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REGULAR SESSION, 2015

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SB 423

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 423

(SENATORS M. HALL, BLAIR, CARMICHAEL, FACEMIRE, D. HALL,
KIRKENDOLL, MULLINS, PLYMALE, ROMANO, TRUMP, WOELFEL,
WILLIAMS AND STOLLINGS, *ORIGINAL SPONSORS*)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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WILLIAMS AND STOLLINGS, *ORIGINAL SPONSORS*)

[Passed March 14, 2015; in effect ninety days from passage.]

AN ACT to repeal §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated, §16-1-9f; to amend and reenact §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code; to amend said code by adding thereto a new section, designated §22-30-26; and to amend and reenact §22-31-2 of said code, all relating to protection of water resources and public health generally; amending the Aboveground Storage Tank Act; defining terms; requiring secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; authorizing the Secretary of the

Department of Environmental Protection to propose emergency and legislative rules; creating alternative regulatory program to allow permitted and otherwise regulated entities to compel permits and plans to accomplish tank and secondary containment standards under existing programs; requiring secretary to develop regulatory program for tanks; creating a zone of peripheral concern for some; creating certain exemptions to regulation; providing factors to be considered in a program; requiring inspection and certification of tanks; requiring evidence of financial responsibility; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of type and quantity of fluids stored in tanks to local water utilities and governments; requiring posting of signs at or near tanks; creating an administrative fund; creating Protect Our Water Fund; authorizing public access to certain information; authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; providing for civil and criminal penalties; allowing appeals to Environmental Quality Board; prohibiting duplicative enforcement; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing for waiver of certain requirements; authorizing secretary to require individual NPDES permits; authorizing Secretary of Department of Health and Human Resources to inventory potential sources of significant contamination; membership of study commission; scope of study; and establishing reporting requirements.

Be it enacted by the Legislature of West Virginia:

That §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §16-1-9f; that §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6,

§22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-30-26; and that §22-31-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM

§16-1-9f. Inventory of potential sources of significant contamination.

1 (a) The secretary, working in collaboration with the
2 Department of Environmental Protection and the Division of
3 Homeland Security and Emergency Management, shall
4 compile an inventory of all potential sources of significant
5 contamination contained within a public water system's zone
6 of critical concern and identify those that are not currently
7 permitted or subject to regulation by the Secretary of the
8 Department of Environmental Protection under one or more
9 articles of chapter twenty-two of this code. In compiling the
10 inventory, the secretary shall use information provided in the
11 registrations submitted pursuant to section four, article thirty,
12 chapter twenty-two of this code, information provided to the
13 Division of Homeland Security and Emergency Management
14 pursuant to section 312 of the federal Emergency Planning
15 and Community Right-to-Know Act, and other information
16 available to the agency.

17 (b) The Department shall provide a copy of the compiled
18 list of known potential sources of significant contamination
19 in each zone of critical concern to the Department of
20 Environmental Protection and the Division of Homeland
21 Security and Emergency Management.

CHAPTER 22. ENVIRONMENTAL RESOURCES

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-2. Legislative findings.

1 (a) The West Virginia Legislature finds the public policy
2 of the State of West Virginia is to protect and conserve the
3 water resources for the state and its citizens. The state's water
4 resources are vital natural resources that are essential to
5 maintain, preserve and promote human health, quality of life
6 and economic vitality of the state.

7 (b) The West Virginia Legislature further finds the public
8 policy of the state is for clean, uncontaminated water to be
9 made available for its citizens who are dependent on clean
10 water as a basic need for survival and who rely on the
11 assurances from public water systems and the government
12 that the water is safe to consume.

13 (c) The West Virginia Legislature further finds the public
14 policy of the state is that clean, uncontaminated water be
15 available to its businesses and industries that rely on water
16 for their economic pursuits and the well-being of their
17 employees. These include the medical industry, educational
18 institutions, the food and hospitality industries, the tourism
19 industry, manufacturing, coal, natural gas and other
20 industries. Businesses and industries searching for places to
21 locate or relocate consider the quality of life for their
22 employees as well as the quality of raw materials such as
23 clean water.

24 (d) The Legislature further finds that large quantities of
25 fluids are stored in aboveground storage tanks within the state
26 and that emergency situations involving these fluids can and
27 will arise that may present a hazard to human health, safety,

28 the water resources, the environment and the economy of the
29 state. The Legislature further recognizes that some of these
30 fluids have been stored in aboveground storage tanks in a
31 manner insufficient to protect human health, safety, water
32 resources, the environment and the economy of the state.

§22-30-3. Definitions.

1 For purposes of this article:

2 (1) "Aboveground storage tank" or "tank" or "AST"
3 means a device made to contain an accumulation of more
4 than one thousand three hundred twenty gallons of fluids that
5 are liquid at standard temperature and pressure, which is
6 constructed primarily of nonearthen materials, including
7 concrete, steel, plastic or fiberglass reinforced plastic, which
8 provide structural support, more than ninety percent of the
9 capacity of which is above the surface of the ground, and
10 includes all ancillary pipes and dispensing systems up to the
11 first point of isolation. The term includes stationary devices
12 which are permanently affixed, and mobile devices which
13 remain in one location on a continuous basis for three
14 hundred sixty-five or more days. A device meeting this
15 definition containing hazardous waste subject to regulation
16 under 40 C. F. R. Parts 264 and 265, exclusive of tanks
17 subject to regulation under 40 C. F. R. § 265.201 is included
18 in this definition but is not a regulated tank. Notwithstanding
19 any other provision of this code to the contrary, the following
20 categories of devices are not subject to the provisions of this
21 article:

22 (A) Shipping containers that are subject to state or federal
23 laws or regulations governing the transportation of hazardous
24 materials, including, but not limited to, railroad freight cars
25 subject to federal regulation under the Federal Railroad
26 Safety Act, 49 U. S. C. §§20101-2015, as amended,

27 including, but not limited to, federal regulations promulgated
28 thereunder at 49 C. F. R. Parts 172, 173 or 174;

