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AN ACT

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

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 for noncommercial purposes;

(2) pipeline facility, including gathering
lines, that is regulated under Chapter 601 of Title 49 of the

1 United States Code or that is an intrastate pipeline facility
2 regulated under state laws as provided in Chapter 601 of
3 Title 49 of the United States Code and that is determined by
4 the United States secretary of transportation to be connected
5 to a pipeline, or to be operated or intended to be capable of
6 operating at pipeline pressure or as an integral part of a
7 pipeline;

8 (3) surface impoundment, pit, pond or
9 lagoon;

10 (4) storm water or wastewater collection
11 system;

12 (5) flow-through process tank;

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

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

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

23 (9) tanks or related pipelines and
24 facilities owned or used by a refinery, natural gas
25 processing plant or pipeline company in the regular course of

1 its refining, processing or pipeline business;

2 B. "board" means the environmental improvement
3 board;

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

8 D. "director" or "secretary" means the secretary
9 of environment;

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

16 F. "division" or "department" means the department
17 of environment;

18 G. "federal agency" means any department, agency
19 or other instrumentality of the federal government and any
20 independent agency or establishment of that government,
21 including any government corporation and the government
22 publishing office;

23 H. "generator" means any person producing
24 hazardous waste;

25 I. "hazardous agricultural waste" means hazardous

1 waste generated as part of the licensed activity by any
2 person licensed pursuant to the Pesticide Control Act or
3 hazardous waste designated as hazardous agricultural waste by
4 the board, but does not include animal excrement in
5 connection with farm, ranch or feedlot operations;

6 J. "hazardous substance incident" means any
7 emergency incident involving a chemical or chemicals,
8 including transportation wrecks, accidental spills or leaks,
9 fires or explosions, which incident creates the reasonable
10 probability of injury to human health or property;

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

15 (1) cause or significantly contribute to an
16 increase in mortality or an increase in serious irreversible
17 or incapacitating reversible illness; or

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

25 (a) drilling fluids, produced waters

1 and other wastes associated with the exploration, development
2 or production of crude oil or natural gas or geothermal
3 energy;

4 (b) fly ash waste;

5 (c) bottom ash waste;

6 (d) slag waste;

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

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

14 (g) cement kiln dust waste;

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

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

24 N. "regulated substance" means:

25 (1) a substance defined in Section 101(14)

1 of the federal Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980, but not including a
3 substance regulated as a hazardous waste under Subtitle C of
4 the federal Resource Conservation and Recovery Act of 1976,
5 as amended; and

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

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

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

1 hazardous waste;

2 Q. "storage tank" means an above ground storage
3 tank or an underground storage tank;

4 R. "tank installer" means any individual who
5 installs or repairs a storage tank;

6 S. "tank tester" means any individual who tests
7 storage tanks;

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

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

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

20 V. "underground storage tank" means a single tank
21 or a combination of tanks, including underground pipes
22 connected thereto, that is used to contain an accumulation of
23 regulated substances and the volume of which, including the
24 volume of the underground pipes connected thereto, is ten
25 percent or more beneath the surface of the ground.

1 "Underground storage tank" does not include any:

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

5 (2) septic tank;

6 (3) pipeline facility, including gathering
7 lines, that is regulated under Chapter 601 of Title 49 of the
8 United States Code or that is an intrastate pipeline facility
9 regulated under state laws as provided in Chapter 601 of
10 Title 49 of the United States Code and that is determined by
11 the United States secretary of transportation to be connected
12 to a pipeline, or to be operated or intended to be capable of
13 operating at pipeline pressure or as an integral part of a
14 pipeline;

15 (4) surface impoundment, pit, pond or
16 lagoon;

17 (5) storm water or wastewater collection
18 system;

19 (6) flow-through process tank;

20 (7) liquid trap, tank or associated
21 gathering lines directly related to oil or gas production and
22 gathering operations;

23 (8) storage tank situated in an underground
24 area, such as a basement, cellar, mineworking drift, shaft or
25 tunnel, if the storage tank is situated upon or above the

1 surface of the undesignated floor;

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

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

7 (11) pipes connected to any tank that is
8 described in Paragraphs (1) through (10) of this subsection;
9 and

10 W. "used oil" means any oil that has been refined
11 from crude oil, or any synthetic oil, that has been used and
12 as a result of such use is contaminated by physical or
13 chemical impurities."

