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Bill could leave only 90 tanks covered by rules, W.Va. DEP data show

by **Ken Ward Jr.**, Staff writer

As few as 90 of the thousands of chemical storage tanks across West Virginia might be covered by new state Department of Environmental Protection safety requirements passed after last year's Freedom Industries leak, if [legislation introduced this week](#) passes, according to a new analysis of DEP data.

That's 0.2 percent of the nearly 44,000 tanks listed in a database the DEP put together with owner registrations.

Downstream Strategies, a Morgantown-based environmental consultant, analyzed the data and [released its findings in conjunction with the West Virginia Rivers Coalition](#).

"Senate Bill 373 passed with the promise that our water supplies would be

protected,” said Angie Rosser, executive director of the Rivers Coalition. “The fact that the Legislature is now introducing bills that exclude 99.8 percent of tanks is a betrayal of that promise. We cannot accept our lawmakers turning their back on public safety and ignoring what we learned last year about the vulnerability of our water.”

The new analysis is [an update from a report released last month](#) that used the chemical tank registration data the DEP previously released to provide a glimpse into where tanks are located, what industries have the most and what substances the tanks contain. That report also tried to begin to examine how various changes to the new law might allow thousands of tanks located “in close proximity” to drinking water intakes to escape requirements for periodic inspections and mandated safety standards.”

In a prepared statement, the DEP said its own review showed that, under the legislation, about 1,800 tanks would be left to be regulated, including only about one-third of the tanks agency officials consider pose the most risk to public drinking water supplies.

It’s not clear how the methods used by the DEP and Downstream Strategies to analyze the tank data differed, but the DEP’s figures were based on a more recent version of the registration database that included nearly 50,000 tanks statewide, compared to the nearly 44,000 in the version analyzed by Downstream Strategies.

Kelley Gillenwater, the DEP’s communications director, said the agency’s latest database shows that about 1,400 tanks statewide were found during initial inspections to be “not fit for service.” All but 100 of those 1,400 tanks would be exempt from regulation under the new legislation, Gillenwater said.

“We hope that, as these new bills go through the legislative process, our lawmakers use the data from the tank inventory to ensure we have a law that protects West Virginia citizens and our environment while also ensuring that we focus our attention where it really needs to be focused — on the tanks that pose the biggest threat,” Gillenwater said.

Under one bill (HB2754), [introduced Tuesday in the House of Delegates](#), tanks that are not located in the “zone of critical concern,” near public drinking water intakes would be exempt from the law passed last year. So would any tanks related to the state’s oil and gas industry and any tanks with a capacity of less than 10,000 gallons.

The new Downstream Strategies report says that more than 41,000 tanks — out of nearly 44,000 in the DEP inventory that was analyzed — would be exempt because they aren’t in a zone of critical concern. Nearly 39,000 tanks would be exempt because they have a capacity of less than 10,000 gallons, the report states. More than 33,400 would be exempt because they are part of the oil and gas industry. Nearly 29,000 would be exempt because they are covered by another government regulatory program, the report said.

Many tanks would be subject to more than one of the exemptions included in the bill. The tank that leaked at Freedom Industries, for example, would not have been covered by tank safety requirements under the bill, simply because a groundwater protection plan was required under its state Clean Water Act permit.

The report noted that, of the tanks that would be excluded from the law under the bill, nearly 1,100 of them failed an initial inspection and were listed by their owners as “not fit for service.”

“Rather than gutting the act, I hope that legislators give serious

consideration to the aboveground storage tank rule that the Department of Environmental Protection is now proposing,” said Evan Hansen, president of Downstream Strategies. “[The] DEP is proposing stricter regulations for tanks that present the highest risk due to their location, contents and size. This makes a lot more sense than new blanket exemptions.”

It’s not clear when lawmakers plan to take up the legislation. The House bill has 11 co-sponsors, including Minority Leader Tim Miley, D-Harrison, and three other Democrats. A similar Senate bill ([SB423](#)), introduced Thursday, has 13 sponsors, including seven Democrats.

Also Thursday, Laura Jordan, a spokeswoman for West Virginia American Water, whose source-water supply was contaminated by the Freedom leak, said her company is still reviewing specifics of the new legislation but has “significant concerns with many of the changes being proposed.”

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