29 (B) Barges or boats subject to federal regulation under the
30 United States Coast Guard, United States Department of
31 Homeland Security, including, but not limited to, federal
32 regulations promulgated at 33 C. F. R. 1, *et seq.* or subject to
33 other federal law governing the transportation of hazardous
34 materials;

35 (C) Swimming pools;

36 (D) Process vessels;

37 (E) Devices containing drinking water for human or
38 animal consumption, surface water or groundwater,
39 demineralized water, noncontact cooling water or water
40 stored for fire or emergency purposes;

41 (F) Devices containing food or food-grade materials used
42 for human or animal consumption and regulated under the
43 Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-392);

44 (G) Except when located in a zone of critical concern, a
45 device located on a farm, the contents of which are used
46 exclusively for farm purposes and not for commercial
47 distribution;

48 (H) Devices holding wastewater that is being actively
49 treated or processed (e.g., clarifier, chlorine contact chamber,
50 batch reactor, etc.);

51 (I) Empty tanks held in inventory or offered for sale;

52 (J) Pipeline facilities, including gathering lines, regulated
53 under the Natural Gas Pipeline Safety Act of 1968 or the

54 Hazardous Liquid Pipeline Safety Act of 1979, or an
55 intrastate pipeline facility regulated by the West Virginia
56 Public Service Commission or otherwise regulated under any
57 state law comparable to the provisions of either the Natural
58 Gas Pipeline Safety Act of 1968 or the Hazardous Liquid
59 Pipeline Safety Act of 1979;

60 (K) Liquid traps, atmospheric and pressure vessels, or
61 associated gathering lines related to oil or gas production and
62 gathering operations; and

63 (L) Electrical equipment such as transformers, circuit
64 breakers and voltage regulator transformers.

65 (2) "Department" means the West Virginia Department
66 of Environmental Protection.

67 (3) "First point of isolation" means the valve, pump,
68 dispenser or other device or equipment on or nearest to the
69 tank where the flow of fluids into or out of the tank may be
70 shut off manually or where it automatically shuts off in the
71 event of a pipe or tank failure.

72 (4) "Nonoperational storage tank" means an empty
73 aboveground storage tank in which fluids will not be
74 deposited or from which fluids will not be dispensed on or
75 after the effective date of this article.

76 (5) "Operator" means any person in control of, or having
77 responsibility for, the daily operation of an aboveground
78 storage tank.

79 (6) "Owner" means a person who holds title to, controls
80 or owns an interest in an aboveground storage tank, including
81 the owner immediately preceding the discontinuation of its
82 use. "Owner" does not mean a person who holds an interest

83 in a tank for financial security unless the holder has taken
84 possession of and operated the tank.

85 (7) "Person", "persons" or "people" means any
86 individual, trust, firm, owner, operator, corporation or other
87 legal entity, including the United States government, an
88 interstate commission or other body, the state or any agency,
89 board, bureau, office, department or political subdivision of
90 the state, but does not include the Department of
91 Environmental Protection.

92 (8) "Process vessel" means a tank that forms an integral
93 part of a production process through which there is a steady,
94 variable, recurring or intermittent flow of materials during the
95 operation of the process or in which a biological, chemical or
96 physical change in the material occurs. This does not include
97 tanks used for storage of materials prior to their introduction
98 into the production process or for the storage of finished
99 products or by-products of the production process.

100 (9) "Public groundwaters supply source" means a primary
101 source of water supply for a public water system which is
102 directly drawn from a well, underground stream, underground
103 reservoir, underground mine or other primary sources of
104 water supplies which are found underneath the surface of the
105 state.

106 (10) "Public surface water supply source" means a
107 primary source of water supply for a public water system
108 which is directly drawn from rivers, streams, lakes, ponds,
109 impoundments or other primary sources of water supplies
110 which are found on the surface of the state.

111 (11) "Public surface water influenced groundwater supply
112 source" means a source of water supply for a public water
113 system which is directly drawn from an underground well,

114 underground river or stream, underground reservoir or
115 underground mine, and the quantity and quality of the water
116 in that underground supply source is heavily influenced,
117 directly or indirectly, by the quantity and quality of surface
118 water in the immediate area.

119 (12) "Public water system" means:

120 (A) Any water supply or system which regularly supplies
121 or offers to supply water for human consumption through
122 pipes or other constructed conveyances, if serving at least an
123 average of twenty-five individuals per day for at least sixty
124 days per year, or which has at least fifteen service
125 connections, and shall include:

126 (i) Any collection, treatment, storage and distribution
127 facilities under the control of the owner or operator of the
128 system and used primarily in connection with the system; and

129 (ii) Any collection or pretreatment storage facilities not
130 under such control which are used primarily in connection
131 with the system.

132 (B) A public water system does not include a bathhouse
133 located on coal company property solely for the use of its
134 employees or a system which meets all of the following
135 conditions:

136 (i) Consists only of distribution and storage facilities (and
137 does not have any collection and treatment facilities);

138 (ii) Obtains all of its water from, but is not owned or
139 operated by, a public water system which otherwise meets the
140 definition;

141 (iii) Does not sell water to any person; and

142 (iv) Is not a carrier conveying passengers in interstate
143 commerce.

144 (13) "Regulated level 1 aboveground storage tank" or
145 "level 1 regulated tank" means:

146 (A) An AST located within a zone of critical concern,
147 source water protection area, public surface water influenced
148 groundwater supply source area, or any AST system
149 designated by the Secretary as a level 1 regulated tank; or

150 (B) An AST that contains substances defined in section
151 101(14) of the Comprehensive Environmental Response,
152 Compensation and Liability Act (CERCLA) as a "hazardous
153 substance" (42 U. S. C. § 9601(14)); or is on EPA's
154 "Consolidated List of Chemicals Subject to the Emergency
155 Planning and Community Right to Know Act (EPCRA),
156 CERCLA, and § 112(r) of the Clean Air Act (CAA)" (known
157 as "the List of Lists") as provided by 40 C. F. R. §§ 355, 372,
158 302, and 68) in a concentration of one percent or greater,
159 regardless of the AST's location, except ASTs containing
160 petroleum are not "level 1 regulated tanks" based solely upon
161 containing constituents recorded on the CERCLA lists; or,

162 (C) An AST with a capacity of 50,000 gallons or more,
163 regardless of its contents or location.

