

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 592

BY SENATORS MARTIN, HELTON, TARR, AND ROSE

[Reported March 11, 2025, from the Committee on
Energy, Industry, and Mining]

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 aboveground 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 an exemption to devices having
7 a capacity of 210 barrels or less and not located in a zone of critical concern, which is
8 located at a lawfully permitted coal mining site; providing that the secretary may not, as
9 part of the regulatory program, require any regulated tanks to be lifted, moved, or
10 otherwise physically altered in connection with a visual leak detection program in the
11 absence of a confirmed release; providing that tanks used for hydrocarbon production,
12 transportation, or storage activities and tanks used for roadway snow and ice
13 pretreatment, as identified under certain sections of code that are located in a zone of
14 critical concern, are exempt from inspection and certification by a third party, but must be
15 self-inspected, self-certified, and reported to Department of Environmental Protection by
16 its owner or operator at least once per year; and providing that tanks used for hydrocarbon
17 production, transportation, and storage activities and tanks used for roadway snow and
18 ice pretreatment, as identified under certain sections of code that are located in a zone of
19 critical concern are required to have secondary containment inspections performed and
20 documented by the owner or 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 non-earthen materials, including concrete, steel,
5 plastic, or fiberglass reinforced plastic, which provide structural support, more than 90 percent of
6 the 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
17 amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R.
18 §§172, 173, 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
22 of 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, or production activities, that are
47 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 this paragraph and paragraph
51 (M) of this subdivision must still meet the registration requirements contained in §22-30-4 of this
52 code, the notice requirements contained in §22-30-10 of this code, and the signage requirements
53 contained in §22-30-11 of this code; and

54 (O) Devices having a capacity of 210 barrels or less, which are located within the
55 boundaries of a permit issued pursuant to §22-3-8 of this code, which are not located within a
56 zone of critical concern.

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

58 (3) "First point of isolation" means the valve, pump, dispenser, or other device or
59 equipment on or nearest to the tank where the flow of fluids into or out of the tank may be shut
60 off manually or where it automatically shuts off in the event of a pipe or tank failure: Provided,
61 That the first point of isolation for double-walled tanks that are filled and emptied from the top is
62 the point at which piping exits the outside wall of such tanks.

63 (4) "Nonoperational storage tank" means an empty aboveground storage tank in which
64 the tank owner or operator has given notice to the department that fluids will not be deposited, or
65 from which fluids will not be dispensed on or after the effective date of this article.

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

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

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

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

80 the production process or for the storage of finished products or by-products of the production
81 process.

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

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

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

94 (12) "Public water system" means:

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

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

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

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

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

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

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

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

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

112 (A) An AST (other than a tank identified in §22-30-3(1)(M), §22-30-3(1)(N), or §22-30-
113 3(1)(O) of this code) located within a zone of critical concern, source water protection area, public
114 surface water influenced groundwater supply source area, or any AST system designated by the
115 secretary as a level 1 regulated tank; or

116 (B) An AST that contains substances defined in section 101(14) of the Comprehensive
117 Environmental Response, Compensation and Liability Act (CERCLA) as a "hazardous substance"
118 (42 U. S. C. § 9601(14)); or is on EPA's Consolidated List of Chemicals Subject to the Emergency
119 Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act
120 (CAA) (known as the List of Lists) as provided by 40 C. F. R. §§ 355, 372, 302, and 68 in a
121 concentration of one percent or greater, regardless of the AST's location, except ASTs containing
122 petroleum are not level 1 regulated tanks based solely upon containing constituents recorded on
123 the CERCLA lists; or

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

126 (14) "Regulated level 2 aboveground storage tank" or "level 2 regulated tank" means an
127 AST that is located within a zone of peripheral concern that is not a level 1 regulated tank, or a
128 tank identified under §22-30-3(1)(M), §22-30-3(1)(N), or §22-30-3(1)(O) of this code that is in a
129 zone of critical concern.

