Comparison of SB 373 Amendments to Water Resources Protection Act, versus Gov. Tomblin’s AST bill

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| Provisions | SB 373 (Unger, et al.) | Tomblin’s AST Bill | Com Sub 373 |
| Definitions of “Tank” | Any tank >1100 Gal | Tanks > 1100 Gal, but with numerous exemptions:Excludes gas pipelines and gathering lines, surface impoundments, pits ponds or lagoons, flow-through process tanks, tanks regulated under other existing Acts, mobile tanks (staying less than 30 days in one location), tanks used to store brines or chemicals under SCMRA, Horizontal Well Control Act, tanks at sites with individual NPDES permits, tanks at solid waste facilities, and tanks excluded by DEP rule. Also exempts “nonoperational tanks, and tanks outside critical zone | Moves definition of ASTs to new Article 30.Adds Tomblin’s exemptions for: gas pipelines and gathering lines; mobile tanks (staying less than 30 days in one location; pits ponds or lagoons; tanks under SCMRA, tanks used to store brines or chemicals for natural gas under 22-6 or 6A, (Horizontal Well Control Act), tanks at sites with individual NPDES permits, tanks at solid waste facilities. Adds new exemptions for: heating oil, natural gas or propane tanks regulated under NFPA58-30A or 30B; equipment or machinery tanks; indoor tanks with containment; hazardous waste tanks regulated under federal solid waste act; pesticide tanks regulated in 19-16A. Improvements include:++Includes tanks of 500 Gal if located within 500 feet of source or surface waters. ++Drops Tomblin exemption for “nonoperational tanks and tanks outside critical zone”; exemptions for oil-filled tanks regulated under 40CFR112; tanks under Federal Food Drug and Cosmetic act. Removes language limiting covered tanks to those in zone of critical concern. |
| Source Water Protection | Not addressed | DEP & DPH jointly approve source water protection plans developed by local water utility. Plan to include contingency plan for contamination, alternate water supplies, management plan and surveys of ZCC, and public notification plan. Utilities pay fees to Industrial AST Fund | DEP implements source water protection plans developed by local water utility. Plan to include contingency plan for contamination, alternate water supplies, management plan and surveys of ZCC, and public notification plan. Utilities pay fees to AST Administrative Fund. |
| DEP Rules and Standards | Requires AST permit, tank performance standards, leak detection system, testing, reporting releases, and taking corrective action, closure requirements, certification by PE, permit application and registration fees,  | Fees from AST owners, AST registration with DEP, inspections of leak detection and AST integrity, reporting and corrective actions for releases, construction standards, methods for closure and removal, Financial responsibility requirements, secondary containment standards, and volumes of regulated materials to be regulated. | Permit requirements same as original 373.Adds requirements for financial responsibility, taking corrective action |
| Create Funds? | Not addressed | Establishes Leaking IAST Response Fund, | Creates AST Administrative fund and Leaking AST Response fund |
| Confidential Information | Not addressed | DEP to develop rules, applicant can request CBI.  | applicant can request CBI. |
| Enforcement | DEP may assess civil penalties and order corrective action | DEP may revoke registration, assess civil penalties, recover costs, and order corrective action. | DEP may revoke registration, assess civil penalties, recover costs, and order corrective action. |
| Tank registration | Requires tank registration and inventory by DEP, Requires a permit for AST | Unlawful to use or deliver to an unregistered tank. | Requires tank inventory by DEP of operational and nonoperational tanks, registration of tanks, and permit to construct, operate and use ASTs. Unlawful to use or deliver to an unregistered tank. |
| Inspections | Requires initial inspection by PE | Requires annual inspection by PE | Annual inspection by PE |
| Spill Prevention | Not addressed | Detailed Response Plan required | Adds Spill Prevention Response Plan |
| Public notification | Not addressed | Notice to water supply system, municipality and county within 25 miles. Public access to info via FOIA, but data submitter may request CBI. In case of danger, DEP shall provide immediate notice to municipal and public water system. | Adds Notice to water supply system, municipality and county within 25 miles. Public access to info via FOIA, but data submitter may request CBI. |
| DEP Authority | Grants DEP authority to enter, sample, review records and take corrective action. | Grants DEP authority to enter, sample, review records and take corrective action. | Grants DEP authority to enter, sample, review records and take corrective action. |
| Penalties | Civil penalties | Civil and criminal penalties | Civil and criminal penalties |
| Other Provisions | Adopts and Improves State Water Resources Plan, Provides for continued stream gauge funding | Triennial report to Legislature | Same, and adds reporting requirements for ASTs in Article 30 in the State Water Resources Management Plan. |
| OtherGaps |  | Does not specify who in DEP will administer this program. | Does not specify who in DEP will administer this program. |
| **New Issues?**Findings | AST carry hazardous materials, and some are insufficient to protect human health |  | Moves findings to new Article 30, andAdds findings that it is public policy that clean water be available for citizens and businesses |
| Large quantity user | Lowers reporting from 750,000 to 300,000 gal per month |  | Adds exemption for farm use |
| Owner and Operator | Defines these for AST |  | Definitions moved to 30. |
| Dept of Public health | Not addressed | Reviews and approves Source water plans with DEP | Not addressed |
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Prepared by Jim Kotcon 1-23-14

WV Sierra Club