

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 405**

BY SENATORS PHILLIPS AND NELSON

[Introduced February 23, 2021; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §22-30-3 of the Code of West Virginia, 1931, as amended, relating  
2 to altering the definition of “aboveground storage tank”.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.**

**§22-30-3. Definitions.**

1 For purposes of this article:

2 (1) “Aboveground storage tank” or “tank” or “AST” means a device made to contain an  
3 accumulation of more than 1,320 gallons of fluids that are liquid at standard temperature and  
4 pressure, which is constructed primarily of nonearthen materials, including concrete, steel, plastic,  
5 or fiberglass reinforced plastic, which provide structural support, more than 90 percent of the  
6 capacity of which is above the surface of the ground, and includes all ancillary pipes and  
7 dispensing systems up to the first point of isolation. The term includes stationary devices which  
8 are permanently affixed, and mobile devices which remain in one location on a continuous basis  
9 for 365 or more days. A device meeting this definition containing hazardous waste subject to  
10 regulation under 40 C.F.R. Parts 264 and 265, exclusive of tanks subject to regulation under 40  
11 C.F.R. § 265.201 is included in this definition but is not a regulated tank. Notwithstanding any  
12 other provision of this code to the contrary, the following categories of devices are not subject to  
13 the provisions of this article:

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

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

22 hazardous materials;

23 (C) Swimming pools;

24 (D) Process vessels;

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

28 (F) Devices containing food or food-grade materials used for human or animal  
29 consumption and regulated under the Federal Food, Drug and Cosmetic Act (21 U.S.C. §301-  
30 392);

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

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

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

36 (J) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline  
37 Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline  
38 facility regulated by the West Virginia Public Service Commission or otherwise regulated under  
39 any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968  
40 or the Hazardous Liquid Pipeline Safety Act of 1979;

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

43 (L) Electrical equipment such as transformers, circuit breakers, and voltage regulator  
44 transformers;

45 (M) Devices having a capacity of 210 barrels or less, containing brine water or other fluids  
46 produced in connection with hydrocarbon production activities; ~~that are not located in a zone of~~  
47 ~~critical concern~~ and

48 (N) Devices having a capacity of 10,000 gallons or less, containing sodium chloride or  
49 calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of  
50 critical concern: *Provided*, That all such devices exempted under subdivisions (M) and (N) of this  
51 subdivision must still meet the registration requirements contained in §22-30-4 of this code, the  
52 notice requirements contained in §22-30-10 of this code, and the signage requirements contained  
53 in §22-30-11 of this code.

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

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

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

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

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

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

71 (8) "Process vessel" means a tank that forms an integral part of a production process  
72 through which there is a steady, variable, recurring, or intermittent flow of materials during the  
73 operation of the process or in which a biological, chemical, or physical change in the material

74 occurs. This does not include tanks used for storage of materials prior to their introduction into  
75 the production process or for the storage of finished products or by-products of the production  
76 process.

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

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

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

89 (12) "Public water system" means:

90 (A) Any water supply or system which regularly supplies or offers to supply water for  
91 human consumption through pipes or other constructed conveyances, if serving at least an  
92 average of 25 individuals per day for at least 60 days per year, or which has at least 15 service  
93 connections, and shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

126 containment.

127 (17) "Secondary containment" means a safeguard applied to one or more aboveground  
128 storage tanks that prevents the discharge into the waters of the state of the entire capacity of the  
129 largest single tank and sufficient freeboard to contain precipitation. In order to qualify as  
130 secondary containment, the barrier and containment field must be sufficiently impervious to  
131 contain fluids in the event of a release, and may include double-walled tanks, dikes, containment  
132 curbs, pits, or drainage trench enclosures that safely confine the release from a tank in a facility  
133 catchment basin or holding pond. Earthen dikes and similar containment structures must be  
134 designed and constructed to contain, for a minimum of 72 hours, fluid that escapes from a tank.

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

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

141 (20) "Zone of critical concern" for a public surface water supply source and for a public  
142 surface water influenced groundwater supply source is a corridor along streams within a  
143 watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the  
144 intake's susceptibility to potential contaminants within that corridor. The zone of critical concern  
145 is determined using a mathematical model that accounts for stream flows, gradient and area  
146 topography. The length of the zone of critical concern is based on a five-hour time of travel of  
147 water in the streams to the intake. The width of the zone of critical concern is 1,000 feet measured  
148 horizontally from each bank of the principal stream and 500 feet measured horizontally from each  
149 bank of the tributaries draining into the principal stream.

150 (21) "Zone of peripheral concern" for a public surface water supply source and for a public  
151 surface water influenced groundwater supply source is a corridor along streams within a

152 watershed that warrants scrutiny due to its proximity to the surface water intake and the intake's  
153 susceptibility to potential contaminants within that corridor. The zone of peripheral concern is  
154 determined using a mathematical model that accounts for stream flows, gradient, and area  
155 topography. The length of the zone of peripheral concern is based on an additional five-hour time  
156 of travel of water in the streams beyond the perimeter of the zone of critical concern, which creates  
157 a protection zone of 10 hours above the water intake. The width of the zone of peripheral concern  
158 is 1,000 feet measured horizontally from each bank of the principal stream and 500 feet measured  
159 horizontally from each bank of the tributaries draining into the principal stream.

NOTE: The purpose of this bill is to alter the definition of an aboveground storage tank.

Strike-throughs indicate language that would be stricken from a heading or the present law,  
and underscoring indicates new language that would be added.