164 (14) "Regulated level 2 aboveground storage tank" or
165 "level 2 regulated tank" means an AST that is located within
166 a zone of peripheral concern that is not a level 1 regulated
167 tank.

168 (15) "Regulated aboveground storage tank" or "regulated
169 tank" means an AST that meets the definition of a level 1 or
170 level 2 regulated tank.

171 (16) “Release” means any spilling, leaking, emitting,
172 discharging, escaping, or leaching of fluids from an
173 aboveground storage tank into the waters of the state or
174 escaping from secondary containment.

175 (17) “Secondary containment” means a safeguard applied
176 to one or more aboveground storage tanks that prevents the
177 discharge into the waters of the state of the entire capacity of
178 the largest single tank and sufficient freeboard to contain
179 precipitation. In order to qualify as secondary containment,
180 the barrier and containment field must be sufficiently
181 impervious to contain fluids in the event of a release, and
182 may include double-walled tanks, dikes, containment curbs,
183 pits or drainage trench enclosures that safely confine the
184 release from a tank in a facility catchment basin or holding
185 pond. Earthen dikes and similar containment structures must
186 be designed and constructed to contain, for a minimum of
187 seventy-two hours, fluid that escapes from a tank.

188 (18) “Secretary” means the Secretary of the Department
189 of Environmental Protection, or his or her designee.

190 (19) “Source water protection area” for a public
191 groundwater supply source is the area within an aquifer that
192 supplies water to a public water supply well within a
193 five-year time-of-travel, and is determined by the
194 mathematical calculation of the locations from which a drop
195 of water placed at the edge of the protection area would
196 theoretically take five years to reach the well.

197 (20) “Zone of critical concern” for a public surface water
198 supply source and for a public surface water influenced
199 groundwater supply source is a corridor along streams within
200 a watershed that warrants detailed scrutiny due to its
201 proximity to the surface water intake and the intake’s
202 susceptibility to potential contaminants within that corridor.

203 The zone of critical concern is determined using a
204 mathematical model that accounts for stream flows, gradient
205 and area topography. The length of the zone of critical
206 concern is based on a five-hour time-of-travel of water in the
207 streams to the intake. The width of the zone of critical
208 concern is one thousand feet measured horizontally from each
209 bank of the principal stream and five hundred feet measured
210 horizontally from each bank of the tributaries draining into
211 the principal stream.

212 (21) "Zone of peripheral concern" for a public surface
213 water supply source and for a public surface water influenced
214 groundwater supply source is a corridor along streams within
215 a watershed that warrants scrutiny due to its proximity to the
216 surface water intake and the intake's susceptibility to
217 potential contaminants within that corridor. The zone of
218 peripheral concern is determined using a mathematical model
219 that accounts for stream flows, gradient and area topography.
220 The length of the zone of peripheral concern is based on an
221 additional five-hour time-of-travel of water in the streams
222 beyond the perimeter of the zone of critical concern, which
223 creates a protection zone of ten hours above the water intake.
224 The width of the zone of peripheral concern is one thousand
225 feet measured horizontally from each bank of the principal
226 stream and five hundred feet measured horizontally from
227 each bank of the tributaries draining into the principal stream.

§22-30-4. Inventory and registration of existing aboveground storage tanks.

1 (a) To assure protection of the water resources of the
2 state, the secretary shall compile an inventory of all
3 aboveground storage tanks. The secretary shall prescribe a
4 registration form for this purpose.

5 (b) Each owner or operator of an aboveground storage
6 tank shall complete and submit to the secretary the
7 registration form by July 1, 2015. The owner or operator of
8 any aboveground storage tank placed into service on or after
9 the effective date of this section shall complete and submit a
10 registration form to the secretary prior to storing fluids
11 therein. Tank registrations previously submitted to the
12 secretary pursuant to this article shall constitute registration
13 pursuant to this section.

14 (c) At a minimum, the registration form shall identify the
15 ownership of the tank, tank location, date of installation if
16 known, type of construction, capacity and age of the tank, the
17 type of fluid stored therein, and the circumstances under
18 which the registration must be updated.

19 If the registered tank is regulated under any existing state
20 or federal regulatory program, the owner of the tank shall be
21 required to provide the identifying number of any license,
22 registration or permit issued for the tank.

23 (d) The Secretary shall charge a registration fee of \$40
24 per tank for all ASTs in service prior to July 1, 2015. The
25 registration fee for ASTs placed into service on or after July
26 1, 2015, shall be \$20 per tank. Registration fees for ASTs in
27 service prior to July 1, 2015, shall be deposited such that half
28 the amount is placed into the AST Administrative Fund and
29 half the amount into the Protect Our Water Fund. Registration
30 fees for ASTs placed into service on or after July 1, 2015,
31 shall be deposited wholly into the AST Administrative Fund.

32 (1) The secretary shall propose emergency or legislative
33 rules for legislative approval in accordance with the
34 provisions of article three, chapter twenty-nine-a of this code
35 to set out the process and procedure for registration fee
36 assessment and collection.

37 (2) In recognition of the need to expeditiously capitalize
38 the AST Administrative Fund and the Protect Our Water
39 Fund, the secretary may charge the fees provided for in this
40 subsection by sending invoices for the same to the owners or
41 operators of ASTs prior to the promulgation of the rules
42 contemplated in subdivision (1) of this subsection.

43 (e) After July 1, 2015, it shall be unlawful for any owner
44 or operator to operate or use an aboveground storage tank
45 that has not been properly registered or for which any
46 applicable registration fee has not been paid.

§22-30-5. Aboveground Storage Tank Regulatory Program.

