

1 **Senate Bill No. 542**

2 (By Senators Wells, Unger, Jenkins, Plymale, Palumbo and Beach)

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4 [Introduced February 12, 2014; referred to the Committee on

5 Energy, Industry and Mining; and then to the Committee on the

6 Judiciary.]

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11 A BILL to amend and reenact §22-11-3 of the Code of West Virginia,

12 1931, as amended; and to amend said code by adding thereto a

13 new section, designated §22-11-31, all relating to release of

14 fluids or chemicals; definitions; requiring notification of

15 release; and providing penalties for failure to submit

16 notification.

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

18 That §22-11-3 of the Code of West Virginia, 1931, as amended,

19 be amended and reenacted; and that said code be amended by adding

20 thereto a new section, designated §22-11-31, all to read as

21 follows:

22 **ARTICLE 11. WATER POLLUTION CONTROL ACT.**

23 **§22-11-3. Definitions.**

24 Unless the context in which used clearly requires a different

1 meaning, as used in this article:

2 (1) "Activity" or "activities" means any activity or
3 activities for which a permit is required by section seven of this
4 article;

5 (2) "Board" means the environmental quality board, provided in
6 article three, chapter twenty-two-b of this code;

7 (3) "Chief" means the director of the division of water and
8 waste management of the Department of Environmental Protection;

9 (4) "Code" means the Code of West Virginia, 1931, as amended;

10 (5) "Department" means the Department of Environmental
11 Protection;

12 (6) "Disposal system" means a system for treating or disposing
13 of sewage, industrial wastes or other wastes, or the effluent
14 therefrom, either by surface or underground methods, and includes
15 sewer systems, the use of subterranean spaces, treatment works,
16 disposal wells and other systems;

17 (7) "Disposal well" means any well drilled or used for the
18 injection or disposal of treated or untreated sewage, industrial
19 wastes or other wastes into underground strata;

20 (8) "Effluent limitation" means any restriction established on
21 quantities, rates and concentrations of chemical, physical,
22 biological and other constituents which are discharged into the
23 waters of this state;

24 (9) "Establishment" means an industrial establishment, mill,

1 factory, tannery, paper or pulp mill, mine, colliery, breaker or
2 mineral processing operation, quarry, refinery, well and each and
3 every industry or plant or works in the operation or process of
4 which industrial wastes, sewage or other wastes are produced;

5 (10) "Industrial user" means those industries identified in
6 the standard industrial classification manual, United States Bureau
7 of the Budget, 1967, as amended and supplemented, under the
8 category "division d--manufacturing" and other classes of
9 significant waste producers identified under regulations issued by
10 the director or the administrator of the United States
11 environmental protection agency;

12 (11) "Industrial wastes" means any liquid, gaseous, solid or
13 other waste substance, or a combination thereof, resulting from or
14 incidental to any process of industry, manufacturing, trade or
15 business, or from or incidental to the development, processing or
16 recovery of any natural resources; and the admixture with such
17 industrial wastes of sewage or other wastes, as hereinafter
18 defined, is also "industrial waste" within the meaning of this
19 article;

20 (12) "Other wastes" means garbage, refuse, decayed wood,
21 sawdust, shavings, bark and other wood debris and residues
22 resulting from secondary processing; sand, lime, cinders, ashes,
23 offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals,
24 heat or all other materials and substances not sewage or industrial

1 wastes which may cause or might reasonably be expected to cause or
2 to contribute to the pollution of any of the waters of the state;

3 (13) "Outlet" means the terminus of a sewer system or the
4 point of emergence of any water-carried sewage, industrial wastes
5 or other wastes, or the effluent therefrom, into any of the waters
6 of this state, and includes a point source;

7 (14) "Person", "persons" or "applicant" means any industrial
8 user, public or private corporation, institution, association, firm
9 or company organized or existing under the laws of this or any
10 other state or country; State of West Virginia; governmental
11 agency, including federal facilities; political subdivision; county
12 commission; municipal corporation; industry; sanitary district;
13 public service district; drainage district; soil conservation
14 district; watershed improvement district; partnership; trust;
15 estate; person or individual; group of persons or individuals
16 acting individually or as a group; or any legal entity whatever;

17 (15) "Point source" means any discernible, confined and
18 discrete conveyance, including, but not limited to, any pipe,
19 ditch, channel, tunnel, conduit, well, discrete fissure, container,
20 rolling stock or vessel or other floating craft, from which
21 pollutants are or may be discharged;

