

1 SENATE BILL 28

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Gay G. Kernan

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE HAZARDOUS
12 WASTE ACT AND THE GROUND WATER PROTECTION ACT TO CONFORM THE
13 DEFINITIONS OF "ABOVE GROUND STORAGE TANK", "UNDERGROUND
14 STORAGE TANK" AND "TANK TESTER" TO COMPLY WITH FEDERAL LAW.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 74-4-3 NMSA 1978 (being Laws 1977,
18 Chapter 313, Section 3, as amended) is amended to read:

19 "74-4-3. DEFINITIONS.--As used in the Hazardous Waste
20 Act:

21 A. "above ground storage tank" means a single tank
22 or combination of tanks, including underground pipes connected
23 thereto, that are used to contain petroleum, including crude
24 oil or any fraction thereof that is liquid at standard
25 conditions of temperature and pressure of sixty degrees

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1 Fahrenheit and fourteen and seven-tenths pounds per square inch
2 absolute, and the volume of which is more than ninety percent
3 above the surface of the ground. "Above ground storage tank"
4 does not include any:

5 (1) farm, ranch or residential tank used for
6 storing motor fuel for noncommercial purposes;

7 (2) pipeline facility, including gathering
8 lines, that is regulated under [~~the federal Natural Gas~~
9 ~~Pipeline Safety Act of 1968 or the federal Hazardous Liquid~~
10 ~~Pipeline Safety Act of 1979~~] 49 U.S.C. 601 or that is an
11 intrastate pipeline facility regulated under state laws
12 [~~comparable to either act~~] as provided in 49 U.S.C. 601 and
13 that is determined by the United States secretary of
14 transportation to be connected to a pipeline, or to be operated
15 or intended to be capable of operating at pipeline pressure or
16 as an integral part of a pipeline;

17 (3) surface impoundment, pit, pond or lagoon;

18 (4) storm water or wastewater collection
19 system;

20 (5) flow-through process tank;

21 (6) liquid trap, tank or associated gathering
22 lines or other storage methods or devices related to oil, gas
23 or mining exploration, production, transportation, refining,
24 processing or storage, or to oil field service industry
25 operations;

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1 (7) tank used for storing heating oil for
2 consumptive use on the premises where stored;

3 (8) pipes connected to any tank that is
4 described in Paragraphs (1) through (7) of this subsection; or

5 (9) tanks or related pipelines and facilities
6 owned or used by a refinery, natural gas processing plant or
7 pipeline company in the regular course of [~~their~~] its refining,
8 processing or pipeline business;

9 B. "board" means the environmental improvement
10 board;

11 C. "corrective action" means an action taken in
12 accordance with rules of the board to investigate, minimize,
13 eliminate or clean up a release to protect the public health,
14 safety and welfare or the environment;

15 D. "director" or "secretary" means the secretary of
16 environment;

17 E. "disposal" means the discharge, deposit,
18 injection, dumping, spilling, leaking or placing of any solid
19 waste or hazardous waste into or on any land or water so that
20 [~~such~~] the solid waste or hazardous waste or constituent
21 thereof may enter the environment or be emitted into the air or
22 discharged into any waters, including ground waters;

23 F. "division" or "department" means the department
24 of environment;

25 G. "federal agency" means any department, agency or

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1 other instrumentality of the federal government and any
2 independent agency or establishment of that government,
3 including any government corporation and the government
4 ~~[printing]~~ publishing office;

5 H. "generator" means any person producing hazardous
6 waste;

7 I. "hazardous agricultural waste" means hazardous
8 waste generated as part of the licensed activity by any person
9 licensed pursuant to the Pesticide Control Act or hazardous
10 waste designated as hazardous agricultural waste by the board,
11 but does not include animal excrement in connection with farm,
12 ranch or feedlot operations;