1 (a) The secretary shall develop a regulatory program for
2 new and existing regulated aboveground storage tanks and
3 secondary containment that takes into account the size,
4 location and contents of the tanks and sets out tiered
5 requirements for regulated tanks. Level 1 tanks shall be
6 regulated to a higher standard of tank and secondary
7 containment integrity based upon their proximity to a public
8 surface water supply source or public surface water
9 influenced groundwater supply source.

10 (b) The rules promulgated by the secretary for regulated
11 tanks and secondary containment shall, at a minimum,
12 include the following:

13 (1) Criteria for the design, construction and maintenance
14 of aboveground storage tanks;

15 (2) Criteria for the design, construction, maintenance or
16 methods of secondary containment;

17 (3) Criteria for the design, operation, maintenance or
18 methods of leak detection. Acceptable leak detection shall

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19 include, but not be limited to, visual inspections, an inventory
20 control system together with tank testing, or a comparable
21 system or method designed to identify leaks from
22 aboveground storage tanks;

23 (4) Requirements for recordkeeping;

24 (5) Requirements for the development of maintenance
25 and corrosion prevention plans;

26 (6) Requirements for the closure of aboveground storage
27 tanks and any remediation necessary as a result of release
28 from the aboveground storage tank;

29 (7) The assessment of a registration fee, and annual
30 operation and response fees as determined by the secretary;

31 (8) Certificate to operate issuance only after the
32 application and any other supporting documents have been
33 submitted, reviewed and approved by the secretary;

34 (9) A procedure for the administrative resolution of
35 violations including the assessment of administrative civil
36 penalties.

37 (c) For those entities that are otherwise regulated under
38 those provisions of this chapter that necessitate individual,
39 site-specific permits or plans that require appropriate
40 containment and diversionary structures or equipment to
41 prevent discharged or released materials from reaching the
42 waters of the state, the secretary may amend those permits or
43 plans associated with those permits or both at the request of
44 the permittee to include conditions pertaining to the
45 management and control of regulated tanks, so long as those
46 conditions in the opinion of the secretary are sufficient in
47 combination with practices and protections already in place

48 to protect the waters of the state. In its application for permit
49 or plan modification, the permittee shall advise the secretary
50 whether, how and to what extent the permittee adheres to
51 other standards or plans with regard to tank and secondary
52 containment integrity, inspection and spill prevention and
53 response, including, without limitation, API 653 standards for
54 Tank Inspection, Repair, Alteration and Reconstruction or
55 STI SP001 Standards for Aboveground Storage Tanks or the
56 requirements of the federal spill prevention and
57 countermeasures program governed by 40 C. F. R. Part 112.
58 Inclusion of ASTs in amended permits or plans would not
59 relieve the owner or operator's responsibility to pay
60 registration, certificate to operate or Protect Our Water Fund
61 fees. Specifically, the permits or plans the secretary may
62 amend include:

63 (1) Permits issued pursuant to the Surface Coal Mining
64 and Reclamation Act, article three of this chapter;

65 (2) Permits issued by the Office of Oil and Gas pursuant
66 to article six or six-a of this chapter or spill pollution and
67 control measures plans required under 35 C. S. R. 1;

68 (3) Individual permits issued pursuant to the National
69 Pollution Discharge Elimination System, article eleven of this
70 chapter;

71 (4) Permits issued pursuant to the Solid Waste
72 Management Act, article fifteen of this chapter; and

73 (5) Groundwater protection plans issued pursuant to
74 article twelve of this chapter.

75 (d) Any entity whose permit or plan modification or
76 amendment relating to tank integrity and secondary
77 containment design operation and maintenance is approved

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78 by the secretary and so maintained shall be deemed to be
79 compliant with this article and entitles the entity to a
80 certificate to operate so long as the registration requirements
81 of section four of this article are also met.

82 (e) The manner and time frames for implementation of
83 the regulatory program required by this section shall be
84 established by the secretary through the proposal of
85 emergency or legislative rules in accordance with the
86 provisions of article three, chapter twenty-nine-a of this code.

§22-30-6. Evaluation and certification.

1 (a) Each regulated aboveground storage tank and its
2 associated secondary containment structure shall be evaluated
3 by a qualified registered professional engineer or a qualified
4 person working under the direct supervision of a registered
5 professional engineer, regulated and licensed by the State
6 Board of Registration for Professional Engineers, or by an
7 individual certified to perform tank inspections by the
8 American Petroleum Institute or the Steel Tank Institute, or
9 by a person holding certification under another program
10 approved by the secretary.

11 (b) Every owner or operator shall submit a certification
12 that each regulated tank and its associated secondary
13 containment structure have been evaluated by a qualified
14 person as set forth in subsection (a) of this section and meets
15 the standards established in accordance with section five of
16 this article.

17 (c) The certification form shall be submitted to the
18 secretary within one hundred eighty days of the effective date
19 of the rules establishing standards that are adopted in
20 accordance with section five of this article. Subsequent
21 certifications shall be due at regular intervals thereafter as

22 established by the secretary by legislative rule, but not more
23 frequently than once per calendar year.

24 (d) Any person who performs a tank evaluation in
25 accordance with subsection (a) of this section, a responsible
26 person designated by the owner or operator and any other
27 person designated by the secretary by legislative rule may
28 certify aboveground storage tanks in accordance with
29 subsection (b) of this section.

§22-30-7. Financial responsibility.

1 The secretary shall promulgate rules requiring owners
2 and operators of regulated aboveground storage tanks to
3 provide evidence of adequate financial resources to undertake
4 reasonable corrective action for releases from regulated
5 aboveground storage tanks based on factors including the
6 location, contents and size of the tanks. The means of
7 demonstrating adequate financial responsibility may include,
8 but not be limited to, providing evidence of current insurance,
9 guarantee, surety bond, letter of credit, proof of assets, trust
10 fund or qualification as a self insurer. The secretary may
11 determine which bonds and other guarantees of performance
12 provided to the secretary pursuant to other articles of this
13 chapter shall satisfy the requirements of this section.

§22-30-8. Corrective action.

