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HOUSE BILL 459

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

James G. Townsend

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF CHAPTER 74  
NMSA 1978 TO EXCLUDE TANKS USED BY CROP DUSTING OR CROP  
SPRAYING SERVICES FROM THE DEFINITION OF "ABOVE GROUND STORAGE  
TANK".

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

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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, regulated under the federal Natural Gas Pipeline Safety  
9 Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act  
10 of 1979 or that is an intrastate pipeline facility regulated  
11 under state laws comparable to either act;

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

13 (4) storm water or wastewater collection  
14 system;

15 (5) flow-through process tank;

16 (6) liquid trap, tank or associated gathering  
17 lines or other storage methods or devices related to oil, gas  
18 or mining exploration, production, transportation, refining,  
19 processing or storage, or to oil field service industry  
20 operations;

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

23 (8) tank used by a crop dusting or crop  
24 spraying service;

25 [~~8~~] (9) pipes connected to any tank that is

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1 described in Paragraphs (1) through [~~(7)~~] (8) of this  
2 subsection; or

3 [~~(9)~~] (10) tanks or related pipelines and  
4 facilities owned or used by a refinery, natural gas processing  
5 plant or pipeline company in the regular course of [~~their~~] its  
6 refining, processing or pipeline business;

7 B. "board" means the environmental improvement  
8 board;

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

13 D. "director" or "secretary" means the secretary of  
14 environment;

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

21 F. "division" or "department" means the department  
22 of environment;

23 G. "federal agency" means any department, agency or  
24 other instrumentality of the federal government and any  
25 independent agency or establishment of that government,

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1 including any government corporation and the government  
2 printing office;

3 H. "generator" means any person producing hazardous  
4 waste;

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

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

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

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

23 (2) pose a substantial present or potential  
24 hazard to human health or the environment when improperly  
25 treated, stored, transported, disposed of or otherwise managed.

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1 "Hazardous waste" does not include any of the following, until  
2 the board determines that they are subject to Subtitle C of the  
3 federal Resource Conservation and Recovery Act of 1976, as  
4 amended, 42 U.S.C. 6901 et seq.:

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

8 (b) fly ash waste;

9 (c) bottom ash waste;

10 (d) slag waste;

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

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

18 (g) cement kiln dust waste;

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

23 M. "person" means an individual, trust, firm, joint  
24 stock company, federal agency, corporation, including a  
25 government corporation, partnership, association, state,

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1 municipality, commission, political subdivision of a state or  
2 any interstate body;

3 N. "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, as amended; and

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

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

5 Q. "storage tank" means an above ground storage  
6 tank or an underground storage tank;

7 R. "tank installer" means any individual who  
8 installs or repairs a storage tank;

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

12 T. "treatment" means any method, technique or  
13 process, including neutralization, designed to change the  
14 physical, chemical or biological character or composition of a  
15 hazardous waste so as to neutralize the waste or so as to  
16 render the waste nonhazardous, safer for transport, amenable to  
17 recovery, amenable to storage or reduced in volume.

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

21 U. "underground storage tank" means a single tank  
22 or a combination of tanks, including underground pipes  
23 connected thereto, that [~~are~~] is used to contain an  
24 accumulation of regulated substances and the volume of which,  
25 including the volume of the underground pipes connected

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1 thereto, is ten percent or more beneath the surface of the  
2 ground. "Underground storage tank" does not include any:

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

6 (2) septic tank;

7 (3) pipeline facility, including gathering  
8 lines, that is regulated under the federal Natural Gas Pipeline  
9 Safety Act of 1968 or the federal Hazardous Liquid Pipeline  
10 Safety Act of 1979 or that is an intrastate pipeline facility  
11 regulated under state laws comparable to either act;

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

13 (5) storm water or wastewater collection  
14 system;

15 (6) flow-through process tank;

16 (7) liquid trap, tank or associated gathering  
17 lines directly related to oil or gas production and gathering  
18 operations;