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

132 (16) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching of
133 fluids from ~~an aboveground storage tank~~ secondary containment, or from a tank where there is
134 no secondary containment into the waters of the state or escaping from secondary containment.
135 "Release from an aboveground storage tank", or similar words, means a release of fluids from
136 secondary containment and is not a "leak" into secondary containment.

137 (17) "Secondary containment" means a safeguard applied to one or more aboveground
138 storage tanks that prevents the discharge into the waters of the state of the entire capacity of the
139 largest single tank and sufficient freeboard to contain precipitation. In order to qualify as
140 secondary containment, the barrier and containment field must be sufficiently impervious to
141 contain fluids in the event of a ~~release~~ leak, and may include double-walled tanks, dikes,
142 containment curbs, pits, or drainage ~~trench-enclosures~~ that safely confine the ~~release~~ leak from
143 a tank in a facility catchment basin, wastewater treatment plant authorized to receive the tank
144 contents and capable of containing and/or treating it in the event of a leak, or holding pond.
145 Earthen dikes and similar containment structures must be designed and constructed to contain,
146 for a minimum of 72 hours, fluid that escapes from a tank.

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

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

153 (20) "Zone of critical concern" for a public surface water supply source and for a public
154 surface water influenced groundwater supply source is a corridor along streams within a
155 watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the

156 intake's susceptibility to potential contaminants within that corridor. The zone of critical concern
157 is determined using a mathematical model that accounts for stream flows, gradient and area
158 topography. The length of the zone of critical concern is based on a five-hour time of travel of
159 water in the streams to the intake. The width of the zone of critical concern is 1,000 feet measured
160 horizontally from each bank of the principal stream and 500 feet measured horizontally from each
161 bank of the tributaries draining into the principal stream: Provided, That any existing aboveground
162 storage tank located in an area designated as a zone of critical concern on or after July 1, 2025,
163 shall not become a level one regulated aboveground storage tank or be subject to the regulations
164 related thereto for a period of nine months following written notice by certified mail or email sent
165 to the owner or operator of such tanks in the newly-designated zone of critical concern.

166 (21) "Zone of peripheral concern" for a public surface water supply source and for a public
167 surface water influenced groundwater supply source is a corridor along streams within a
168 watershed that warrants scrutiny due to its proximity to the surface water intake and the intake's
169 susceptibility to potential contaminants within that corridor. The zone of peripheral concern is
170 determined using a mathematical model that accounts for stream flows, gradient, and area
171 topography. The length of the zone of peripheral concern is based on an additional five-hour time
172 of travel of water in the streams beyond the perimeter of the zone of critical concern, which creates
173 a protection zone of 10 hours above the water intake. The width of the zone of peripheral concern
174 is 1,000 feet measured horizontally from each bank of the principal stream and 500 feet measured
175 horizontally from each bank of the tributaries draining into the principal stream: Provided, That
176 any existing aboveground storage tank located in an area designated as a zone of peripheral
177 concern on or after July 1, 2025, shall not become a level two regulated aboveground storage
178 tank or be subject to the regulations related thereto for a period of nine months following written
179 notice, by certified mail or email sent to the owner or operator of such tanks in the newly
180 designated zone of peripheral concern.

181 (22) "Leak" means any spilling, emitting, discharging, escaping, or leaching of fluids from
182 an aboveground storage tank into secondary containment. Upon the occurrence of a suspected
183 or threatened leak, owners, or operators of aboveground storage tanks must report the suspected
184 or threatened leak to the secretary within 24 hours of discovery, unless the owner or operator is
185 able to determine within that time period that the suspected or threatened leak was a false alarm.

186 (23) "Temporarily out-of-service" (TOS) means an emptied aboveground storage tank in
187 which the tank owner or operator has given notice to the department through the registration
188 process that fluids will not be deposited in the AST. While TOS, an AST is subject only to the
189 registration requirements contained in 22-30-4 of this code, the notice requirements in 22-30-10
190 of this code, and the signage requirements in 22-30-11 of this code. TOS status ceases at the
191 earlier of: (A) Closure of the AST; (B) notice of resumption of operational status by amending the
192 registration to show the tank as currently in use; or (C) after five years in TOS status, at which
193 time the owner or operator must return the tank to service or perform closure of the AST. Prior to
194 returning a TOS tank to service an acceptable fit for service inspection performed by a qualified
195 individual as defined in the AST rule shall be submitted to the agency.