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

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

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

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

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

39 (1) If no person can be found within thirty days, or a
40 shorter period as may be necessary to protect human health,

41 safety, water resources and the environment, who is an owner
42 or operator of the aboveground storage tank at issue and who
43 is capable of carrying out the corrective action properly;

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

47 (3) The cost of corrective action to be expended on an
48 aboveground storage tank exceeds the amount of resources
49 that the owner or operator can reasonably be expected to
50 possess based on the information required to be submitted
51 pursuant to this article and, considering the fluid being stored
52 in the aboveground storage tank in question, expenditures
53 from the Protect Our Water Fund are necessary to assure an
54 effective corrective action; or

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

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

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

69 (2) The owner or operator determined by the secretary to
70 be responsible for the release has been informed in writing of

71 the secretary's determination and has been requested by the
72 secretary to take appropriate corrective action but is unable
73 or unwilling to take proper action in a timely manner.

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

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

§22-30-9. Spill prevention and response plan.

1 (a) Within one hundred eighty days of the effective date
2 of this article, each owner or operator of a regulated
3 aboveground storage tank shall submit to the secretary a spill
4 prevention and response plan for all regulated aboveground
5 storage tanks at a facility or location. Owners and operators
6 of regulated aboveground storage tanks shall file updated
7 plans required to be submitted by this section no less
8 frequently than every five years. The spill prevention and
9 response plan shall at a minimum:

10 (1) Describe the activity that occurs at the site and
11 provide an inventory of the types and amounts of fluids
12 stored in regulated aboveground storage tanks at the facility.
13 The plan shall provide a reference to the location of the safety
14 data sheets (SDS) required by the Occupational Safety and
15 Health Administration for all fluids stored in regulated
16 aboveground storage tanks at the facility;

17 (2) Identify all facility-related positions with duties and
18 responsibilities for overseeing the implementation of the
19 facility's plan and list all facility emergency coordinators;

20 (3) Describe a preventive maintenance program,
21 monitoring and inspection procedures, and employee training
22 programs;

23 (4) Describe the general release response procedures that
24 the aboveground storage tank facility and contract emergency
25 personnel shall employ upon the occurrence of any release;

26 (5) Provide contact information for the state, county and
27 municipal emergency management agencies and the nearest
28 downstream public water supply intake, and designate the
29 person or persons to be notified in the event of a release from
30 a regulated aboveground storage tank that could reach waters
31 of the state; and

32 (6) Provide the secretary with any other information he or
33 she may reasonably request.

34 (b) Each owner of a regulated aboveground storage tank
35 with an approved spill prevention and response plan shall
36 submit to the secretary a revised plan or addendum to the
37 plan in accordance with the requirements of this article if any
38 of the following occur:

39 (1) There is a substantial modification in design,
40 construction, operation or maintenance of any regulated
41 aboveground storage tank, secondary containment or leak
42 detection equipment or methods, or there are other
43 circumstances that increase the potential for fires, explosions
44 or releases of fluids;

45 (2) There is a substantial modification in emergency
46 equipment at the facility;

47 (3) There are substantial changes in emergency response
48 protocols at the aboveground storage tank facility;

49 (4) The plan fails in an emergency;

50 (5) The removal or the addition of any regulated
51 aboveground storage tank; or

52 (6) Other circumstances occur for which the secretary
53 requests an update.

54 (c) The secretary shall approve the spill prevention and
55 response plan or reject the plan and require modifications as
56 may be necessary and reasonable to assure the protection of
57 the source water of a public water system from a release of
58 fluids from a regulated aboveground storage tank. If rejected,
59 the owner or operator of the regulated aboveground storage
60 tank shall submit a revised plan to the secretary for approval
61 within thirty days of receipt of notification of the secretary's
62 decision. Failure to comply with a plan approved by the
63 secretary pursuant to this section is a violation of this article.

64 (d) In lieu of a plan developed in accordance with the
65 requirements of this section, the owner or operator of a
66 regulated aboveground storage tank may certify to the
67 secretary that it is subject to: (1) A groundwater protection

68 plan approved by the secretary; or (2) a spill prevention
69 control and countermeasures plan that complies the
70 requirements of 40 C. F. R. Part 112. Such plans shall be
71 made available for review or submitted to the secretary upon
72 request.

73 (e) Nothing contained in this section relieves the owner
74 or operator of an aboveground storage tank from his or her
75 obligation to report any release in accordance with the
76 provisions of this chapter and the rules promulgated
77 thereunder.

§22-30-10. Notice to local governments and water companies.

1 (a) The owner or operator of a regulated aboveground
2 storage tank shall provide notice directly to the public water
3 system and to state, county and municipal emergency
4 response organizations of the type and quantity of fluid stored
5 in the regulated aboveground storage tanks at the facility and
6 the location of the safety data sheets (SDS) associated with
7 the fluids in storage. Subject to the protections afforded in
8 section fourteen of this article, the information required in
9 this subsection shall be delivered to the specific public water
10 system and to state, county and municipal emergency
11 response organizations that are designated by the secretary to
12 receive required notice.

13 (b) In lieu of the information required in subsection (a) of
14 this section, the tank owner or operator may provide the
15 inventory forms and applicable documents required by
16 sections 311 and 312 of the Emergency Planning and
17 Community Right-to-Know Act, subject to the protection of
18 trade secrets and site security information allowed by section
19 fourteen of this article.

§22-30-11. Required signage.

1 Every aboveground storage tank shall display, or have
2 displayed nearby, the tank registration number, when issued
3 by the secretary; the emergency contact number for the owner
4 or operator of the tank; and the number for the Department of
5 Environmental Protection's Spill Reporting Hotline.

§22-30-12. Aboveground Storage Tank Administrative Fund.

1 (a) The secretary shall collect a registration fee from
2 owners or operators of each aboveground storage tank as set
3 forth in section four of this article and an annual operating fee
4 for each regulated aboveground tank in an amount to be
5 promulgated in the legislative rules authorized by this article,
6 in an amount sufficient to defray the costs of administering
7 this article. All registration and operation fees and the net
8 proceeds of all fines, penalties and forfeitures collected under
9 this article, including accrued interest, shall be paid into a
10 special revenue account, hereby created within the State
11 Treasury, designated the Aboveground Storage Tank
12 Administrative Fund.