19 (8) storage tank situated in an underground  
20 area, such as a basement, cellar, mineworking drift, shaft or  
21 tunnel, if the storage tank is situated upon or above the  
22 surface of the undesignated floor;

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

25 (10) tank exempted by rule of the board after

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1 finding that the type of tank is adequately regulated under  
2 another federal or state law; or

3 (11) pipes connected to any tank that is  
4 described in Paragraphs (1) through (10) of this subsection;  
5 and

6 V. "used oil" means any oil that has been refined  
7 from crude oil, or any synthetic oil, that has been used and as  
8 a result of such use is contaminated by physical or chemical  
9 impurities."

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

12 "74-6B-3. DEFINITIONS.--As used in the Ground Water  
13 Protection Act:

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

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

25 (2) pipeline facility, including gathering

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1 lines, that are regulated under the federal Natural Gas  
2 Pipeline Safety Act of 1968 or the federal Hazardous Liquid  
3 Pipeline Safety Act of 1979 or that is an intrastate pipeline  
4 facility regulated under state laws comparable to either act;  
5 (3) surface impoundment, pit, pond or lagoon;  
6 (4) storm water or wastewater collection  
7 system;  
8 (5) flow-through process tank;  
9 (6) liquid trap, tank or associated gathering  
10 lines or other storage methods or devices related to oil, gas  
11 or mining exploration, production, transportation, refining,  
12 processing or storage, or oil field service industry  
13 operations;  
14 (7) tank used for storing heating oil for  
15 consumptive use on the premises where stored;  
16 (8) tank used by a crop dusting or crop  
17 spraying service;  
18 [~~(8)~~] (9) pipes connected to any tank that is  
19 described in Paragraphs (1) through [~~(7)~~] (8) of this  
20 subsection; or  
21 [~~(9)~~] (10) tanks or related pipelines and  
22 facilities owned or used by a refinery, natural gas processing  
23 plant or pipeline company in the regular course of [~~their~~] its  
24 refining, processing or pipeline business;  
25 B. "board" means the environmental improvement

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1 board;

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

6 D. "department" means the department of  
7 environment;

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

11 F. "owner":

12 (1) means:

13 (a) in the case of a storage tank in use  
14 or brought into use on or after November 8, 1984, a person who  
15 owns a storage tank used for storage, use or dispensing of  
16 regulated substances; and

17 (b) in the case of a storage tank in use  
18 before November 8, 1984 but no longer in use after that date, a  
19 person who owned the tank immediately before the  
20 discontinuation of its use; and

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

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

25 (b) had an underground storage tank

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1 taken out of operation after January 1, 1974 and removed from  
2 the ground prior to November 8, 1984; or

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

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

7 H. "regulated substance" means:

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

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

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

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

22 K. "site" means a place where there is or was at a  
23 previous time one or more storage tanks and may include areas  
24 contiguous to the actual location or previous location of the  
25 tanks;

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1           L. "storage tank" means an above ground storage  
2 tank or an underground storage tank; and

3           M. "underground storage tank" means a single tank  
4 or a combination of tanks, including underground pipes  
5 connected thereto, that [~~are~~] is used to contain an  
6 accumulation of regulated substances and the volume of which,  
7 including the volume of the underground pipes connected  
8 thereto, is ten percent or more beneath the surface of the  
9 ground. The term does not include any:

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

13                   (2) septic tank;

14                   (3) pipeline facility, including gathering  
15 lines, regulated under the federal Natural Gas Pipeline Safety  
16 Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act  
17 of 1979 or that is an intrastate pipeline facility regulated  
18 under state laws comparable to either act;

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

20                   (5) storm water or wastewater collection  
21 system;

22                   (6) flow-through process tank;

23                   (7) liquid trap, tank or associated gathering  
24 lines directly related to oil or gas production and gathering  
25 operations;

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underscoring material = new  
~~[bracketed material] = delete~~

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

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

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

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

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