

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 2598

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[Originating in the Committee on Energy and
Manufacturing, February 8, 2022.]

1 A BILL to amend and reenact §22-30-3, §22-30-5, and §22-30-6 of the Code of West Virginia,
2 1931, as amended, relating generally to above ground storage tanks; modifying an
3 exception to the definition of an aboveground storage tank to except out devices having a
4 capacity of 210 barrels or less, containing brine water or other fluids produced in
5 connection with hydrocarbon transmission and storage, as well as production activities,
6 that are not located in a zone of critical concern; providing that the secretary may not, as
7 part of the regulatory program, require any regulated tanks to be lifted, moved, or
8 otherwise physically altered in connection with a visual leak detection program in the
9 absence of a confirmed release; providing that tanks used for hydrocarbon production,
10 transportation, and storage activities and tanks used for roadway snow and ice
11 pretreatment, as identified under §22-30-3(1)(M) and (N), are exempt from inspection and
12 certification by a third party, but must be self-inspected, self-certified, and reported to DEP
13 by its owner or operator at least once per year; and providing that tanks used for
14 hydrocarbon production, transportation, and storage activities and tanks used for roadway
15 snow and ice pretreatment, as identified under §22-30-3(1)(M) and (N) are required to
16 have secondary containment inspections performed and documented by the owner or
17 operator at least once per month.

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 other
12 provision of this code to the contrary, the following categories of devices are not subject to the
13 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 transmission, storage, and production activities, that
47 are not located in a zone of 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.

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

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

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

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

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

12 (3) Criteria for the design, operation, maintenance or methods of leak detection.
13 Acceptable leak detection shall include, but not be limited to, visual inspections, an inventory
14 control system together with tank testing, or a comparable system or method designed to identify
15 leaks from aboveground storage tanks; Provided, That the secretary may not require any
16 regulated tanks to be lifted, moved, or otherwise physically altered in connection with a visual leak
17 detection program in the absence of a confirmed release;

18 (4) Requirements for recordkeeping;

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

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

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

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

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

28 (c) For those entities that are otherwise regulated under those provisions of this chapter
29 that necessitate individual, site-specific permits or plans that require appropriate containment and
30 diversionary structures or equipment to prevent discharged or released materials from reaching
31 the waters of the state, the secretary may amend those permits or plans associated with those
32 permits or both at the request of the permittee to include conditions pertaining to the management
33 and control of regulated tanks, so long as those conditions in the opinion of the secretary are
34 sufficient in combination with practices and protections already in place to protect the waters of
35 the state. In its application for permit or plan modification, the permittee shall advise the secretary
36 whether, how and to what extent the permittee adheres to other standards or plans with regard to
37 tank and secondary containment integrity, inspection and spill prevention and response, including,
38 without limitation, API 653 standards for Tank Inspection, Repair, Alteration and Reconstruction
39 or STI SP001 Standards for Aboveground Storage Tanks or the requirements of the federal spill
40 prevention and countermeasures program governed by 40 C. F. R. Part 112. Inclusion of ASTs
41 in amended permits or plans would not relieve the owner or operator's responsibility to pay
42 registration, certificate to operate or Protect Our Water Fund fees. Specifically, the permits or
43 plans the secretary may amend include:

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

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

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

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

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

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

58 (e) The manner and time frames for implementation of the regulatory program required by
59 this section shall be established by the secretary through the proposal of emergency or legislative
60 rules in accordance with the 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 associated secondary containment
2 structure shall be evaluated by a qualified registered professional engineer or a qualified person
3 working under the direct supervision of a registered professional engineer, regulated and licensed
4 by the State Board of Registration for Professional Engineers, or by an individual certified to
5 perform tank inspections by the American Petroleum Institute or the Steel Tank Institute, or by a
6 person holding certification under another program approved by the secretary.

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

11 (c) The certification form shall be submitted to the secretary within one hundred eighty
12 days of the effective date of the rules establishing standards that are adopted in accordance with
13 section five of this article. Subsequent certifications shall be due at regular intervals thereafter as
14 established by the secretary by legislative rule, but not more frequently than once per calendar
15 year.

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

20 (e) Notwithstanding any subsection in this section, tanks identified under §22-30-3(1)(M)
21 and (N) are exempt from this section, but must be self-inspected and self-certified by its owner or
22 operator at least once per year and reported to the agency; and tanks identified under §22-30-
23 3(1)(M) and (N) are required to have secondary containment inspections performed and
24 documented by the owner or operator at least once per month.

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