hundred eighty-
19 nine, the total fee assessed shall be sufficient to assure a

20 balance of five hundred thousand dollars taking into
21 account those amounts deposited in the fund pursuant to
22 subsection (c) of section twenty of this article. For
23 subsequent years, the director shall vary the fees annually
24 to a level necessary to produce a fund of at least seven
25 hundred fifty thousand dollars at the beginning of each
26 calendar year taking into account those amounts deposited
27 in the fund pursuant to subsection (c) of section twenty of
28 this article. In no event shall the fees assessed in this section
29 be set to produce revenues exceeding two hundred fifty
30 thousand dollars in any year.

31 (c) When the unobligated balance of the leaking
32 underground storage tank response fund exceeds one
33 million dollars at the end of a calendar year, fee assessment
34 under this section shall cease until such time as the
35 unobligated balance at the end of any year is less than seven
36 hundred fifty thousand dollars.

37 (d) At the end of each fiscal year, any unexpended
38 balance including accrued interest of such collected fees
39 shall not be transferred to the general revenue fund but
40 shall remain in the fund.

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

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

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

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

62 (4) Financing the nonfederal share of the cleanup and
63 site reclamation activities pursuant to Subtitle I of the
64 federal Resource Conservation and Recovery Act, as
65 amended, as well as future operation and maintenance costs
66 for these sites: *Provided*, That no portion of the moneys in
67 the leaking underground storage tank response fund shall
68 be used for defraying the costs of administering this article.

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

§20-5H-22. Underground storage tank insurance fund.

1 (a) The director may establish an underground storage
2 tank insurance fund for the purpose of satisfying the
3 financial responsibility requirements established pursuant
4 to section ten of this article. The director shall promulgate
5 rules and regulations establishing an annual financial
6 responsibility assessment to be assessed on and paid by
7 owners or operators of underground storage tanks who are
8 unable to obtain insurance or otherwise meet the financial
9 responsibility requirements established pursuant to section
10 ten of this article. Such assessments shall be paid into the
11 state treasury into a special fund designated "the
12 underground storage tank insurance fund."

13 (b) At the end of each fiscal year, any unexpended
14 balance of such assessment shall not be transferred to the
15 general revenue fund but shall remain in the underground
16 storage tank insurance fund.

§20-5H-23. Conflicting provisions.

1 This article is intended to supplement existing law and it
2 is not the intention of the Legislature in enacting this article
3 to repeal, expressly or by implication, any other provision
4 of this code. In the event that some provision herein is
5 inconsistent with any other provisions of the code, making
6 it impossible to comply with both, the provisions of this
7 article shall control: *Provided*, That no enforcement
8 proceeding brought pursuant to this article may be
9 duplicated by an enforcement proceeding subsequently
10 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.

Luca O. Williams
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph A. Mills
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Dean Tomlinson
.....
President of the Senate

William C. Coker
.....
Speaker House of Delegates

The within *approved* this the *28th*
March
day of 1988.

Arthur A. Maney, Jr.
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/15/88

Time 4:29 pm

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