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WEST VIRGINIA CODE

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-1. Short title.

This article may be known and cited as the Aboveground Storage Tank Act. **§22-30-2.**

Legislative findings.

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

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

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

(d) The Legislature further finds that large quantities of fluids are stored in aboveground storage tanks within the state and that emergency situations involving these fluids can and will arise that may present a hazard to human health, safety, the water resources, the environment and the economy of the state. The Legislature further recognizes that some of these fluids have been stored in aboveground storage tanks in a manner insufficient to protect human health, safety, water resources, the environment and the economy of the state.

§22-30-3. Definitions.

For purposes of this article:

(1) "Aboveground storage tank" or "tank" or "AST" means a device made to contain an accumulation of more than one thousand three hundred twenty gallons of fluids that are liquid at standard temperature and pressure, which is constructed primarily of nonearthen materials, including concrete, steel, plastic or fiberglass reinforced plastic, which provide structural support, more than ninety percent of the capacity of which is above the surface of the ground,

and includes all ancillary pipes and dispensing systems up to the first point of isolation. The term includes stationary devices which are permanently affixed, and mobile devices which remain in one location on a continuous basis for three hundred sixty-five or more days. A device meeting this definition containing hazardous waste subject to regulation under 40 C. F. R. Parts 264 and 265, exclusive of tanks subject to regulation under 40 C. F. R. § 265.201 is included in this definition but is not a regulated tank. Notwithstanding any other provision of this code to the contrary, the following categories of devices are not subject to the provisions of this article:

(A) Shipping containers that are subject to state or federal laws or regulations governing the transportation of hazardous materials, including, but not limited to, railroad freight cars subject to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R. Parts 172, 173 or 174;

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

(C) Swimming pools;

(D) Process vessels;

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

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

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

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

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

(J) Pipeline facilities, 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 by the West Virginia Public Service Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

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

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

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

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

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

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

(6) "Owner" means a person who holds title to, controls or owns an interest in an aboveground storage tank, including the owner immediately preceding the discontinuation of its use. "Owner" does not mean a person who holds an interest in a tank for financial security unless the holder has taken possession of and operated the tank.

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

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

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

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

(11) "Public surface water influenced groundwater supply source" means a source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area.

(12) "Public water system" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Secretary" means the Secretary of the Department of Environmental Protection, or his or her designee.

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

(20) "Zone of critical concern" for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time-of-travel of water in the streams to the intake. The width of the zone of critical concern is one thousand feet measured horizontally from each bank of the principal stream and five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

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

five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Criteria for the design, operation, maintenance or methods of leak detection. Acceptable leak detection shall include, but not be limited to, visual inspections, an inventory control system together with tank testing, or a comparable system or method designed to identify leaks from aboveground storage tanks;

(4) Requirements for recordkeeping;

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

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

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

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

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

(c) For those entities that are otherwise regulated under those provisions of this chapter that necessitate individual, site-specific permits or plans that require appropriate containment and diversionary structures or equipment to prevent discharged or released materials from reaching the waters of the state, the secretary may amend those permits or plans associated with those permits or both at the request of the permittee to include conditions pertaining to the management and control of regulated tanks, so long as those conditions in the opinion of the secretary are sufficient in combination with practices and protections already in place to protect the waters of the state. In its application for permit or plan modification, the permittee shall advise the secretary whether, how and to what extent the permittee adheres to other standards or plans with regard to tank and secondary containment integrity, inspection and spill prevention and response, including, without limitation, API 653 standards for Tank Inspection, Repair,

Alteration and Reconstruction or STI SP001 Standards for Aboveground Storage Tanks or the requirements of the federal spill prevention and countermeasures program governed by 40 C. F. R. Part 112. Inclusion of ASTs in amended permits or plans would not relieve the owner or operator's responsibility to pay registration, certificate to operate or Protect Our Water Fund fees. Specifically, the permits or plans the secretary may amend include:

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

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

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

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

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

(d) Any entity whose permit or plan modification or amendment relating to tank integrity and secondary containment design operation and maintenance is approved by the secretary and so maintained shall be deemed to be compliant with this article and entitles the entity to a certificate to operate so long as the registration requirements of section four of this article are also met.

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

§22-30-6. Evaluation and certification.

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

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

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

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

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

§22-30-7. Financial responsibility.

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

§22-30-8. Corrective action.

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

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

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

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

(c) Following the effective date of rules promulgated pursuant to this article, all actions or orders of the secretary shall be in conformity with those rules. Following the effective date of the

rules, the secretary may utilize funds from the Protect Our Water Fund to undertake corrective action with respect to any release from an aboveground storage tank only if, in the judgment of the secretary, the action is necessary to protect human health, safety, water resources or the environment from contamination, and one or more of the following situations exists:

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

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

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

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

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

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

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

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

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

describing the circumstances that required the action to be taken and setting forth the matters identified in subsection (e) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

(4) The plan fails in an emergency;

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

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

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

(d) In lieu of a plan developed in accordance with the requirements of this section, the owner or operator of a regulated aboveground storage tank may certify to the secretary that it is subject to: (1) A groundwater protection plan approved by the secretary; or (2) a spill prevention control and countermeasures plan that complies the requirements of 40 C. F. R. Part 112. Such plans shall be made available for review or submitted to the secretary upon request.

