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## Bill would roll back chemical tank oversight

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

CHARLESTON, W.Va. — Legislation making its way through the Statehouse would ease West Virginia's new oversight of aboveground chemical storage tanks by cutting back on state inspections, allowing lesser safety standards for some tanks, and blocking public access to some information about hazardous materials stored near drinking water intakes.

The bill ([SB 423](#)) would essentially exempt more than 36,000 aboveground storage tanks around the state from new safety requirements that lawmakers [approved unanimously after last year's Freedom Industries leak](#), according to state officials and outside experts who have reviewed the legislation and the state's existing inventory of about 48,000 tanks.

An undetermined number of the remaining tanks could likewise avoid being specifically regulated by the new law if the Department of Environmental

Protection determines their existing state permits are adequate to “protect the waters of the state,” according to the legislation, now being considered in the House of Delegates.

Mandated inspections by DEP personnel would be reduced from an annual basis to every five years and would be conducted only on tanks considered the most dangerous because of their size, contents or location near public drinking water intakes.

The bill would give the state Division of Homeland Security and Emergency Management new powers to control the flow of information to the public about chemical storage and toxic leaks, making it a crime for anyone to make public information the agency has “designated ... as restricted from public release.”

Parts of the bill also require new rulemaking by the DEP, a move that critics are concerned will set back the process of getting new chemical tank safety standards in place by another year or more.

Over the weekend, senators approved the measure by [a 30-1 vote](#). The only vote against it came from Sen. Chris Walters, R-Kanawha. Absent and not voting were Sens. Ferns, R-Ohio; Leonhardt, R-Monongalia; and Prezioso, D-Marion.

On Monday, Walters said the bill had several provisions he was concerned about, including those regarding public information, and that he “wanted to be extremely cautious” with his vote given his own experience during the 2014 water crisis in the Kanawha Valley.

“While overall I believe this compromise kept the integrity of most of last year’s tank law, I couldn’t forget those days that had such a deep impact not only on my constituents, but my family, and I couldn’t vote for it,” Walters said. “I do know the committee worked long hours to create a piece of legislation which is much better than the originally drafted bill.”

The bill gives many industry groups, especially those representing oil and gas operators, much of what they had hoped for and leaves environmental groups trying to find a way to preserve as much of last year’s bill ([SB 373](#)) as they can.

“It’s definitely a rollback,” said Angie Rosser, executive director of the West Virginia Rivers Coalition. “We have serious outstanding concerns that we hope the House will take the time to look at.”

Rebecca Randolph, president of the West Virginia Manufacturers Association, praised the Senate-passed bill, saying it “provides a greater focus on the tanks that present the most potential to impact drinking water.”

While the effort to walk back the chemical tank rules is taking place under new Republican leadership in the Senate and House, top Democratic leaders like then-Senate President Jeff Kessler, D-Marshall, had [sought a special session](#) last year to make similar changes. And the House version of [the industry-based bill this year](#) is co-sponsored by four Democrats, including former House Speaker Tim Miley, D-Harrison.

Supporters of scaling back last year’s legislation argue it was written as a knee-jerk reaction to the Freedom leak, resulting in language that was broader than many lawmakers intended, and going beyond tanks that pose serious threats to public utility water intakes.

But last year’s bill [went through three committees in the House and two committees in the Senate](#). The Aboveground Storage Tank Act was

strengthened substantially from [the version originally proposed](#) by Gov. Earl Ray Tomblin [following an industry-only “stakeholders” meeting](#), and after a [House committee hearing at which DEP officials described](#) how some existing agency programs don't necessarily focus on chemical tank safety issues.

Initial versions of this year's legislation [would have left fewer than 100 tanks covered by the new law](#), in large part by giving a blanket exemption to any chemical tanks used by the oil and gas industry. Thousands of tanks located within 1,000 feet of a stream would have been exempted, as would about 1,100 tanks that failed the initial inspections required under last year's law, according to [a report](#) by the Rivers Coalition and the Morgantown consulting firm Downstream Strategies.

The latest version of the bill emerged last week from behind-the-scenes discussions among DEP officials, legislative staff, various industry lobbyists and citizen activists. The meetings were organized by Senate Judiciary Chairman Charles Trump, R-Morgan.

This version carves a huge number of tanks out of the law by creating and defining a new term, “regulated aboveground storage tank.” The term limits the law's coverage to larger tanks, tanks with more dangerous contents, and tanks located within the “zone of critical concern,” which runs to five hours upstream from drinking water intakes, and those tanks defined by a new term, the “zone of peripheral concern,” which goes about 10 hours upstream from water intakes.

While definitive numbers aren't yet available, DEP officials have told lawmakers that about 5,000 tanks are located within the zone of critical concern and another 5,000 to 7,000 tanks within the zone of peripheral concern. That's out of the roughly 48,000 tanks contained in a DEP inventory that was put together only after it was required by last year's law.

The Senate-passed bill maintains one significant part of the definition of aboveground storage tank that applied the term to all tanks with a storage capacity of 1,320 gallons. The original, industry-backed bill would have reduced the law's coverage by increasing that threshold to 10,000 gallons. The Senate-passed bill also eliminated a broad exemption the proposed legislation would have given to the oil and gas industry.

But the Senate-passed bill also would create a sort-of “opt-out” arrangement in which tank owners and operators covered by existing DEP permits for things like gas drilling or coal mining could substitute those permits for compliance with the chemical tank safety law.

Under this provision, tank owners could ask for their existing permits to be modified “to include conditions pertaining to the management and control of regulated tanks.” Those tank owners would then be considered in compliance with the storage tank law as long as their permit language “in combination with practices and protections already in place” are sufficient “to protect the waters of the state.”

Charlie Burd, executive director of the Independent Oil and Gas Operators Association, said his group preferred the straight-out exemption contained in the original bill but can live with the language the Senate approved.

“In a perfect world, we and others would have liked to just be exempted out,” Burd said Monday. “But we live in a world where we have to be held accountable, and oil and gas doesn't want to send a message that we don't want to be accountable.”

Randolph, the manufacturers association president, said the Senate language “provides an efficient and effective vehicle for addressing tanks

without duplicating regulations.”

But Evan Hansen, an environmental consultant with Downstream Strategies, said the problem with this part of the Senate-passed bill is that existing permit programs and industry practices may in many cases not meet the sorts of tank integrity standards that the aboveground storage tank law otherwise mandates. Instead of allowing existing permits and practices to substitute for those standards if the DEP thinks they will “protect waters of the state,” lawmakers should allow such substitutions only if they would result in safety standards “as stringent as” the tank law already requires, Hansen said.

“It makes a lot of sense not to duplicate regulations, so long as it’s the same level of stringency,” Hansen said.

The House Judiciary Committee scheduled a public hearing on the bill for 8:30 a.m. Friday in the House chamber.

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