22 (16) "Pollutant" means industrial wastes, sewage or other
23 wastes as defined in this section;

24 (17) "Pollution" means the man-made or man-induced alteration

1 of the chemical, physical, biological and radiological integrity of
2 the waters of the state;

3 (18) "Publicly owned treatment works" means any treatment
4 works owned by the state or any political subdivision thereof, any
5 municipality or any other public entity, for the treatment of
6 pollutants;

7 (19) "Release" means any spilling, leaking, emitting,
8 discharging, escaping, leaching or disposing of fluids or chemicals
9 from an aboveground storage tank into groundwater, surface water or
10 subsurface soils;

11 ~~(19)~~ (20) "Secretary" means the Secretary of the Department of
12 Environmental Protection or such other person to whom the secretary
13 has delegated authority or duties pursuant to section six or eight,
14 article one of this chapter;

15 ~~(20)~~ (21) "Sewage" means water-carried human or animal wastes
16 from residences, buildings, industrial establishments or other
17 places, together with such groundwater infiltration and surface
18 waters as may be present;

19 ~~(21)~~ (22) "Sewer system" means pipelines or conduits, pumping
20 stations, force mains and all other constructions, facilities,
21 devices and appliances appurtenant thereto, used for collecting or
22 conducting sewage, industrial wastes or other wastes to a point of
23 disposal or treatment;

24 ~~(22)~~ (23) "Treatment works" means any plant, facility, means,

1 system, disposal field, lagoon, pumping station, constructed
2 drainage ditch or surface water intercepting ditch, diversion ditch
3 above or below the surface of the ground, settling tank or pond,
4 earthen pit, incinerator, area devoted to sanitary landfills or
5 other works not specifically mentioned herein, installed for the
6 purpose of treating, neutralizing, stabilizing, holding or
7 disposing of sewage, industrial wastes or other wastes or for the
8 purpose of regulating or controlling the quality and rate of flow
9 thereof;

10 ~~(23)~~ (24) "Water resources", "water" or "waters" means any and
11 all water on or beneath the surface of the ground, whether
12 percolating, standing, diffused or flowing, wholly or partially
13 within this state, or bordering this state and within its
14 jurisdiction, and includes, without limiting the generality of the
15 foregoing, natural or artificial lakes, rivers, streams, creeks,
16 branches, brooks, ponds (except farm ponds, industrial settling
17 basins and ponds and water treatment facilities), impounding
18 reservoirs, springs, wells, watercourses and wetlands; and

19 ~~(24)~~ (25) "Well" means any shaft or hole sunk, drilled, bored
20 or dug into the earth or into underground strata for the extraction
21 or injection or placement of any liquid or gas, or any shaft or
22 hole sunk or used in conjunction with such extraction or injection
23 or placement. The term "well" does not include any shaft or hole
24 sunk, drilled, bored or dug into the earth for the sole purpose of

1 core drilling or pumping or extracting therefrom potable, fresh or
2 usable water for household, domestic, industrial, agricultural or
3 public use.

4 **§22-11-31. Release of fluids or chemicals; penalties.**

5 (a) Upon the release of any fluid or chemical from a facility
6 or storage unit into groundwater, surface water, or subsurface
7 soils, the person responsible for the release shall immediately
8 notify the division. The notice shall include as much of the
9 following information as is known at the time of the release:

10 (1) The chemical name or identity of any substance involved in
11 the release;

12 (2) An estimate of the quantity of any such substance that was
13 released into the groundwater, surface water, or subsurface soils;

14 (3) The time and duration of the release;

15 (4) The medium or media into which the release occurred;

16 (5) Any known or anticipated acute or chronic health risks
17 associated with the release and, where appropriate, advice
18 regarding medical attention necessary for exposed individuals;

19 (6) Proper precautions to take as a result of the release,
20 including evacuation; and

21 (7) The name and telephone number of the individual (or
22 individuals) to be contacted for further information.

23 (b) Any person who knowingly and willfully fails to provide
24 notice as required by subsection (a) is guilty of a misdemeanor,

1 and upon conviction thereof, shall be confined in a regional jail
2 for a period of time not exceeding six months, and be fined an
3 amount not to exceed \$25,000.

NOTE: The purpose of this bill is to require notice to the Division of Environmental Protection for a release of chemicals or fluids into groundwater, surface water or subsurface soils. The bill further provides for penalties for knowingly and willfully failing to immediately provide the notice required.

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

§22-11-31 is new; therefore strikethroughs and underscoring have been omitted.