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AN ACT

RELATING TO ENVIRONMENTAL IMPROVEMENT; AMENDING THE
DEFINITION OF "ABOVE GROUND STORAGE TANK" TO EXCLUDE A TANK
USED BY A CROP-DUSTING OR CROP-SPRAYING SERVICE.

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

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

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

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

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

(2) pipeline facility, including gathering
lines regulated under the federal Natural Gas Pipeline Safety
Act of 1968 or the federal Hazardous Liquid Pipeline Safety
Act of 1979, or that is an intrastate pipeline facility

1 regulated under state laws comparable to either act;

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

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

6 (5) flow-through process tank;

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

12 (7) tank associated with an emergency
13 generator system;

14 (8) tank used by a crop-dusting or
15 crop-spraying services;

16 (9) pipe connected to any tank that is
17 described in Paragraphs (1) through (8) of this subsection;
18 or

19 (10) tank or related pipeline and facility
20 owned or used by a refinery, natural gas processing plant or
21 pipeline company in the regular course of their refining,
22 processing or pipeline business;

23 B. "board" means the environmental improvement
24 board;

25 C. "corrective action" means an action taken in

1 accordance with rules of the board to investigate, minimize,
2 eliminate or clean up a release to protect the public health,
3 safety and welfare or the environment;

4 D. "director" or "secretary" means the secretary
5 of environment;

6 E. "disposal" means the discharge, deposit,
7 injection, dumping, spilling, leaking or placing of any solid
8 waste or hazardous waste into or on any land or water so that
9 such solid waste or hazardous waste or constituent thereof
10 may enter the environment or be emitted into the air or
11 discharged into any waters, including ground waters;

12 F. "division" or "department" means the department
13 of environment;

14 G. "federal agency" means any department, agency
15 or other instrumentality of the federal government and any
16 independent agency or establishment of that government,
17 including any government corporation and the government
18 printing office;

19 H. "generator" means any person producing
20 hazardous waste;

21 I. "hazardous agricultural waste" means hazardous
22 waste generated as part of the licensed activity by a person
23 licensed pursuant to the Pesticide Control Act or hazardous
24 waste designated as hazardous agricultural waste by the
25 board, but does not include animal excrement in connection

1 with farm, ranch or feedlot operations;

2 J. "hazardous substance incident" means an
3 emergency incident involving a chemical or chemicals,
4 including but not limited to transportation wrecks,
5 accidental spills or leaks, fires or explosions, which
6 incident creates the reasonable probability of injury to
7 human health or property;

8 K. "hazardous waste" means any solid waste or
9 combination of solid wastes that because of their quantity,
10 concentration or physical, chemical or infectious
11 characteristics may:

12 (1) cause or significantly contribute to an
13 increase in mortality or an increase in serious irreversible
14 or incapacitating reversible illness; or

15 (2) pose a substantial present or potential
16 hazard to human health or the environment when improperly
17 treated, stored, transported, disposed of or otherwise
18 managed. "Hazardous waste" does not include any of the
19 following, until the board determines that they are subject
20 to Subtitle C of the federal Resource Conservation and
21 Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.:

22 (a) drilling fluids, produced waters
23 and other wastes associated with the exploration, development
24 or production of crude oil or natural gas or geothermal
25 energy;

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(b) fly ash waste;

(c) bottom ash waste;

(d) slag waste;

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

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

(g) cement kiln dust waste;

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

M. "person" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

N. "regulated substance" means:

(1) a substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not including a substance regulated as a hazardous waste under Subtitle C of

1 the federal Resource Conservation and Recovery Act of 1976,
2 as amended; and

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

7 O. "solid waste" means any garbage, refuse, sludge
8 from a waste treatment plant, water supply treatment plant or
9 air pollution control facility and other discarded material,
10 including solid, liquid, semisolid or contained gaseous
11 material resulting from industrial, commercial, mining and
12 agricultural operations, and from community activities, but
13 does not include solid or dissolved materials in domestic
14 sewage or solid or dissolved materials in irrigation return
15 flows or industrial discharges that are point sources subject
16 to permits under Section 402 of the federal Water Pollution
17 Control Act, as amended, 86 Stat. 880, or source, special
18 nuclear or byproduct material as defined by the federal
19 Atomic Energy Act of 1954, as amended, 68 Stat. 923;

20 P. "storage" means the containment of hazardous
21 waste, either on a temporary basis or for a period of years,
22 in such a manner as not to constitute disposal of such
23 hazardous waste;

24 Q. "storage tank" means an above ground storage
25 tank or an underground storage tank;

1 R. "tank installer" means any individual who
2 installs or repairs a storage tank;

3 S. "transporter" means a person engaged in the
4 movement of hazardous waste, not including movement at the
5 site of generation, disposal, treatment or storage;

6 T. "treatment" means any method, technique or
7 process, including neutralization, designed to change the
8 physical, chemical or biological character or composition of
9 a hazardous waste so as to neutralize the waste or so as to
10 render the waste nonhazardous, safer for transport, amenable
11 to recovery, amenable to storage or reduced in volume.

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

15 U. "underground storage tank" means a single tank
16 or combination of tanks, including underground pipes
17 connected thereto, that are used to contain an accumulation
18 of regulated substances and the volume of which, including
19 the volume of the underground pipes connected thereto, is ten
20 percent or more beneath the surface of the ground.

