

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 641**

BY SENATORS ROSE, HELTON, RUCKER, AND TARR

[Passed March 13, 2026; in effect 90 days from

passage (June 11, 2026)]



1 AN ACT 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 tank regulation; modifying the  
3 definition of aboveground storage tanks and altering certain exceptions in limited  
4 circumstances; modifying regulated level 1 aboveground storage tanks and exceptions;  
5 modifying regulated level 2 aboveground storage tanks and exceptions; providing a  
6 defined notice period before certain existing aboveground storage tanks may be  
7 reclassified as a level 1 regulated tank or a level 2 regulated tank in a newly-designated  
8 zone of critical concern or zone of peripheral concern; and allowing remote non-  
9 destructive examination technologies to be used on certain periodic physical tank  
10 inspections to reduce human entry into confined spaces if possible.

*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 storage or production activities, that are not located in  
48 a zone of critical concern;

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 and do not contain  
58 substances identified in subdivision (13), paragraph (B), of this section: *Provided*, That such  
59 devices shall meet the registration, notice, and signage requirements of this article.

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

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

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

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

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

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

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

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

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

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

95 (12) "Public water system" means:

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

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

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

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

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

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

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

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

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

113 (A) An AST 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, except that an AST in a zone of critical concern, source

116 water protection area, or public surface water influenced groundwater supply source area, that  
117 has a capacity of 10,000 gallons or less and contains only brine water produced in connection  
118 with hydrocarbon storage or production activities, is a regulated level 2 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 10,000 gallons or less that are located in a zone of critical concern, source water  
132 protection area, or public surface water influenced groundwater supply source area that contain  
133 only brine water produced in connection with hydrocarbon storage or production activities, and  
134 ASTs in a zone of peripheral concern that are 10,000 gallons or less but greater than 210 barrels,  
135 that contain only brine water produced in connection with hydrocarbon storage or production  
136 activities, are categorized as Level 2 tanks.

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

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

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

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

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

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

168 certified or electronic mail sent to the owner or operator of the tanks in the newly-designated zone  
169 of critical concern.

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

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

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

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

6 (2) Conduct reasonable monitoring or testing;

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

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

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

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

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

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

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

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

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

22 (1) Inspect level 1 regulated tanks at least once every three years;

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

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



The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

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*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

Originated in the Senate.

In effect 90 days from passage.

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within is ..... this the.....  
Day of ....., 2026.

.....  
*Governor*