13 J. "hazardous substance incident" means any
14 emergency incident involving a chemical or chemicals, including
15 ~~[but not limited to]~~ transportation wrecks, accidental spills
16 or leaks, fires or explosions, which incident creates the
17 reasonable probability of injury to human health or property;

18 K. "hazardous waste" means any solid waste or
19 combination of solid wastes that because of their quantity,
20 concentration or physical, chemical or infectious
21 characteristics may:

22 (1) cause or significantly contribute to an
23 increase in mortality or an increase in serious irreversible or
24 incapacitating reversible illness; or

25 (2) pose a substantial present or potential

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1 hazardous to human health or the environment when improperly
2 treated, stored, transported, disposed of or otherwise managed.
3 "Hazardous waste" does not include any of the following, until
4 the board determines that they are subject to Subtitle C of the
5 federal Resource Conservation and Recovery Act of 1976, as
6 amended, 42 U.S.C. 6901 et seq.:

7 (a) drilling fluids, produced waters and
8 other wastes associated with the exploration, development or
9 production of crude oil or natural gas or geothermal energy;

10 (b) fly ash waste;

11 (c) bottom ash waste;

12 (d) slag waste;

13 (e) flue gas emission control waste
14 generated primarily from the combustion of coal or other fossil
15 fuels;

16 (f) solid waste from the extraction,
17 beneficiation or processing of ores and minerals, including
18 phosphate rock and overburden from the mining of uranium ore;
19 or

20 (g) cement kiln dust waste;

21 L. "manifest" means the form used for identifying
22 the quantity, composition, origin, routing and destination of
23 hazardous waste during transportation from point of generation
24 to point of disposal, treatment or storage;

25 M. "person" means an individual, trust, firm, joint

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1 stock company, federal agency, corporation, including a
2 government corporation, partnership, association, state,
3 municipality, commission, political subdivision of a state or
4 any interstate body;

5 N. "regulated substance" means:

6 (1) a substance defined in Section 101(14) of
7 the federal Comprehensive Environmental Response, Compensation,
8 and Liability Act of 1980, but not including a substance
9 regulated as a hazardous waste under Subtitle C of the federal
10 Resource Conservation and Recovery Act of 1976, as amended; and

11 (2) petroleum, including crude oil or any
12 fraction thereof that is liquid at standard conditions of
13 temperature and pressure of sixty degrees Fahrenheit and
14 fourteen and seven-tenths pounds per square inch absolute;

15 O. "solid waste" means any garbage, refuse, sludge
16 from a waste treatment plant, water supply treatment plant or
17 air pollution control facility and other discarded material,
18 including solid, liquid, semisolid or contained gaseous
19 material resulting from industrial, commercial, mining and
20 agricultural operations, and from community activities, but
21 does not include solid or dissolved materials in domestic
22 sewage or solid or dissolved materials in irrigation return
23 flows or industrial discharges that are point sources subject
24 to permits under Section 402 of the Federal Water Pollution
25 Control Act, as amended, 86 Stat. 880, or source, special

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1 nuclear or byproduct material as defined by the federal Atomic
2 Energy Act of 1954, as amended, 68 Stat. 923;

3 P. "storage" means the containment of hazardous
4 waste, either on a temporary basis or for a period of years, in
5 such a manner as not to constitute disposal of such hazardous
6 waste;

7 Q. "storage tank" means an above ground storage
8 tank or an underground storage tank;

9 R. "tank installer" means any individual who
10 installs or repairs a storage tank;

11 S. "tank tester" means any individual who tests
12 storage tanks;

13 ~~[S.]~~ T. "transporter" means a person engaged in the
14 movement of hazardous waste, not including movement at the site
15 of generation, disposal, treatment or storage;

16 ~~[T.]~~ U. "treatment" means any method, technique or
17 process, including neutralization, designed to change the
18 physical, chemical or biological character or composition of a
19 hazardous waste so as to neutralize the waste or so as to
20 render the waste nonhazardous, safer for transport, amenable to
21 recovery, amenable to storage or reduced in volume.

