

West Virginia Source Water Protection Act

1. **Short title.**
2. **Applicability.** (1) Industrial above ground storage tanks located within a zone of critical concern (“ZCC”) and (2) state-wide public water systems.
3. **Legislative findings and purpose.**
4. **Definitions.** This section defines “Aboveground storage tank”, “Industrial aboveground storage tank”, “Nonoperational storage tank”, “Operator”, “Owner”, “Person”, “Public water system”, “Regulated material”, “Release”, “Secondary containment”, “Secretary” and “Zone of critical concern.”
 - a. “Industrial aboveground storage tank” applicability is limited by the following:
 - i. Sixteen exemptions, including non-commercial farm or residential tanks (under a certain capacity), septic tanks, propane tanks, mobile tanks, certain tanks regulated pursuant to other state or federal statutes, etc.
 - ii. Location in a zone of critical concern;
 - iii. Containment of a certain volume of regulated material.
 - b. “Public water system” includes supplies or systems which regularly supply water to 25 individuals per day for at least 60 days per year.
 - c. “Regulated material” is determined by a substance’s MSDS health hazard rating, and includes substances with ratings of two (i.e, MCHM), three, or four.
 - d. “Zones of critical concern” are identified by Source Water Assessment Reports, per the federal Source Water Assessment and Protection Program (by DHHR), or by the secretary through legislative rule.
5. **Source water protection.** This section requires that, within 90 days of the effective date of this article, public water systems remit an annual fee and submit a source water protection plan for approval by DEP and DHHR. The purpose of the plan is to protect a system’s source water supply from contamination caused by a release of regulated material from an industrial aboveground storage tank.¹
6. **Promulgation of rules and standards by the secretary.** This section provides the secretary with emergency and legislative rulemaking authority to implement an industrial aboveground storage tank program.
7. **Powers and duties of secretary.** This section provides secretary with sole and exclusive authority to implement an industrial aboveground storage tank program.
8. **Notification requirements.** This section requires notification to the secretary of the placement of industrial aboveground storage tanks into service by June 30, 2014 or

¹ Includes (1) a contingency plan, (2) the identification of alternative water sources, (3) a preventative management plan, and (4) a contamination communications plan. DEP may also request a public water system to conduct studies regarding potential contaminant sources.

within thirty days of placement. The section also provides for notification requirements upon transfer of ownership.

9. **Registration.** This section requires registration of industrial aboveground storage tanks and the submission of an annual fee. The section also makes it unlawful to operate, or deliver a regulated material to, an unregistered tank.
10. **Annual inspection and certification by registered professional engineer.** This section requires a registered professional engineer to annually certify that industrial aboveground storage tanks, associated equipment, leak detection systems, and secondary containment structures meet minimum standards.
11. **Financial responsibility.** This section provides the secretary with rule-making authority requiring owners and operators to provide satisfactory evidence of adequate financial resources to undertake reasonable corrective actions for releases, including insurance, guarantee, surety bond, letter of credit, etc.
12. **Performance standards.** This section provides minimum performance standards to be included in legislative rules.
13. **Corrective action.** This section permits the secretary to take or require corrective action upon the release of regulated material
14. **Spill prevention response plan.** This section submission to the secretary of a spill prevention response plan for each industrial aboveground storage tank, as developed in consultation with county and municipal emergency management agencies.²
15. **Notice to local governments, water companies, and other industrial users.** This section requires that an inventory of regulated material in industrial aboveground storage tanks, MSDS sheets, and approved spill prevention response plans be provided annually to public waters systems within 25 miles downstream, the local municipality, and the local county.
16. **Required signage.** This section requires industrial aboveground storage tank to include prominently posted signage disclosing the regulated material, and hazards, contained therein.
17. **Industrial aboveground storage tank administrative fund.** This section creates a special revenue account, funded by annual registration fees, fines, penalties and forfeitures, to administer the industrial aboveground storage tank program.
18. **Leaking industrial aboveground storage tank response fund.** This section creates a special revenue account, as funded by an annual fee, to assure an adequate response to releases of regulated material.

² The plan must contain (1) a description of the facility, (2) description of the organizational structure, (3) preventative maintenance measures, (4) countermeasures upon occurrence of a release, (5) the network of people to be notified of a release, and (6) other information requested by the secretary.

19. **Public access to information.** This section provides for public access to all documents and information submitted to the DEP, subject to FOIA exemptions.
20. **Inspections, monitoring and testing.** This section permits the secretary to require owners or operators of industrial aboveground storage tanks to furnish information, conduct reasonable monitoring or testing, or allow access to records to implement the provisions of the article.
21. **Administrative orders, injunctive relief.** This section permits the secretary to issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonably specific time, and to use administrative and civil enforcement processes.
22. **Civil and criminal penalties.** This section creates civil penalties for noncompliance with secretary's order (\$25,000 per day), failure to register (\$10,000 per tank), submitting false information (\$10,000 per tank), and failure to comply with promulgated standards (\$10,000 per day). This section also creates a misdemeanor (six months/\$25,000 fine) for a "knowing and intentional" violation of this article.
23. **Appeal to environmental quality board.**
24. **Duplicative enforcement prohibited.**
25. **Reporting and accountability.** This section requires the secretary to report to the legislature every three years on the effectiveness of the article and annually on the accounting of the administrative and leaking response funds.
26. **Interagency cooperation.** This section requires coordination between the DEP and DHHR, PSC, local health departments, state and local emergency response agencies, and the state fire marshal.
27. **Imminent and substantial endangerment.** This section permits the secretary to sue any owner or operator of an industrial aboveground storage tank upon receiving evidence of an imminent and substantial endangerment to human health or the environment. Upon receipt of such information, the secretary shall also provide immediate notice to appropriate state and local agencies and public water systems.
28. **Severability.**