

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 641

BY SENATORS ROSE, HELTON, RUCKER, AND TARR

[Reported March 2, 2026, from the Committee on

Energy, Industry, and Mining]

1 A BILL to amend and reenact §22-30-3 and §22-30-15 of the Code of West Virginia, 1931, as
2 amended, relating generally to aboveground storage tanks; modifying the definitions of
3 aboveground storage tank, regulated level 1 aboveground storage tank, and regulated
4 level 2 aboveground storage tank; providing a certain notice period before certain existing
5 aboveground storage tanks may be reclassified as a level 1 regulated tank or a level 2
6 regulated tank in a newly-designated zone of critical concern or zone of peripheral
7 concern; and allowing certain remote technologies to be used in certain tank inspections.

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, the words and phrases in this section have the meanings
2 ascribed to them.

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

15 (A) Shipping containers that are subject to state or federal laws or regulations governing
16 the transportation of hazardous materials, including, but not limited to, railroad freight cars subject

17 to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §20101-2015, as
18 amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R.
19 §§172, 173, or 174;

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

24 (C) Swimming pools;

25 (D) Process vessels;

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

29 (F) Devices containing food or food-grade materials used for human or animal
30 consumption and regulated under the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-
31 392);

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

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

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

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

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

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

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

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

55 (O) Devices having a capacity of 10,000 gallons or less which are located within the
56 boundaries of a permit issued pursuant to §22-3-1 et seq. of this code and certified pursuant to
57 §22-12-8 of this code and are not located within a zone of critical concern: *Provided*, That such
58 devices shall meet the registration, notice, and signage requirements of this article.

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

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

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 located within a zone of critical concern, source water protection area, public
113 surface water influenced groundwater supply source area, or any AST system designated by the
114 secretary as a level 1 regulated tank, except that an AST in a zone of critical concern, source
115 water protection area, or public surface water influenced groundwater supply source area, that
116 has a capacity of less than 50,000 gallons and contains brine water or other fluids produced in
117 connection with hydrocarbon transmission, storage, or production activities, is a regulated level 2
118 tank; or

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

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

129 (14) "Regulated level 2 aboveground storage tank" or "level 2 regulated tank" means an
130 AST that is located within a zone of peripheral concern that is not a level 1 regulated tank. ASTs
131 of a capacity of less than 50,000 gallons that are located in a zone of critical concern, source
132 water protection area, or public surface water influenced groundwater supply source area
133 that contain brine water or other fluids produced in connection with hydrocarbon transmission,
134 storage, or production activities, and ASTs in a zone of peripheral concern that are less than
135 50,000 gallons but greater than 210 barrels, that contain brine water or other fluids produced in
136 connection with hydrocarbon transmission, storage, or production activities, are categorized as
137 Level 2 tanks.

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

140 (16) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching of
141 fluids from an aboveground storage tank into the waters of the state or escaping from secondary
142 containment.

143 (17) "Secondary containment" means a safeguard applied to one or more aboveground
144 storage tanks that prevents the discharge into the waters of the state of the entire capacity of the

145 largest single tank and sufficient freeboard to contain precipitation. In order to qualify as
146 secondary containment, the barrier and containment field must be sufficiently impervious to
147 contain fluids in the event of a release, and may include double-walled tanks, dikes, containment
148 curbs, pits, or drainage ~~trench enclosures~~ that safely confine the release from a tank in a facility
149 catchment basin, or holding pond. Earthen dikes and similar containment structures must be
150 designed and constructed to contain, for a minimum of 72 hours, fluid that escapes from a tank.

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

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

157 (20) "Zone of critical concern" for a public surface water supply source and for a public
158 surface water influenced groundwater supply source is a corridor along streams within a
159 watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the
160 intake's susceptibility to potential contaminants within that corridor. The zone of critical concern
161 is determined using a mathematical model that accounts for stream flows, gradient and area
162 topography. The length of the zone of critical concern is based on a five-hour time of travel of
163 water in the streams to the intake. The width of the zone of critical concern is 1,000 feet measured
164 horizontally from each bank of the principal stream and 500 feet measured horizontally from each
165 bank of the tributaries draining into the principal stream: Provided, That any existing aboveground
166 storage tank located in an area that becomes designated as a zone of critical concern on or after
167 July 1, 2026, does not become a level one regulated aboveground storage tank nor become
168 subject to the regulations related thereto for a period of nine months following written notice by
169 certified or electronic mail sent to the owner or operator of the tanks in the newly-designated zone
170 of critical concern.

171 (21) "Zone of peripheral concern" for a public surface water supply source and for a public
172 surface water influenced groundwater supply source is a corridor along streams within a
173 watershed that warrants scrutiny due to its proximity to the surface water intake and the intake's
174 susceptibility to potential contaminants within that corridor. The zone of peripheral concern is
175 determined using a mathematical model that accounts for stream flows, gradient, and area
176 topography. The length of the zone of peripheral concern is based on an additional five-hour time
177 of travel of water in the streams beyond the perimeter of the zone of critical concern, which creates
178 a protection zone of 10 hours above the water intake. The width of the zone of peripheral concern
179 is 1,000 feet measured horizontally from each bank of the principal stream and 500 feet measured
180 horizontally from each bank of the tributaries draining into the principal stream: Provided, That
181 any existing aboveground storage tank located in an area that becomes designated as a zone of
182 peripheral concern on or after July 1, 2026, does not become a level two regulated aboveground
183 storage tank nor become subject to the regulations related thereto for a period of nine months
184 following written notice, by certified or electronic mail sent to the owner or operator of the tanks in
185 the newly-designated zone of peripheral concern.

§22-30-15. Inspections, monitoring and testing.

186 (a) For the purposes of developing or assisting in the development of any rule, conducting
187 any study, taking any corrective action or enforcing any provision of this article, any owner or
188 operator of an aboveground storage tank shall, upon request of the secretary:

189 (1) Furnish information relating to the aboveground storage tanks, their associated
190 equipment and contents;

191 (2) Conduct reasonable monitoring or testing;

192 (3) Permit the secretary, at all reasonable times, to inspect and copy records relating to
193 aboveground storage tanks; and

194 (4) Permit the secretary to have access to the aboveground storage tanks for corrective
195 action.

196 (b) For the purposes of developing or assisting in the development of any rule, conducting
197 any study, taking corrective action or enforcing any provision of this article, the secretary may:

198 (1) Enter at any time any establishment or other place where an aboveground storage
199 tank is located;

200 (2) Inspect and obtain samples of any fluid contained in an aboveground storage tank;

201 (3) Conduct monitoring or testing of the aboveground storage tanks, associated
202 equipment, contents or surrounding soils, surface water or groundwater; and

203 (4) Take corrective action as specified in this article.

204 (c) Each inspection shall be commenced and completed with reasonable promptness.

205 (d) To ensure protection of the water resources of the state and compliance with any
206 provision of this article or rule promulgated thereunder, the secretary shall:

207 (1) Inspect level 1 regulated tanks at least once every three years;~~The secretary shall~~

208 (2) Develop an inspection protocol for level 2 regulated tanks; and

209 (3) Allow remote non-destructive examination technologies to be used in connection with
210 any required periodic physical inspection of tanks in order to reduce, to the extent possible, human
211 entry to confined space.