13 (b) At the end of each fiscal year, any unexpended
14 balance, including accrued interest, on deposit in the
15 Aboveground Storage Tank Administrative Fund shall not be
16 transferred to the General Revenue Fund, but shall remain in
17 the Aboveground Storage Tank Administrative Fund for
18 expenditure pursuant to this section.

§22-30-13. Protect Our Water Fund.

1 (a) Each owner or operator of a regulated aboveground
2 storage tank shall pay an annual fee to assure adequate
3 response to releases from aboveground storage tanks. The
4 amount of fees assessed pursuant to this section shall be set
5 forth by rule. The proceeds of the assessment shall be paid
6 into a special revenue account, hereby created within the

7 State Treasury, designated the Protect Our Water Fund. The
8 fund shall be administered by the secretary. Expenditures
9 from the fund shall be solely to respond to releases from
10 aboveground storage tanks.

11 (b) Each owner or operator of an regulated aboveground
12 storage tank subject to a fee assessment under subsection (a)
13 of this section shall pay a fee based on the number, contents
14 and location of regulated aboveground storage tanks he or
15 she owns or operates, as applicable. The secretary shall vary
16 the fees annually to a level necessary to produce a fund of no
17 more than \$1 million after three years from the effective date
18 of this article, and to maintain an aggregate fund of \$1
19 million at the beginning of each calendar year thereafter.

20 (c) At the end of each fiscal year, any unexpended
21 balance, including accrued interest, on deposit in the Protect
22 Our Water Fund shall not be transferred to the General
23 Revenue fund, but shall remain in the Protect Our Water
24 Fund for expenditure pursuant to this section.

25 (d) The secretary may enter into agreements and contracts
26 and to expend the moneys in the fund for the following
27 purposes:

28 (1) Responding to aboveground storage tank releases
29 when, based on readily available information, the secretary
30 determines that immediate action is necessary to prevent or
31 mitigate significant risk of harm to human health, safety,
32 water resources or the environment from contamination
33 caused by a release of fluid from aboveground storage tanks
34 in situations for which no federal funds are immediately
35 available for the response, cleanup or containment: *Provided,*
36 That the secretary shall apply for and diligently pursue all
37 available federal funds at the earliest possible time;

38 (2) Reimbursing any nonresponsible parties for
39 reasonable cleanup costs incurred with the authorization of
40 the secretary in responding to an aboveground storage tank
41 release; or

42 (3) Reimbursing any nonresponsible parties for
43 reasonable costs incurred with the authorization of the
44 secretary responding to perceived, potential or threatened
45 releases from aboveground storage tanks.

46 (e) The secretary, through a cooperative agreement with
47 another state regulatory agency, in this or another state, may
48 use the fund to compensate the cooperating agency for
49 expenses the cooperating agency incurs in carrying out
50 corrective actions pursuant to this article.

§22-30-14. Public access to information.

1 (a) The public shall have access to all documents and
2 information submitted to the department pursuant to this
3 article, subject to the limitations contained in the state
4 Freedom of Information Act, article one, chapter
5 twenty-nine-b of this code, or any information designated by
6 the Division of Homeland Security and Emergency
7 Management as restricted from public release. Trade secrets,
8 proprietary business information and information designated
9 by the Division of Homeland Security and Emergency
10 Management as restricted from public release shall be
11 secured and safeguarded by the department. Such
12 information or data shall not be disclosed to the public or to
13 any firm, individual or agency other than officials or
14 authorized employees or representatives of a state or federal
15 agency implementing the provisions of this article or any
16 other applicable law related to releases of fluid from
17 aboveground storage tanks that impact the state's water
18 resources. Any person who makes any unauthorized

19 disclosure of such confidential information or data is guilty
20 of a misdemeanor and, upon conviction thereof, may be fined
21 not more than \$1,000 or confined in a regional jail facility for
22 not more than twenty days, or both.

23 (b) A list of the potential sources of significant
24 contamination contained within the zone of critical concern
25 or zone of peripheral concern as provided by the Bureau for
26 Public Health, working in conjunction with the department
27 and the Division of Homeland Security and Emergency
28 Management may only be disclosed to the extent consistent
29 with the protection of trade secrets, confidential business
30 information and information designated by the Division of
31 Homeland Security and Emergency Management as
32 described above. The exact location of the contaminants
33 within the zone of critical concern or zone of peripheral
34 concern is not subject to public disclosure in response to a
35 Freedom of Information Act request under article one,
36 chapter twenty-nine-b of this code. However, the location,
37 characteristics and approximate quantities of potential
38 sources of significant contamination within the zone of
39 critical concern or zone of peripheral concern shall be made
40 known to one or more designees of the public water utility,
41 and shall be maintained in a confidential manner by the
42 public water utility. In the event of a release to waters of the
43 state that could affect a public water supply, information
44 about the release shall be promptly made available to any
45 emergency responders responding to the site of a spill or
46 release and the general public shall be promptly notified in
47 the event of a chemical spill, release or related emergency by
48 the Director of Homeland Security and Emergency
49 Management.

50 (c) The Director of Homeland Security and Emergency
51 Management may promulgate emergency rules and shall
52 propose legislative rules, pursuant to article three, chapter

53 twenty-nine-a of this code to effectuate the provisions of this
54 section.

§22-30-15. Inspections, monitoring and testing.

1 (a) For the purposes of developing or assisting in the
2 development of any rule, conducting any study, taking any
3 corrective action or enforcing any provision of this article,
4 any owner or operator of an aboveground storage tank shall,
5 upon request of the secretary:

6 (1) Furnish information relating to the aboveground
7 storage tanks, their associated equipment and contents;

8 (2) Conduct reasonable monitoring or testing;

9 (3) Permit the secretary, at all reasonable times, to inspect
10 and copy records relating to aboveground storage tanks; and

11 (4) Permit the secretary to have access to the
12 aboveground storage tanks for corrective action.