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

16 "74-4-4.4. STORAGE TANKS--REGISTRATION--INSTALLER
17 CERTIFICATION--TESTER CERTIFICATION--FEES.--

18 A. By rule, the board shall require an owner of a
19 storage tank to register the tank with the department and
20 impose reasonable conditions for registration, including the
21 submission of plans, specifications and other relevant
22 information relating to the tank. For purposes of this
23 subsection only, the term "owner" means: in the case of a
24 storage tank in use on November 8, 1984 or brought into use
25 after that date, any person who owns the storage tank; and in

1 the case of a storage tank in use before November 8, 1984 but
2 no longer in use on that date, any person who owned the tank
3 immediately before the discontinuation of its use. The owner
4 of a tank taken out of operation on or before January 1, 1974
5 shall not be required to notify under this subsection. The
6 owner of a tank taken out of operation after January 1, 1974
7 and removed from the ground prior to November 8, 1984 shall
8 not be required to notify under this subsection. Evidence of
9 current registration pursuant to this subsection shall be
10 available for inspection at the site of the storage tank.

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

20 C. By rule, the board may require tank installers
21 and tank testers to obtain certification from the department
22 and develop procedures for certification that will ensure
23 that storage tanks are installed, repaired and tested in a
24 manner that will not encourage or facilitate leaking. If the
25 board requires certification, it is unlawful for a person to

1 install, repair or test a storage tank unless the person is a
2 certified tank installer or certified tank tester. In
3 accordance with the Uniform Licensing Act, the department may
4 suspend or revoke the certification for a tank installer or
5 tank tester upon grounds that the person:

6 (1) exercised fraud, misrepresentation or
7 deception in obtaining certification;

8 (2) exhibited gross incompetence in the
9 installation, repair or testing of a storage tank; or

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

12 D. By rule, the board shall provide a schedule of
13 fees sufficient to defray the reasonable and necessary costs
14 of:

15 (1) reviewing and acting upon applications
16 for the registration of storage tanks;

17 (2) reviewing and acting upon applications
18 for the certification of tank installers and certification of
19 tank testers; and

20 (3) implementing and enforcing any provision
21 of the Hazardous Waste Act applicable to storage tanks, tank
22 installers and tank testers, including standards for the
23 installation, operation and maintenance of storage tanks and
24 for the certification of tank installers and tank testers."

25 SECTION 3. Section 74-6B-3 NMSA 1978 (being Laws 1990,

1 Chapter 124, Section 3, as amended) is amended to read:

2 "74-6B-3. DEFINITIONS.--As used in the Ground Water
3 Protection Act:

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

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

15 (2) pipeline facility, including gathering
16 lines, that is regulated under Chapter 601 of Title 49 of the
17 United States Code or that is an intrastate pipeline facility
18 regulated under state laws as provided in Chapter 601 of
19 Title 49 of the United States Code and that is determined by
20 the United States secretary of transportation to be connected
21 to a pipeline, or to be operated or intended to be capable of
22 operating at pipeline pressure or as an integral part of a
23 pipeline;

24 (3) surface impoundment, pit, pond or
25 lagoon;

1 (4) storm water or wastewater collection
2 system;

3 (5) flow-through process tank;

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

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

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

14 (9) tanks or related pipelines and
15 facilities owned or used by a refinery, natural gas
16 processing plant or pipeline company in the regular course of
17 its refining, processing or pipeline business;

18 B. "board" means the environmental improvement
19 board;

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

24 D. "department" means the department of
25 environment;

1 E. "operator" means any person in control of or
2 having responsibility for the daily operation of a storage
3 tank;

4 F. "owner":

5 (1) means:

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

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

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

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

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

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

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

25 H. "regulated substance" means:

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

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

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

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

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

20 L. "storage tank" means an above ground storage
21 tank or an underground storage tank; and

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

1 volume of the underground pipes connected thereto, is ten
2 percent or more beneath the surface of the ground. The term
3 does not include any:

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

7 (2) septic tank;

8 (3) pipeline facility, including gathering
9 lines, that is regulated under Chapter 601 of Title 49 of the
10 United States Code or that is an intrastate pipeline facility
11 regulated under state laws as provided in Chapter 601 of
12 Title 49 of the United States Code and that is determined by
13 the United States secretary of transportation to be connected
14 to a pipeline, or to be operated or intended to be capable of
15 operating at pipeline pressure or as an integral part of a
16 pipeline;

17 (4) surface impoundment, pit, pond or
18 lagoon;

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

21 (6) flow-through process tank;

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

25 (8) storage tank situated in an underground

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

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

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

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

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