21 "Underground storage tank" does not include any:

22 (1) farm, ranch or residential tank of one
23 thousand one hundred gallons or less capacity used for
24 storing motor fuel or heating oil for noncommercial purposes;

25 (2) septic tank;

1 (3) pipeline facility, including gathering
2 lines that are regulated under the federal Natural Gas
3 Pipeline Safety Act of 1968 or the federal Hazardous Liquid
4 Pipeline Safety Act of 1979, or that is an intrastate
5 pipeline facility regulated under state laws comparable to
6 either act;

7 (4) surface impoundment, pit, pond or
8 lagoon;

9 (5) storm water or wastewater collection
10 system;

11 (6) flow-through process tank;

12 (7) liquid trap, tank or associated
13 gathering lines directly related to oil or gas production and
14 gathering operations;

15 (8) storage tank situated in an underground
16 area, such as a basement, cellar, mineworking drift, shaft or
17 tunnel, if the storage tank is situated upon or above the
18 surface of the undesignated floor;

19 (9) tank associated with an emergency
20 generator system;

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

24 (11) pipe connected to any tank that is
25 described in Paragraphs (1) through (10) of this subsection;

1 and

2 V. "used oil" means any oil refined from crude
3 oil, or any synthetic oil, that has been used and as a result
4 of such use is contaminated by physical or chemical
5 impurities."

6 Section 2. Section 74-6B-3 NMSA 1978 (being Laws 1990,
7 Chapter 124, Section 3, as amended) is amended to read:

8 "74-6B-3. DEFINITIONS.--As used in the Ground Water
9 Protection Act:

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

19 (1) farm, ranch or residential tank used for
20 storing motor fuel or heating oil for noncommercial purposes;

21 (2) pipeline facility, including gathering
22 lines that are regulated under the federal Natural Gas
23 Pipeline Safety Act of 1968 or the federal Hazardous Liquid
24 Pipeline Safety Act of 1979, or that is an intrastate
25 pipeline facility regulated under state laws comparable to

1 either act;

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

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

6 (5) flow-through process tank;

7 (6) liquid trap, tank or associated

8 gathering lines or other storage methods or devices related
9 to oil, gas or mining exploration, production,
10 transportation, refining, processing or storage, or the oil
11 field service industry operations;

12 (7) tank associated with an emergency
13 generator system;

14 (8) tank used by a crop-dusting or
15 crop-spraying service;

16 (9) pipe connected to any tank that is
17 described in Paragraphs (1) through (8) of this subsection;
18 or

19 (10) tank or related pipeline and facility
20 owned or used by a refinery, natural gas processing plant or
21 pipeline company in the regular course of their refining,
22 processing or pipeline business;

23 B. "board" means the environmental improvement
24 board;

25 C. "corrective action" means an action taken in

1 accordance with rules of the board to investigate, minimize,
2 eliminate or clean up a release to protect the public health,
3 safety and welfare or the environment;

4 D. "department" means the department of
5 environment;

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

9 F. "owner" means:

10 (1) in the case of a storage tank in use or
11 brought into use on or after November 8, 1984, a person who
12 owns the storage tank; and

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

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

19 H. "regulated substance" means:

20 (1) a substance defined in Section 101(14)
21 of the federal Comprehensive Environmental Response,
22 Compensation and Liability Act of 1980, but not including a
23 substance regulated as a hazardous waste under Subtitle C of
24 the federal Resource Conservation and Recovery Act of 1976,
25 as amended; and

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

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

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

10 K. "site" means a place where there is or was at a
11 previous time one or more storage tanks and may include areas
12 contiguous to the actual location or previous location of the
13 tanks;

14 L. "storage tank" means an above ground storage
15 tank or an underground storage tank; and

16 M. "underground storage tank" means a single tank
17 or combination of tanks, including underground pipes
18 connected thereto, that are used to contain an accumulation
19 of regulated substances and the volume of which, including
20 the volume of the underground pipes connected thereto, is ten
21 percent or more beneath the surface of the ground. The term
22 does not include any:

23 (1) farm, ranch or residential tank of one
24 thousand one hundred gallons or less capacity used for
25 storing motor fuel or heating oil for noncommercial purposes;

- 1 (2) septic tank;
- 2 (3) pipeline facility, including gathering
- 3 lines regulated under the federal Natural Gas Pipeline Safety
- 4 Act of 1968 or the federal Hazardous Liquid Pipeline Safety
- 5 Act of 1979, or that is an intrastate pipeline facility
- 6 regulated under state laws comparable to either act;
- 7 (4) surface impoundment, pit, pond or
- 8 lagoon;
- 9 (5) storm water or wastewater collection
- 10 system;
- 11 (6) flow-through process tank;
- 12 (7) liquid trap, tank or associated
- 13 gathering lines directly related to oil or gas production and
- 14 gathering operations;
- 15 (8) storage tank situated in an underground
- 16 area, such as a basement, cellar, mineworking drift, shaft or
- 17 tunnel, if the storage tank is situated upon or above the
- 18 surface of the undesignated floor;
- 19 (9) tank associated with an emergency
- 20 generator system;
- 21 (10) tank exempted by rule of the board
- 22 after finding that the type of tank is adequately regulated
- 23 under another federal or state law; or
- 24 (11) pipes connected to any tank that is
- 25 described in Paragraphs (1) through (10) of this subsection."

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