



# Citizens' Guide to SB373

Updated January 2015

## SUMMARY

Senate Bill 373, a bill relating to water resources protection initiated after the January 9, 2014 Elk River chemical leak, passed the West Virginia Legislature on March 8—the final night of the 2014 regular session. It was signed into law by Governor Earl Ray Tomblin on April 1, 2014. This guide highlights most major changes the bill made to state law and important next steps for citizen involvement.

## SOURCE WATER PROTECTION PLANS

WV CODE CHAPTER 16, ARTICLE 1

The most important response to the contamination of the Charleston water supply is a new requirement for public water systems to write and periodically update Source Water Protection Plans (SWPPs).

Certain public water utilities are now required to submit SWPPs by July 1, 2016. These include those that draw their water from surface waters (streams, rivers, or reservoirs) or from groundwater that is influenced by surface water. A list of utilities that fit this definition is provided by the Bureau for Public Health here:

<http://www.wvdhhr.org/oehs/eed/swap/Bill.asp>

Key elements of the new SWPP requirements are as follows:

- Utilities must make every effort to inform and engage the public, local governments, local emergency planners, local health departments and affected residents when developing the SWPP.
- The SWPP must include:
  - **Contingency plan.** This plan documents the utility's planned response to contamination of its supply source. It includes an analysis of the system's ability to isolate or divert contaminated waters from its intake. It also requires analysis of the raw water storage capacity for the plant.
  - **Potential significant contaminant sources.** A list of these sources within the "zone of critical concern" (ZCC) must be compiled by the WV Department of Environmental Protection. The ZCC is

the area alongside the stream in which the intake is located, as well as the stream's tributaries, from which water flows downstream to the intake within five hours.

- **Alternative sources.** If the plant is served by a single intake, an analysis of the feasibility of several options to provide safe, reliable water service if the water source is contaminated.
  - **Management plan.** This plan identifies specific activities that will be pursued by the utility, in cooperation with the Bureau for Public Health, local health departments, local emergency responders, local emergency planning committee, and other state, county or local agencies and organizations to protect its source water supply from contamination.
  - **Communications plan.** This plan documents the manner in which the utility, together with state and local emergency response agencies, shall notify and update the local health agencies and the public, should contamination occur.
  - **Early warning system.** Systems must examine the feasibility of implementing an early warning monitoring system.
- SWPPs must be submitted to the Bureau for Public Health. BPH must consult with the local public health officer and must conduct at least one public hearing. It may then approve, reject, or modify the plans.
  - SWPPs must be updated at least every three years or when there is a substantial change in the potential significant contaminant sources within the ZCC.

**Citizen Participation:** *It will be important to ensure that citizens play an active role in the development of the SWPPs. Utilities must make "every effort" to engage the public in the development of these SWPPs. After submission, when BPH is reviewing the SWPPs, they will hold public hearings. It will be important for citizens to participate in these hearings. The rule implementing this section of the law will be considered in the 2015 Legislative Session. Citizens need to make legislators aware of the importance of reinforcing public participation SWPP development in the rule.*

## PUBLIC WATER SUPPLY PROTECTION ACT

WV CODE CHAPTER 22, ARTICLE 31

WV Department of Environmental Protection (WVDEP) has new responsibilities for source water protection that include:

- WVDEP must compile inventories of potential significant contaminant sources within ZCCs for all public water systems that draw from surface water or groundwater influenced by surface water.
- WVDEP may require a permit for identified contaminant sources. WVDEP may also require any other conditions or limitations to assure protection of water in ZCCs.
- WVDEP shall inspect at least annually any potential significant contaminant source within a ZCC.
- Individual permits are required for sites with aboveground storage a tank within ZCCs. WVDEP has the authority to require individual NPDES permits for other activities within ZCCs.

## ABOVEGROUND STORAGE TANK ACT

WV CODE CHAPTER 22, ARTICLE 30

The Act creates an entirely new registration and permitting process for aboveground storage tanks.

- WVDEP must immediately compile an inventory of all aboveground storage tanks in the state, along with key information about each tank.
- A new aboveground storage tank regulatory program is established. WVDEP will propose new rules to operationalize the program for the 2015 legislative session. The program will include permits, performance standards, leak detection systems, recordkeeping requirements, and numerous other components.
- Aboveground storage tanks located within ZCCs will be identified. Consideration will be given to whether additional regulatory requirements are placed on these tanks that are located immediately upstream from drinking water intakes.
- Owners or operators of all aboveground storage tanks must arrange for annual inspections by a qualified inspector.
- The Act also has numerous other sections regarding corrective actions to address releases, spill prevention response plans, signage, and other items.
- Owners or operators of all aboveground storage tanks within ZCCs must provide public notice to downstream public water systems. Notice must also be provided to the county and municipality in which the tank is located and include a detailed inventory of the type and quantity of fluid stored, information about the fluids, and a spill prevention response plan.
- There are exclusions to what is considered to be a “tank,” and additional exclusions may be included in the new rules.
- If the site with a tank is regulated under a permit, then all of the following are to be specifically set forth as enforceable permit conditions and requirements: secondary containment, spill prevention, leak detection and control requirements, inspection requirements, reporting requirements, and routine integrity testing requirements for that tank or tanks. This implicitly provides for citizen suits.

**Citizen Participation:** WVDEP has filed a proposed rule to implement the Act. They are accepting public comment through January 21. Then the Legislature will debate and vote on the rule. Citizens need to submit public comments to DEP and also share their comments and requests with their legislators. For the latest information from DEP, go to: <http://www.dep.wv.gov/WWE/abovegroundstoragetanks>

## LONG-TERM MEDICAL STUDY

WV CODE CHAPTER 16, ARTICLE 1

A new requirement for a medical study to assess any long-term health effects resulting from the chemical spill is established. The Bureau of Public Health (BPH) must engage federal agencies in this effort. BPH must ensure that key information from health providers is preserved and collected, and must submit its findings to the Joint Committee on Health by January 1, 2015.

**Citizen Participation:** *The public should monitor whether BPH attempts to use flexibility provided in this section which allows BPH to request additional authority to conduct this study. It will also be important to monitor their report, which is due by January 1, 2015.*

## STUDY COMMISSION

WV CODE CHAPTER 22, ARTICLE 31

A new Public Water System Supply Study Commission is established to study and report back to the Joint Committee on Government and Finance by December 15, 2014. The Commission's report is to cover:

- The effectiveness and quality of information in updated SWPPs.
- The effectiveness of SB373 in general.
- Financial and funding available to public water systems.
- A review and consideration of the recommendations of the U.S. Chemical Safety and Hazard and Investigation Board.

**Citizen Participation:** *The Commission issued its initial report available here: <http://www.dhsem.wv.gov/Pages/water-commission.aspx>. It will be important to urge the legislature to consider the Commission's initial recommendations and authorize funding for the Study Commission to continue.*

## MONITORING REQUIREMENTS

WV CODE CHAPTER 24, ARTICLE 2G

New monitoring requirements for public water utilities that serve more than 100,000 customers are established – this only applies to WVAW's Charleston system.

- It specifies the monitoring technical capabilities and requires testing for seven types of contaminants.
- If technology to adequately detect contaminants—required by this section—proves to be not feasible to implement, the public water utility shall report by January 1, 2015, to the Joint Committee on Government and Finance specifying the reasons such technology is not feasible to obtain or use. The utility must also suggest alternatives.

### **For more information:**

West Virginia Rivers Coalition

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[www.wvrivers.org](http://www.wvrivers.org)