



### SUMMARY OF FINAL SENATE BILL 373

On Saturday evening, March 8, the West Virginia Legislature passed Senate Bill 373, which establishes a broad array of new regulatory requirements that will impact businesses and individuals across the state. The bill is now awaiting Governor Tomblin's signature. Certain aspects of this legislation will directly affect oil and gas operations and these provisions are summarized below.

**Aboveground Storage Tank Act.** One of the two new Acts included in the bill is the Aboveground Storage Tank Act, W. Va. Code §§ 22-30-1 *et seq.* This Act establishes a comprehensive regulatory program for ASTs located in the state. For purposes of the Act, AST is defined broadly to mean:

*a device made to contain an accumulation of more than 1320 gallons of fluids that are liquids at standard temperature and pressure, which is constructed primarily of non-carbon materials, including wood, concrete, steel, plastic or fiberglass reinforced plastic, which provide structural support, more than 90% capacity of which is above the surface of the ground, but does not include any process vessel. The term includes stationary devices which are permanently affixed, and mobile devices which remain in one location on a continuous basis for 60 or more days, and includes all ancillary aboveground pipes and dispensing systems up to the first point of isolation and all ancillary underground pipes and dispensing systems connected to the aboveground containers to the first point of isolation . . .”*

*Id.* § 22-30-3(1). The definition of AST goes on to exclude certain shipping containers, railroad freight cars, barges and boats. *Id.* If your AST falls within the scope of this definition, then many if not all of the remaining provisions in the Act will apply to you.

The following are some key components of this new Act:

- **Registration [§ 22-30-4]:** Under the registration program, owners and operators of ASTs must submit a registration form to the West Virginia Department of Environmental Protection (“WVDEP”) that identifies the ownership of the tank, date of installation if known, capacity and age of the tank, type and volume of fluid stored therein, and the identity of and distance to the nearest groundwater public water supply intake and/or nearest surface water downstream public water supply intake. If the tank is regulated under an existing state or federal regulatory program, information about that program must be provided as well. ***As of October 1, 2014, it will be unlawful for any owner or operator to operate or use an AST that has not been properly registered or for which any applicable registration fee has not been paid.***

- **Permitting [§ 22-30-5]:** WVDEP must establish a new permitting program for new and existing ASTs through legislative rulemaking during the 2015 Regular Session of the Legislature. The program will include permitting procedures and extensive performance standards covering design, construction, maintenance, corrosion detection, secondary containment and leak detection. Importantly, the bill does contain limited waivers to the permitting requirements in this section (see below), as well as authorization for the WVDEP to adopt rules allowing for the requirements of the AST act to be incorporated into and enforced through NPDES permits or permits issued pursuant to 22-6 (oil and gas) or 22-6A (horizontal wells) of the state code. This would eliminate the need to obtain a separate permit under the AST act. .
  
- **Waiver [§ 22-30-25]:** The bill includes a limited waiver of the permitting requirements in Section 5 of the article for certain categories of ASTs that either “do not represent a substantial threat of contamination” or “they are currently regulated under standards which meet or exceed the protective standards and requirements set forth in this article.” This includes, *inter alia*, (a) ASTs containing drinking water, filtered surface water, demineralized water, noncontact cooling water or water stored for fire or emergency purposes, (b) septic tanks and home aeration systems, (c) certain pipeline facilities, (d) liquid traps and associated gathering lines related to oil or gas production and gathering operations, (e) surface impoundments, pits, ponds or lagoons, and (f) ASTs for which SPCC plans are required by USEPA under 40 C.F.R. Part 112, unless the AST is located within a zone of critical concern for a public water system. WVDEP may also designate (through rulemaking) additional categories of ASTs for which the permitting requirements can be waived where the tanks are regulated under an existing state or federal regulatory permit or standard with requirements that are at least as stringent as those set forth in this article. Finally, it should be emphasized that **the waiver only applies to the permitting requirements under section five; it would not relieve owners and operators of these ASTs of their obligations under the other sections of this article.**
  
- **Other requirements:** The bill includes a number of other important requirements relating to ASTs:
  1. Inspections and certifications [§ 22-30-6],
  2. Evidence of financial responsibility [§ 22-30-7],
  3. Spill prevention response plans [§ 22-30-9],
  4. Notice to local governments and public water systems [§ 22-30-10],
  5. Tank signage [§ 22-30-11],
  6. Fee assessment [§§ 22-30-12 and 22-30-13], and
  7. Administrative, civil and criminal penalties and injunctive relief [§§ 22-30-16 and 22-30-17].

**Public Water Supply Protection Act.** The bill also creates a new statute entitled the “Public Water Supply Protection Act,” W. Va. Code §§ 22-31-1 *et seq.*, which generally focuses on “potential sources of critical concern” (“PSSCs”). This term is defined to mean “a facility or activity that store[s], uses or produces compounds with potential for significant contaminating impact if released into the source water of a public water supply.” *Id.* § 22-31-3(1). This new

article directs WVDEP, working in collaboration with the Bureau for Public Health and Division of Homeland Security and Emergency Management, to compile an inventory of PSSCs located within zones of critical concern for public water systems whose source of supply is obtained from a surface water supply source or a surface water influenced groundwater supply source. *Id.* § 22-31-4(a). If the Secretary determines that a PSSC is not currently permitted and subject to regulation by WVDEP under Chapter 22, and the Secretary determines that regulation is necessary to protect the public interest, the Secretary may require the owner or operator of that facility to register and obtain a permit under this new article. *Id.* § 22-31-4(b). The Secretary is also authorized to charge a reasonable fee, to be set through emergency and legislative rules, to cover the cost of the registration and permitting program. *Id.* § 22-31-4(e).

**Large-Quantity Users Statute.** Finally, the bill also amends certain provisions of the West Virginia Water Resources Protection and Management Act, §§ 22-26-1 *et seq.* Specifically, the bill (1) modifies the definition of “large-quantity user” to reduce the applicability threshold from the withdrawal of “over 750,000 gallons of water in a calendar month” to withdrawal of over “300,000 gallons of water in any thirty-day period” from the state’s waters, (2) adopts the State Water Resources Management Plan, and (3) requires persons that already qualify as large-quantity users to “report actual monthly water withdrawals, or monthly water withdrawals by a method approved by the secretary, for the previous calendar year by March 31 of the succeeding year.” Entities that qualify as “large quantity users” as a result of this bill will not need to report their water use until March 31, 2016.

**Contacts:**

Allyn G. Turner, (304) 340-3856, [aturner@spilmanlaw.com](mailto:aturner@spilmanlaw.com)

Mark D. Clark, (304) 340-3876, [mclark@spilmanlaw.com](mailto:mclark@spilmanlaw.com)

M. Katherine Crockett, (304) 340-3832, [kcrockett@spilmanlaw.com](mailto:kcrockett@spilmanlaw.com)