22 "Treatment" includes any activity or processing designed to
23 change the physical form or chemical composition of hazardous
24 waste so as to render it nonhazardous;

25 ~~[U.]~~ V. "underground storage tank" means a single

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1 tank or a combination of tanks, including underground pipes
2 connected thereto, that ~~are~~ is used to contain an
3 accumulation of regulated substances and the volume of which,
4 including the volume of the underground pipes connected
5 thereto, is ten percent or more beneath the surface of the
6 ground. "Underground storage tank" does not include any:

7 (1) farm, ranch or residential tank of one
8 thousand one hundred gallons or less capacity used for storing
9 motor fuel for noncommercial purposes;

10 (2) septic tank;

11 (3) pipeline facility, including gathering
12 lines, that is regulated under ~~[the federal Natural Gas~~
13 ~~Pipeline Safety Act of 1968 or the federal Hazardous Liquid~~
14 ~~Pipeline Safety Act of 1979]~~ 49 U.S.C. 601 or that is an
15 intrastate pipeline facility regulated under state laws
16 ~~[comparable to either act]~~ as provided in 49 U.S.C. 601 and
17 that is determined by the United States secretary of
18 transportation to be connected to a pipeline, or to be operated
19 or intended to be capable of operating at pipeline pressure or
20 as an integral part of a pipeline;

21 (4) surface impoundment, pit, pond or lagoon;

22 (5) storm water or wastewater collection
23 system;

24 (6) flow-through process tank;

25 (7) liquid trap, tank or associated gathering

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1 lines directly related to oil or gas production and gathering
2 operations;

3 (8) storage tank situated in an underground
4 area, such as a basement, cellar, mineworking drift, shaft or
5 tunnel, if the storage tank is situated upon or above the
6 surface of the undesignated floor;

7 (9) tank used for storing heating oil for
8 consumptive use on the premises where stored;

9 (10) tank exempted by rule of the board after
10 finding that the type of tank is adequately regulated under
11 another federal or state law; or

12 (11) pipes connected to any tank that is
13 described in Paragraphs (1) through (10) of this subsection;
14 and

15 [~~V-~~] W. "used oil" means any oil that has been
16 refined from crude oil, or any synthetic oil, that has been
17 used and as a result of such use is contaminated by physical or
18 chemical impurities."

19 SECTION 2. Section 74-4-4.4 NMSA 1978 (being Laws 1987,
20 Chapter 179, Section 6, as amended) is amended to read:

21 "74-4-4.4. STORAGE TANKS--REGISTRATION--INSTALLER
22 CERTIFICATION--TESTER CERTIFICATION--FEES.--

23 A. By rule, the board shall require an owner of a
24 storage tank to register the tank with the department and
25 impose reasonable conditions for registration, including the

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1 submission of plans, specifications and other relevant
2 information relating to the tank. For purposes of this
3 subsection only, the term "owner" means: in the case of a
4 storage tank in use on November 8, 1984 or brought into use
5 after that date, any person who owns the storage tank; and in
6 the case of a storage tank in use before November 8, 1984 but
7 no longer in use on that date, any person who owned the tank
8 immediately before the discontinuation of its use. The owner
9 of a tank taken out of operation on or before January 1, 1974
10 shall not be required to notify under this subsection. The
11 owner of a tank taken out of operation after January 1, 1974
12 and removed from the ground prior to November 8, 1984 shall not
13 be required to notify under this subsection. Evidence of
14 current registration pursuant to this subsection shall be
15 available for inspection at the site of the storage tank.

16 B. By rule, the board shall require any person who,
17 beginning thirty days after the United States environmental
18 protection agency administrator prescribes the form of notice
19 pursuant to Section 9002(a)(5) of the federal Resource
20 Conservation and Recovery Act of 1976 and for eighteen months
21 thereafter, deposits a regulated substance into a storage tank
22 to give notice of the registration requirements of Subsection A
23 of this section to the owner and operator of the tank.

