

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 679**

BY SENATORS SMITH, BLAIR, FACEMIRE, PREZIOSO AND

SYPOLT

[Introduced March 20, 2017; Referred  
to the Committee on Energy, Industry and Mining]

1 A BILL to amend and reenact §22-30-3 of the Code of West Virginia, 1931, as amended, relating  
2 to the definition of “above ground storage tanks”; and excluding certain tanks holding oil,  
3 brine or other fluids used in hydrocarbon and mineral extraction.

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

1 That §22-30-3 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**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 one thousand three hundred twenty gallons of fluids that are liquid at  
4 standard temperature and pressure, which is constructed primarily of nonearthen materials,  
5 including concrete, steel, plastic or fiberglass reinforced plastic, which provide structural support,  
6 more than ninety percent of the capacity of which is above the surface of the ground, and includes  
7 all ancillary pipes and dispensing systems up to the first point of isolation. The term includes  
8 stationary devices which are permanently affixed, and mobile devices which remain in one  
9 location on a continuous basis for three hundred sixty-five or more days. A device meeting this  
10 definition containing hazardous waste subject to regulation under 40 C. F. R. Parts 264 and 265,  
11 exclusive of tanks subject to regulation under 40 C. F. R. § 265.201 is included in this definition  
12 but is not a regulated tank. Notwithstanding any other provision of this code to the contrary, the  
13 following categories of devices are not subject to 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 Parts 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 emergency  
27 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; ~~and~~

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

45           (M) Tanks having a capacity of 210 barrels or less, containing oil, brine water or other  
46 fluids produced in connection with hydrocarbon and other mineral production activities that are  
47 not located in a zone of critical concern.

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

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

52           (4) "Nonoperational storage tank" means an empty aboveground storage tank in which  
53 fluids will not be deposited or from which fluids will not be dispensed on or after the effective date  
54 of this article.

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

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

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

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

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

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

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

83 (12) "Public water system" means:

84 (A) Any water supply or system which regularly supplies or offers to supply water for  
85 human consumption through pipes or other constructed conveyances, if serving at least an  
86 average of twenty-five individuals per day for at least sixty days per year, or which has at least  
87 fifteen service connections, and shall include:

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

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

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

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

96 (ii) Obtains all of its water from, but is not owned or operated by, a public water system

97 which otherwise meets the definition;

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

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

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

101 (A) An AST located within a zone of critical concern, source water protection area, public  
102 surface water influenced groundwater supply source area, or any AST system designated by the  
103 secretary as a level 1 regulated tank; or

104 (B) An AST that contains substances defined in section 101(14) of the Comprehensive  
105 Environmental Response, Compensation and Liability Act (CERCLA) as a "hazardous substance"  
106 (42 U. S. C. § 9601(14)); or is on EPA's "Consolidated List of Chemicals Subject to the Emergency  
107 Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act  
108 (CAA)" (known as "the List of Lists") as provided by 40 C. F. R. §§ 355, 372, 302, and 68) in a  
109 concentration of one percent or greater, regardless of the AST's location, except ASTs containing  
110 petroleum are not "level 1 regulated tanks" based solely upon containing constituents recorded  
111 on the CERCLA lists; or,

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

114 (14) "Regulated level 2 aboveground storage tank" or "level 2 regulated tank" means an  
115 AST that is located within a zone of peripheral concern that is not a level 1 regulated tank.

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

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

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

123 largest single tank and sufficient freeboard to contain precipitation. In order to qualify as  
124 secondary containment, the barrier and containment field must be sufficiently impervious to  
125 contain fluids in the event of a release, and may include double-walled tanks, dikes, containment  
126 curbs, pits or drainage trench enclosures that safely confine the release from a tank in a facility  
127 catchment basin or holding pond. Earthen dikes and similar containment structures must be  
128 designed and constructed to contain, for a minimum of seventy-two hours, fluid that escapes from  
129 a tank.

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

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

136 (20) "Zone of critical concern" for a public surface water supply source and for a public  
137 surface water influenced groundwater supply source is a corridor along streams within a  
138 watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the  
139 intake's susceptibility to potential contaminants within that corridor. The zone of critical concern  
140 is determined using a mathematical model that accounts for stream flows, gradient and area  
141 topography. The length of the zone of critical concern is based on a five-hour time-of-travel of  
142 water in the streams to the intake. The width of the zone of critical concern is one thousand feet  
143 measured horizontally from each bank of the principal stream and five hundred feet measured  
144 horizontally from each bank of the tributaries draining into the principal stream.

145 (21) "Zone of peripheral concern" for a public surface water supply source and for a public  
146 surface water influenced groundwater supply source is a corridor along streams within a  
147 watershed that warrants scrutiny due to its proximity to the surface water intake and the intake's  
148 susceptibility to potential contaminants within that corridor. The zone of peripheral concern is

149 determined using a mathematical model that accounts for stream flows, gradient and area  
150 topography. The length of the zone of peripheral concern is based on an additional five-hour time-  
151 of-travel of water in the streams beyond the perimeter of the zone of critical concern, which  
152 creates a protection zone of ten hours above the water intake. The width of the zone of peripheral  
153 concern is one thousand feet measured horizontally from each bank of the principal stream and  
154 five hundred feet measured horizontally from each bank of the tributaries draining into the  
155 principal stream.

NOTE: The purpose of this bill is to clarify that tanks having a capacity of 210 barrels or less that contain oil, brine water or other fluids generated by hydrocarbon production are not regulated under the Above Ground Storage Tank Act.

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