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HOUSE BILL 90

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

INTRODUCED BY

Cathrynn N. Brown

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

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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;

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

23 (6) flow-through process tank;

24 (7) liquid trap, tank or associated gathering  
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."