24 C. By rule, the board may require tank installers
25 and tank testers to obtain certification from the department

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1 and develop procedures for certification that will ensure that
2 storage tanks are installed, ~~and~~ repaired and tested in a
3 manner that will not encourage or facilitate leaking. If the
4 board requires certification, it is unlawful for a person to
5 install, ~~or~~ repair or test a storage tank unless ~~he~~ the
6 person is a certified tank installer or certified tank tester.

7 In accordance with the Uniform Licensing Act, the department
8 may suspend or revoke the certification for a tank installer or
9 tank tester upon grounds that ~~he~~ the person:

10 (1) exercised fraud, misrepresentation or
11 deception in obtaining ~~his~~ certification;

12 (2) exhibited gross incompetence in the
13 installation, ~~or~~ repair or testing of a storage tank; or

14 (3) was derelict in the performance of a duty
15 as a certified tank installer or certified tank tester.

16 D. By rule, the board shall provide a schedule of
17 fees sufficient to defray the reasonable and necessary costs
18 of:

19 (1) reviewing and acting upon applications for
20 the registration of storage tanks;

21 (2) reviewing and acting upon applications for
22 the certification of tank installers and certification of tank
23 testers; and

24 (3) implementing and enforcing any provision
25 of the Hazardous Waste Act applicable to storage tanks, ~~and~~

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1 tank installers and tank testers, including standards for the
2 installation, operation and maintenance of storage tanks and
3 for the certification of tank installers and tank testers."

4 SECTION 3. Section 74-6B-3 NMSA 1978 (being Laws 1990,
5 Chapter 124, Section 3, as amended) is amended to read:

6 "74-6B-3. DEFINITIONS.--As used in the Ground Water
7 Protection Act:

8 A. "above ground storage tank" means a single tank
9 or a combination of tanks, including underground pipes
10 connected thereto, that ~~[are]~~ is used to contain petroleum,
11 including crude oil or any fraction thereof that is liquid at
12 standard conditions of temperature and pressure of sixty
13 degrees Fahrenheit and fourteen and seven-tenths pounds per
14 square inch absolute, and the volume of which is more than
15 ninety percent above the surface of the ground. The term does
16 not include any:

17 (1) farm, ranch or residential tank used for
18 storing motor fuel for noncommercial purposes;

19 (2) pipeline facility, including gathering
20 lines, that ~~[are]~~ is regulated under ~~[the federal Natural Gas
21 Pipeline Safety Act of 1968 or the federal Hazardous Liquid
22 Pipeline Safety Act of 1979]~~ 49 U.S.C. 601 or that is an
23 intrastate pipeline facility regulated under state laws
24 ~~[comparable to either act]~~ as provided in 49 U.S.C. 601 and
25 that is determined by the United States secretary of

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1 transportation to be connected to a pipeline, or to be operated
2 or intended to be capable of operating at pipeline pressure or
3 as an integral part of a pipeline;

4 (3) surface impoundment, pit, pond or lagoon;

5 (4) storm water or wastewater collection
6 system;

7 (5) flow-through process tank;

8 (6) liquid trap, tank or associated gathering
9 lines or other storage methods or devices related to oil, gas
10 or mining exploration, production, transportation, refining,
11 processing or storage, or oil field service industry
12 operations;

13 (7) tank used for storing heating oil for
14 consumptive use on the premises where stored;

15 (8) pipes connected to any tank that is
16 described in Paragraphs (1) through (7) of this subsection; or

17 (9) tanks or related pipelines and facilities
18 owned or used by a refinery, natural gas processing plant or
19 pipeline company in the regular course of [~~their~~] its refining,
20 processing or pipeline business;

21 B. "board" means the environmental improvement
22 board;

23 C. "corrective action" means an action taken in
24 accordance with rules of the board to investigate, minimize,
25 eliminate or clean up a release to protect the public health,