13 (b) For the purposes of developing or assisting in the
14 development of any rule, conducting any study, taking
15 corrective action or enforcing any provision of this article,
16 the secretary may:

17 (1) Enter at any time any establishment or other place
18 where an aboveground storage tank is located;

19 (2) Inspect and obtain samples of any fluid contained in
20 an aboveground storage tank;

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

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

25 (c) Each inspection shall be commenced and completed
26 with reasonable promptness.

27 (d) To ensure protection of the water resources of the
28 state and compliance with any provision of this article or rule
29 promulgated thereunder, the secretary shall inspect level 1
30 regulated tanks at least once every three years. The secretary
31 shall develop an inspection protocol for level 2 regulated
32 tanks.

§22-30-16. Administrative orders; injunctive relief.

1 (a) When the secretary determines, on the basis of any
2 information, that a person is in violation of any requirement
3 of this article or the rules promulgated thereunder, the
4 secretary may issue an order stating with reasonable
5 specificity the nature of the violation and requiring
6 compliance within a reasonable specified time period, or the
7 secretary may commence a civil action in the circuit court of
8 the county in which the violation occurred or in the circuit
9 court of Kanawha County for appropriate relief, including a
10 temporary or permanent injunction. The secretary or the
11 Environmental Quality Board may stay any order issued by
12 the secretary until the order is reviewed by the Environmental
13 Quality Board.

14 (b) In addition to the powers and authority granted to the
15 secretary by this chapter to enter into consent agreements,
16 settlements and otherwise enforce this chapter, the secretary
17 shall propose rules for legislative approval to establish a
18 mechanism for the administrative resolution of violations set
19 forth in this article through consent order or agreement as an
20 alternative to instituting a civil action.

§22-30-17. Civil and criminal penalties.

1 (a) Any person who fails to comply with an order of the
2 secretary issued under subsection (a), section sixteen of this
3 article within the time specified in the order is liable for a
4 civil penalty of not more than \$25,000 for each day of
5 continued noncompliance.

6 (b) Any owner or operator of an aboveground storage
7 tank who knowingly fails to register or obtain a certificate to
8 operate a regulated aboveground storage tank or submits false
9 information pursuant to this article is liable for a civil penalty
10 not to exceed \$10,000 for each aboveground storage tank that
11 is not registered or for which a certificate to operate a
12 regulated aboveground storage tank is not obtained or for
13 which false information is submitted.

14 (c) Any owner or operator of an aboveground storage
15 tank who fails to comply with any requirement of this article
16 or any standard promulgated by the secretary pursuant to this
17 article is subject to a civil penalty not to exceed \$10,000 for
18 each day of violation.

19 (d) Any person who knowingly and intentionally violates
20 any provision of this article, or any rule or order issued under
21 or subject to the provisions of this article, is guilty of a
22 misdemeanor and, upon conviction thereof, shall be confined
23 in a regional jail for a period of time not exceeding one year,
24 and be fined an amount not to exceed \$25,000.

25 (e) Any person convicted of a second or subsequent
26 willful violation as set forth in subsection (d) of this section
27 is guilty of a felony and, upon conviction, may be imprisoned
28 in a correctional facility not less than one nor more than three
29 years, or fined not more than \$50,000 for each day of
30 violation, or both fined and imprisoned.

31 (f) Any person may be prosecuted and convicted under
32 the provisions of this section notwithstanding that none of the
33 administrative remedies provided in this article have been
34 pursued or invoked against said person and notwithstanding
35 that civil action for the imposition and collection of a civil
36 penalty or an application for an injunction under the
37 provisions of this article has not been filed against such
38 person.

39 (g) Where a person holding a permit is carrying out a
40 program of pollution abatement or remedial action in
41 compliance with the conditions and terms of a corrective
42 action plan approved by the secretary, the person is not
43 subject to criminal prosecution for pollution recognized and
44 authorized by the approved corrective action plan.

45 (h) Civil penalties are payable to the secretary. All
46 moneys collected under this section for civil fines collected
47 under this article shall be deposited into either the AST
48 Administrative Fund or the Protect Our Water Fund. All
49 money deposited into these accounts shall be used by the
50 secretary solely for the purposes described in sections twelve
51 and thirteen of this article.

§22-30-18. Appeal to Environmental Quality Board.

1 Any person aggrieved or adversely affected by an action,
2 decision or order of the secretary made and entered in
3 accordance with the provisions of this article may appeal to
4 the Environmental Quality Board, pursuant to the provisions
5 of article one, chapter twenty-two-b of this code.

§22-30-19. Duplicative enforcement prohibited.

1 No enforcement proceeding brought pursuant to this
2 article may be duplicated by an enforcement proceeding

3 subsequently commenced under some other article of this
4 code with respect to the same transaction or event, unless the
5 subsequent proceeding involves the violation of a permit or
6 permitting requirement of the other article.

§22-30-21. Interagency cooperation.

1 (a) In implementation of this article, the secretary shall
2 coordinate with the Department of Health and Human
3 Resources, the West Virginia Public Service Commission, the
4 Division of Homeland Security and Emergency Management
5 and local health departments to ensure the successful
6 planning and implementation of this act, including
7 consideration of the role of those agencies in providing
8 services to owners and operators of regulated aboveground
9 storage tanks and public water systems.

10 (b) The Division of Homeland Security and Emergency
11 Management shall also coordinate with state and local
12 emergency response agencies to facilitate a coordinated
13 emergency response and incident command and
14 communication between the owner or operator of the
15 regulated aboveground storage tank, the state and local
16 emergency response agencies, and the affected public water
17 systems.

§22-30-22. Imminent and substantial danger.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, upon receipt of evidence that an aboveground storage
3 tank may present an imminent and substantial danger to human
4 health, water resources or the environment, the secretary may
5 bring suit on behalf of the State of West Virginia in the circuit
6 court of the county in which the imminent and substantial
7 danger exists or in the circuit court of Kanawha County against
8 any owner or operator of an aboveground storage tank who has

9 contributed or who is contributing to imminent and substantial
10 danger to public health, safety, water resources or the
11 environment to order the person to take action as may be
12 necessary to abate the situation and protect human health,
13 safety, water resources and the environment from contamination
14 caused by a release of fluid from an aboveground storage tank.