§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, in the absence of a known release, the
16 secretary may not require inspection of secondary containment or tanks at a greater frequency
17 than once per month: Provided, however, That the secretary may not require any regulated tanks
18 to be lifted, moved, or otherwise physically altered in connection with a visual leak detection
19 program in the absence of a confirmed release: Provided further, That in addition, the secretary
20 shall allow the use of remote non-destructive examination technologies in connection with any
21 required periodic physical inspections of tanks in order to reduce, to the extent possible, human
22 entry to confined spaces;

23 (4) Requirements for recordkeeping;

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

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

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

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

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

33 (c) For those entities that are otherwise regulated under those provisions of this chapter
34 that necessitate individual, site-specific permits or plans that require appropriate containment and
35 diversionary structures or equipment to prevent discharged or released materials from reaching

36 the waters of the state, the secretary may amend those permits or plans associated with those
37 permits or both at the request of the permittee to include conditions pertaining to the management
38 and control of regulated tanks, so long as those conditions in the opinion of the secretary are
39 sufficient in combination with practices and protections already in place to protect the waters of
40 the state. In its application for permit or plan modification, the permittee shall advise the secretary
41 whether, how and to what extent the permittee adheres to other standards or plans with regard to
42 tank and secondary containment integrity, inspection and spill prevention and response, including,
43 without limitation, API 653 standards for Tank Inspection, Repair, Alteration and Reconstruction
44 or STI SP001 Standards for Aboveground Storage Tanks or the requirements of the federal spill
45 prevention and countermeasures program governed by 40 C. F. R. Part 112. Inclusion of ASTs
46 in amended permits or plans would not relieve the owner or operator's responsibility to pay
47 registration, certificate to operate or Protect Our Water Fund fees. Specifically, the permits or
48 plans the secretary may amend include:

49 (1) Permits issued pursuant to the Surface Coal Mining and Reclamation Act, §22-3-1 *et*
50 *seq.* of this code;

51 (2) Permits issued by the Office of Oil and Gas pursuant to §22-6-1 *et seq.* or §22-6A-1 *et*
52 *seq.* of this code or spill pollution and control measures plans required under 35 C. S. R. 1;

53 (3) Individual permits issued pursuant to the National Pollution Discharge Elimination
54 System, §22-11-1 *et seq.* of this code;

55 (4) Permits issued pursuant to the Solid Waste Management Act, §22-15-1 *et seq.* of this
56 code; and

57 (5) Groundwater protection plans issued pursuant to §22-12-1 *et seq.* of this code.

58 (d) Any entity whose permit or plan modification or amendment relating to tank integrity
59 and secondary containment design operation and maintenance is approved by the secretary and
60 so maintained shall be deemed to be compliant with this article and entitles the entity to a

61 certificate to operate so long as the registration requirements of §22-30-4 of this code are also
62 met.

63 (e) The manner and time frames for implementation of the regulatory program required by
64 this section shall be established by the secretary through the proposal of emergency or legislative
65 rules in accordance with the provisions of §29A-3-1 *et seq.* 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 180 days of the effective
12 date of the rules establishing standards that are adopted in accordance with section five of this
13 article. Subsequent certifications shall be due at regular intervals thereafter as established by the
14 secretary by legislative rule, but not more frequently than once per calendar year.

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

19 (e) Notwithstanding any subsection in this section, tanks identified under §22-30-3(1)(M),
20 §22-30-3(1)(N), and §22-30-3(1)(O) of this code that are located in a zone of critical concern are

21 exempt from this section, but must be self-inspected and self-certified by its owner or operator at
22 least once per year and reported to the agency; and tanks identified under §22-30-3(1)(M), §22-
23 30-3(1)(N), and §22-30-3(1)(O) of this code that are located in a zone of critical concern are
24 required to have secondary containment inspections performed and documented by the owner or
25 operator at least once per month.