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1 safety and welfare or the environment;

2 D. "department" means the department of
3 environment;

4 E. "operator" means any person in control of or
5 having responsibility for the daily operation of a storage
6 tank;

7 F. "owner":

8 (1) means:

9 (a) in the case of a storage tank in use
10 or brought into use on or after November 8, 1984, a person who
11 owns a storage tank used for storage, use or dispensing of
12 regulated substances; and

13 (b) in the case of a storage tank in use
14 before November 8, 1984 but no longer in use after that date, a
15 person who owned the tank immediately before the
16 discontinuation of its use; and

17 (2) excludes, for purposes of tank
18 registration requirements only, a person who:

19 (a) had an underground storage tank
20 taken out of operation on or before January 1, 1974;

21 (b) had an underground storage tank
22 taken out of operation after January 1, 1974 and removed from
23 the ground prior to November 8, 1984; or

24 (c) had an above ground storage tank
25 taken out of operation on or before July 1, 2001;

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1 G. "person" means an individual or any legal
2 entity, including all governmental entities;

3 H. "regulated substance" means:

4 (1) a substance defined in Section 101(14) of
5 the federal Comprehensive Environmental Response, Compensation,
6 and Liability Act of 1980, but not including a substance
7 regulated as a hazardous waste under Subtitle C of the federal
8 Resource Conservation and Recovery Act of 1976; and

9 (2) petroleum, including crude oil or a
10 fraction thereof, that is liquid at standard conditions of
11 temperature and pressure of sixty degrees Fahrenheit and
12 fourteen and seven-tenths pounds per square inch absolute;

13 I. "release" means a spilling, leaking, emitting,
14 discharging, escaping, leaching or disposing from a storage
15 tank into ground water, surface water or subsurface soils in
16 amounts exceeding twenty-five gallons;

17 J. "secretary" means the secretary of environment;

18 K. "site" means a place where there is or was at a
19 previous time one or more storage tanks and may include areas
20 contiguous to the actual location or previous location of the
21 tanks;

22 L. "storage tank" means an above ground storage
23 tank or an underground storage tank; and

24 M. "underground storage tank" means a single tank
25 or a combination of tanks, including underground pipes

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1 connected thereto, that ~~are~~ is used to contain an
2 accumulation of regulated substances and the volume of which,
3 including the volume of the underground pipes connected
4 thereto, is ten percent or more beneath the surface of the
5 ground. The term does not include any:

6 (1) farm, ranch or residential tank of one
7 thousand one hundred gallons or less capacity used for storing
8 motor fuel for noncommercial purposes;

9 (2) septic tank;

10 (3) pipeline facility, including gathering
11 lines, that is regulated under ~~[the federal Natural Gas~~
12 ~~Pipeline Safety Act of 1968 or the federal Hazardous Liquid~~
13 ~~Pipeline Safety Act of 1979]~~ 49 U.S.C. 601 or that is an
14 intrastate pipeline facility regulated under state laws
15 ~~[comparable to either act]~~ as provided in 49 U.S.C. 601 and
16 that is determined by the United States secretary of
17 transportation to be connected to a pipeline, or to be operated
18 or intended to be capable of operating at pipeline pressure or
19 as an integral part of a pipeline;

20 (4) surface impoundment, pit, pond or lagoon;

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22 system;

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25 lines directly related to oil or gas production and gathering

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1 operations;

2 (8) storage tank situated in an underground
3 area, such as a basement, cellar, mineworking drift, shaft or
4 tunnel, if the storage tank is situated upon or above the
5 surface of the undesignated floor;

6 (9) tank used for storing heating oil for
7 consumptive use on the premises where stored;

8 (10) tank exempted by rule of the board after
9 finding that the type of tank is adequately regulated under
10 another federal or state law; or

11 (11) pipes connected to any tank that is
12 described in Paragraphs (1) through (10) of this subsection."