15 (b) Upon receipt of information that there is any
16 aboveground storage tank that presents an imminent and
17 substantial danger to human health, safety, water resources or
18 the environment, the secretary shall require the owner or
19 operator of the tank to provide immediate notice to the
20 appropriate state and local government agencies and any
21 affected public water systems. In addition, the secretary shall
22 require notice of any danger to be promptly posted at the
23 aboveground storage tank facility containing the
24 aboveground storage tank at issue.

§22-30-24. Powers and duties of secretary.

1 (a) In addition to the powers and duties prescribed in this
2 chapter or otherwise provided by law, the secretary has the
3 exclusive authority to perform all acts necessary to
4 implement this article.

5 (b) The secretary may receive and expend money from
6 the federal government or any other sources to implement
7 this article.

8 (c) The secretary may revoke any registration or
9 certificate to operate for a significant violation of this article
10 or the rules promulgated hereunder.

11 (d) The secretary may issue orders, assess civil penalties,
12 institute enforcement proceedings and prosecute violations of
13 this article as necessary.

14 (e) The secretary, in accordance with this article, may
15 order corrective action to be undertaken, take corrective
16 action or authorize a third party to take corrective action.

17 (f) The secretary may recover the costs of taking
18 corrective action, including costs associated with authorizing
19 third parties to perform corrective action. Costs may not
20 include routine inspection and administrative activities not
21 associated with a release.

§22-30-25. Waiving certain requirements of this article for specified categories of aboveground storage tanks as designated by the department by legislative rule.

1 The secretary may designate, by rules proposed for
2 legislative approval in accordance with article three, chapter
3 twenty-nine-a of this code, additional categories of
4 aboveground storage tanks for which one or more of the
5 requirements of this article may be waived upon a
6 determination that such categories of aboveground storage
7 tanks either do not represent a substantial threat of
8 contamination or they are currently regulated under standards
9 that are consistent with the protective standards and
10 requirements set forth in this article and rules promulgated
11 thereunder.

§22-30-26. Secretary's authority to require individual NPDES permits within a zone of critical concern.

1 Any person who holds a National Pollutant Discharge
2 Elimination System general permit pursuant to the federal
3 Water Pollution Control Act or the West Virginia Water
4 Pollution Control Act, article eleven of this chapter, for a site
5 that contains one or more regulated aboveground storage
6 tanks may be required by the secretary to apply for and hold
7 an individual permit under those acts. Any general NPDES

8 permit in effect on the effective date of this act shall remain
9 in effect until the secretary either issues or denies the
10 individual NPDES permit.

ARTICLE 31. THE PUBLIC WATER SUPPLY PROTECTION ACT.

§22-31-2. Public Water System Supply Study Commission.

1 (a) There is hereby established the Public Water System
2 Supply Study Commission which is created for the purpose
3 of studying and reporting back to the Joint Committee on
4 Government and Finance on the following subject matters:

5 (1) A review and assessment of the effectiveness and the
6 quality of information contained in updated source water
7 protection plans required for certain public water systems by
8 the provisions of section nine-c, article one, chapter sixteen
9 of this code;

10 (2) A review and assessment of the effectiveness of
11 legislation enacted during the 2014 Regular Session of the
12 West Virginia Legislature, as it pertains to assisting public
13 water systems in identifying and reacting or responding to
14 identified potential sources of significant contamination, and
15 increasing public awareness and public participation in the
16 emergency planning and response process;

17 (3) The extent of available financing and funding
18 alternatives which are available to existing public water
19 systems to pursue projects which are designed to create
20 alternate sources of supply or increased stability of supply in
21 the event of a spill, release or contamination event which
22 impairs the water system's primary source of supply;

23 (4) A review and consideration of the recommendations
24 of the U. S. Chemical Safety and Hazard and Investigation

37

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25 Board after its investigation of the Bayer Crop Science
26 incident of 2008; and

27 (5) Any recommendations or suggestions the study
28 commission may offer to improve the infrastructure of
29 existing public water systems, to provide safe and reliable
30 sources of supplies, and to pursue other measures designed to
31 protect the integrity of public water service.

32 (b) The study commission shall consist of the following
33 twelve members, who shall be appointed and comprised as
34 follows:

35 (1) Four members appointed by the Governor, one of whom
36 shall be a professional engineer experienced in the design and
37 construction of public water systems; one of whom shall be a
38 hydrologist or other expert experienced in determining the flow
39 characteristics of rivers and streams; one of whom shall be an
40 environmental toxicologist or other public health expert who is
41 familiar with the impact of contaminants on the human body;
42 and one citizen representative;

43 (2) One representative designated by the Rural Water
44 Association;

45 (3) One representative designated by the Municipal
46 League;

47 (4) The Secretary of the Department of Environmental
48 Protection or his or her designee;

49 (5) The Commissioner of the Bureau for Public Health or
50 his or her designee who shall serve as chair;

51 (6) The Director of the Division of Homeland Security
52 and Emergency Management or his or her designee;

53 (7) The Chairman of the Public Service Commission or
54 his or her designee;

55 (8) Two representatives designated by the Business
56 Industry Council; and

57 (9) One representative designated by West Virginia
58 Rivers Coalition.

59 (c) Reports by the Commission shall be submitted to the
60 Joint Committee on Government and Finance on or before
61 December 15 of each year, beginning December 15, 2014.

62 (d) The study commission shall terminate on June 30,
63 2019.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Paul R. Taylor
.....
Chairman Senate Committee

John B. McCall
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clark S. Brown
.....
Clerk of the Senate

Steph J. Harris
.....
Clerk of the House of Delegates

William P. Dale
.....
President of the Senate

Robert M. Bell
.....
Speaker of the House of Delegates

The within *is approved*..... this the *2th*
Month
Day of, 2015.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 19 2015

Time 11:20am