WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2746

(By Delegates Beane, Douglas, Staton and Johnson)

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Passed March 12, 1999

In Effect Ninety Days from Passage
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COMMITTEE SUBSTITUTE

FOR

H. B. 2746

(BY DELEGATES BEANE, DOUGLAS, STATON AND JOHNSON)

[Passed March 12, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, five, six, twelve and sixteen, article seventeen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to incorporating federal updates to the underground storage tank act and providing subrogation authority to the director of the division of environmental protection; and proposal of rules.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, twelve and sixteen, article seventeen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. UNDERGROUND STORAGE TANK ACT.

§22-17-3. Definitions.

1 (a) “Change in status” means causing an underground storage tank to be no longer in use or a change in the reported uses, contents or ownership of an underground storage tank.
(b) "Director" means the director of the West Virginia division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

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

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

(e) "Owner" means:

(1) In the case of an underground storage tank in use on 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 1979, or an intrastate pipeline facility regulated under state laws comparable to the provisions of either of those acts;

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

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or
§22-17-5. Powers and duties of director; integration with other acts.

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

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

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

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

(e) The director may take such actions as are necessary and appropriate to carry out and enforce any agreements, contracts or cooperative arrangements entered into as provided in subsection (d) of this section, including the institution and prosecution of suits in any state or federal court or administrative tribunal, whether in the director’s name or in the name of an insured or a subrogor.
§22-17-6. Promulgation of rules and standards by director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§22-17-12. Confidentiality.

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

(b) Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than 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 or she believes is entitled to protection under this section and submit such designated data separately from other data submitted under this article. A designation under this subsection shall be made in writing and in such manner as the director may prescribe.

§22-17-16. Civil penalties.

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

(b) Any owner who knowingly: (1) Fails to register; or (2) submits false information pursuant to this article is liable for a civil penalty not to exceed 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 is subject
to a civil penalty not to exceed ten thousand dollars for each tank for each day of violation.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the ______ day of __________, 1999.

Governor