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

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

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

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

§22-30-11. Required signage.

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

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

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

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

§22-30-13. Protect Our Water Fund.

(a) Each owner or operator of a regulated aboveground storage tank shall pay an annual fee to assure adequate response to releases from aboveground storage tanks. The amount of fees assessed pursuant to this section shall be set forth by rule. The proceeds of the assessment shall be paid into a special revenue account, hereby created within the State Treasury, designated the "Protect Our Water Fund." The fund shall be administered by the secretary. Expenditures from the fund shall be solely to respond to releases from aboveground storage tanks.

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

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

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

(1) Responding to aboveground storage tank releases when, based on readily available information, the secretary determines that immediate action is necessary to prevent or mitigate

significant risk of harm to human health, safety, water resources or the environment from contamination caused by a release of fluid from aboveground storage tanks in situations for which no federal funds are immediately available for the response, cleanup or containment: Provided, That the secretary shall apply for and diligently pursue all available federal funds at the earliest possible time;

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

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

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

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

(a) The public shall have access to all documents and information submitted to the department pursuant to this article, subject to the limitations contained in the state Freedom of Information Act, article one, chapter twenty-nine-b of this code, or any information designated by the Division of Homeland Security and Emergency Management as restricted from public release. Trade secrets, proprietary business information and information designated by the Division of Homeland Security and Emergency Management as restricted from public release shall be secured and safeguarded by the department. Such information or data shall not be disclosed to the public or to any firm, individual or agency other than officials or authorized employees or representatives of a state or federal agency implementing the provisions of this article or any other applicable law related to releases of fluid from aboveground storage tanks that impact the state's water resources. Any person who makes any unauthorized disclosure of such confidential information or data is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than \$1,000 or confined in a regional jail facility for not more than twenty days, or both.

(b) A list of the potential sources of significant contamination contained within the zone of critical concern or zone of peripheral concern as provided by the Bureau for Public Health, working in conjunction with the department and the Division of Homeland Security and Emergency Management may only be disclosed to the extent consistent with the protection of trade secrets, confidential business information and information designated by the Division of Homeland Security and Emergency Management as described above. The exact location of the contaminants within the zone of critical concern or zone of peripheral concern is not subject to public disclosure in response to a Freedom of Information Act request under article one, chapter twenty-nine-b of this code. However, the location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern or zone of peripheral concern shall be made known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility. In the event of a release to waters of the state that could affect a public water supply, information about the release shall

be promptly made available to any emergency responders responding to the site of a spill or release and the general public shall be promptly notified in the event of a chemical spill, release or related emergency by the Director of Homeland Security and Emergency Management.

(c) The Director of Homeland Security and Emergency Management may promulgate emergency rules and shall propose legislative rules, pursuant to article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

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

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

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

(2) Conduct reasonable monitoring or testing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§22-30-19. Duplicative enforcement prohibited.

No enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this code with respect to the same transaction or event, unless the subsequent proceeding involves the violation of a permit or permitting requirement of the other article.

§22-30-20. Reporting and accountability.

(a) Every year, the secretary shall submit a report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance which assesses the effectiveness of this article and provides other information as may be requested by the commission to allow it to assess the effectiveness of this article, including, without limitation, the secretary's observations concerning all aspects of compliance with this article and any legislative rules promulgated pursuant hereto, the regulatory process, and any pertinent changes to federal rules or regulations.

(b) The secretary shall keep accurate accounts of all receipts and disbursements related to the administration of the Aboveground Storage Tank Administrative Fund and shall make a detailed annual report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance addressing the administration of the fund.

(c) The secretary shall keep accurate accounts of all receipts and disbursements related to the administration of the Protect Our Water Fund and shall make a specific annual report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance addressing the administration of the fund.

§22-30-21. Interagency cooperation.

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

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

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

(a) Notwithstanding any other provision of this code to the contrary, upon receipt of evidence that an aboveground storage tank may present an imminent and substantial danger to human health, water resources or the environment, the secretary may bring suit on behalf of the State of West Virginia in the circuit court of the county in which the imminent and substantial danger exists or in the circuit court of Kanawha County against any owner or operator of an aboveground storage tank who has contributed or who is contributing to imminent and substantial danger to public health, safety, water resources or the environment to order the person to take action as may be necessary to abate the situation and protect human health, safety, water resources and the environment from contamination caused by a release of fluid from an aboveground storage tank.

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

§22-30-23. Promulgation of rules.

The secretary shall promulgate emergency and legislative rules as necessary to implement the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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

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

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

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

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

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

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

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

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

Any person who holds a National Pollutant Discharge Elimination System general permit pursuant to the federal Water Pollution Control Act or the West Virginia Water Pollution Control Act, article eleven of this chapter, for a site that contains one or more regulated aboveground storage tanks may be required by the secretary to apply for and hold an individual permit under those acts. Any general NPDES permit in effect on the effective date of this act shall remain in effect until the secretary either issues or denies the individual NPDES permit.

Note: WV Code updated with legislation passed through the [2015 Regular Session](#)