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After passage, steps remain for tank bill

By David Gutman

CHARLESTON, W.Va. -- On the last night of their session, West Virginia legislators passed a bill in response to the Elk River chemical leak that dominated both the 2014 legislative session and the Kanawha Valley's attention for the past two months.

Assuming Gov. Earl Ray Tomblin signs the bill into law, many questions remain about how well the new law will regulate chemical storage tanks and better prepare water utilities for disasters like the Freedom Industries spill.

Asked Sunday if the governor would sign the bill -- which has been significantly altered from

the version he had introduced -- Tomblin's spokeswoman indicated that he likely would.

"As with all bills that come to the governor, he will review them thoroughly," Amy Shuler Goodwin, Tomblin's communications director, wrote in an email. "However, the bill passed last night with input from the citizens of the Kanawha Valley, the DEP, legislative leadership and members of our state legislature is a bill with the best interest of all West Virginians in mind."

The bill contains several provisions -- a long-term study of health effects, required inspections from the state Department of Environmental Protection and an early warning monitoring system at West Virginia American Water Company -- that were not in the original version supported by Tomblin.

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If the governor signs the bill, the state Department of Environmental Protection would begin making a long list of rules -- which would be approved by the Legislature in 2015 -- that would stipulate how the law is carried out.

Among the most contentious of those rules: what kind of tanks may not have to be inspected.

The bill introduced by Tomblin, and the version that initially passed the Senate, contained a long, industry-suggested list of tanks that should be exempt.

Members of the House Judiciary Committee removed that list after they heard from, among others, DEP general counsel Kristin Boggs.

"I can't defend or justify," Boggs told the committee. "We're happy to explain what these exemptions mean. We aren't here to defend the exemptions."

With decisions on which tanks to exempt now up to DEP, the agency will face pressure from industries to remove their tanks from required inspections, said Evan Hansen, a Morgantown environmental consultant whose work was instrumental in helping legislators craft the bill.

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"The DEP is going to be looking at the exclusions that were taken out of the act and I believe they are going to be open to adding exclusions back in if it can be justified through the rulemaking process that those sites are already subject to regulations that are at least as stringent," Hansen said. "I'm sure that some of the industries that want to be excluded will be making their cases."

Hansen called the bill "a major step forward," but didn't like how lawmakers chose to define above-ground storage tanks.

The bill defines tanks as only those with volumes greater than 1,320 gallons.

"It used a cut-off for the size of above ground storage tanks that is inconsistent with other rules, and that exempts many tanks that should be regulated," Hansen said.

The 1,320-gallon number comes from a rule that regulates oil tanks -- but that rule is based on the total volume of all tanks on a site, not individual tanks.

Hansen had no idea how many tanks would be excluded from inspection because of the differing definitions.

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"I think that's part of the reason why legislators were unwilling to bring that number down to make it consistent with other rules, is because they didn't have firm numbers on that either," he said.

The bill requires public water utilities to write and submit source water protection plans by July 1, 2016. Those would contain information on nearby hazards to water sources and plans for responding to a contamination.

"That should be moving forward in communities around the state as soon as possible, because those take time," Hansen said. "Public water utilities that want to do the right thing and make sure that their customers have confidence in the safety of their water, they'll start right away."

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