

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 16

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Carroll H. Leavell

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE HAZARDOUS WASTE ACT AND THE GROUND WATER PROTECTION ACT TO CLARIFY DEFINITIONS OF STORAGE TANKS AND TO PROVIDE FOR COMPLIANCE WITH THE FEDERAL ENERGY POLICY ACT OF 2005.

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 a 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

.174441.3

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

underscored material = new  
[bracketed material] = delete

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

5 (1) farm, ranch or residential tank used for  
6 storing motor fuel [~~or heating oil~~] for noncommercial purposes;

7 (2) 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 (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 [~~the~~] oil field service industry  
20 operations;

21 (7) tank [~~associated with an emergency~~  
22 ~~generator system~~] used for storing heating oil for consumptive  
23 use on the premises where stored;

24 (8) [~~pipes~~] pipe connected to any tank that is  
25 described in Paragraphs (1) through (7) of this subsection; or

.174441.3

underscored material = new  
[bracketed material] = delete

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

5 B. "board" means the environmental improvement  
6 board;

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

11 D. "director" or "secretary" means the secretary of  
12 environment;

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

19 F. "division" or "department" means the department  
20 of environment;

21 G. "federal agency" means any department, agency or  
22 other instrumentality of the federal government and any  
23 independent agency or establishment of that government,  
24 including any government corporation and the government  
25 printing office;

.174441.3

underscored material = new  
[bracketed material] = delete

1 H. "generator" means any person producing hazardous  
2 waste;

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

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

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

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

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

24 "Hazardous waste" does not include any of the following, until  
25 the board determines that they are subject to Subtitle C of the

.174441.3

underscored material = new  
[bracketed material] = delete

1 federal Resource Conservation and Recovery Act of 1976, as  
2 amended, 42 U.S.C. 6901 et seq.:

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

6 (b) fly ash waste;

7 (c) bottom ash waste;

8 (d) slag waste;

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

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

16 (g) cement kiln dust waste;

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

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

.174441.3

underscored material = new  
[bracketed material] = delete

1 N. "regulated substance" means:  
2 (1) ~~any~~ a substance defined in Section  
3 101(14) of the federal Comprehensive Environmental Response,  
4 Compensation, and Liability Act of 1980, but not including  
5 ~~any~~ a substance regulated as a hazardous waste under Subtitle  
6 C of the federal Resource Conservation and Recovery Act of  
7 1976, as amended; and

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

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

25 P. "storage" means the containment of hazardous

.174441.3

underscored material = new  
[bracketed material] = delete

1 waste, either on a temporary basis or for a period of years, in  
2 such a manner as not to constitute disposal of such hazardous  
3 waste;

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

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

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

11 T. "treatment" means any method, technique or  
12 process, including neutralization, designed to change the  
13 physical, chemical or biological character or composition of  
14 [~~any~~] a hazardous waste so as to neutralize [~~such~~] the waste or  
15 so as to render [~~such~~] the waste nonhazardous, safer for  
16 transport, amenable to recovery, amenable to storage or reduced  
17 in volume. "Treatment" includes any activity or processing  
18 designed to change the physical form or chemical composition of  
19 hazardous waste so as to render it nonhazardous;

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

.174441.3

underscored material = new  
[bracketed material] = delete

1 ground. "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 storing  
4 motor fuel [~~or heating oil~~] for noncommercial purposes;

5 (2) septic tank;

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

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

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

14 (6) flow-through process tank;

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

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

22 (9) tank [~~associated with an emergency~~  
23 ~~generator system~~] used for storing heating oil for consumptive  
24 use on the premises where stored;

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

.174441.3



underscored material = new  
[bracketed material] = delete

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

3 (11) [~~pipes~~] pipe connected to any tank that  
4 is 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 74-4-4 NMSA 1978 (being Laws 1977,  
11 Chapter 313, Section 4, as amended) is amended to read:

12 "74-4-4. DUTIES AND POWERS OF THE BOARD.--

13 A. The board shall adopt rules for the management  
14 of hazardous waste, as may be necessary to protect public  
15 health and the environment, that are equivalent to and no more  
16 stringent than federal regulations adopted by the federal  
17 environmental protection agency pursuant to the federal  
18 Resource Conservation and Recovery Act of 1976, as amended:

19 (1) for the identification and listing of  
20 hazardous wastes, taking into account toxicity, persistence and  
21 degradability, potential for accumulation in tissue and other  
22 related factors, including flammability, corrosiveness and  
23 other hazardous characteristics; provided that, except as  
24 authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board  
25 shall not identify or list any solid waste or combination of

.174441.3

underscoring material = new  
[bracketed material] = delete

1 solid wastes as a hazardous waste that has not been listed and  
2 designated as a hazardous waste by the federal environmental  
3 protection agency pursuant to the federal Resource Conservation  
4 and Recovery Act of 1976, as amended;

5 (2) establishing standards applicable to  
6 generators identified or listed under this subsection,  
7 including requirements for:

8 (a) furnishing information on the  
9 location and description of the generator's facility and on the  
10 production or energy recovery activity occurring at that  
11 facility;

12 (b) record keeping practices that  
13 accurately identify the quantities of hazardous waste  
14 generated, the constituents of the waste that are significant  
15 in quantity or in potential harm to human health or the  
16 environment and the disposition of the waste;

17 (c) labeling practices for any  
18 containers used for the storage, transport or disposal of the  
19 hazardous waste that will identify accurately the waste;

20 (d) use of safe containers tested for  
21 safe storage and transportation of the hazardous waste;

22 (e) furnishing the information on the  
23 general chemical composition of the hazardous waste to persons  
24 transporting, treating, storing or disposing of the waste;

25 (f) implementation of programs to reduce

.174441.3

underscoring material = new  
[bracketed material] = delete

1 the volume or quantity and toxicity of the hazardous waste  
2 generated;

3 (g) submission of reports to the  
4 secretary at such times as the secretary deems necessary,  
5 setting out the quantities of hazardous waste identified or  
6 listed pursuant to the Hazardous Waste Act that the generator  
7 has generated during a particular time period and the  
8 disposition of all hazardous waste reported, the efforts  
9 undertaken during a particular time period to reduce the volume  
10 and toxicity of waste generated and the changes in volume and  
11 toxicity of waste actually achieved during a particular time  
12 period in comparison with previous time periods; and

13 (h) the use of a manifest system and any  
14 other reasonable means necessary to assure that all hazardous  
15 waste generated is designated for treatment, storage or  
16 disposal in, and arrives at, treatment, storage or disposal  
17 facilities, other than facilities on the premises where the  
18 waste is generated, for which a permit has been issued pursuant  
19 to the Hazardous Waste Act; ~~and~~ that the generator of  
20 hazardous waste has a program in place to reduce the volume or  
21 quality and toxicity of waste to the degree determined by the  
22 generator to be economically practicable and that the proposed  
23 method of treatment, storage or disposal is that practicable  
24 method currently available to the generator that minimizes the  
25 present and future threat to human health and the environment;

.174441.3

underscored material = new  
[bracketed material] = delete

1 (3) establishing standards applicable to  
2 transporters of hazardous waste identified or listed under this  
3 subsection or of fuel produced from any such hazardous waste or  
4 of fuel from such waste and any other material, as may be  
5 necessary to protect human health and the environment,  
6 including but not limited to requirements for:

7 (a) record keeping concerning the  
8 hazardous waste transported and its source and delivery points;

9 (b) transportation of the hazardous  
10 waste only if properly labeled;

11 (c) compliance with the manifest system  
12 referred to in Subparagraph (h) of Paragraph (2) of this  
13 subsection; and

14 (d) transportation of all the hazardous  
15 waste only to the hazardous waste treatment, storage or  
16 disposal [~~facilities~~] facility that the shipper designates on  
17 the manifest form to be a facility holding a permit issued  
18 pursuant to the Hazardous Waste Act or the federal Resource  
19 Conservation and Recovery Act of 1976, as amended;

20 (4) establishing standards applicable to  
21 distributors or marketers of any fuel produced from hazardous  
22 waste, or any fuel that contains hazardous waste, for:

23 (a) furnishing the information stating  
24 the location and general description of the facility; and

25 (b) furnishing the information

.174441.3

underscored material = new  
[bracketed material] = delete

1 describing the production or energy recovery activity carried  
2 out at the facility;

3 (5) establishing performance standards as may  
4 be necessary to protect human health and the environment  
5 applicable to owners and operators of facilities for the  
6 treatment, storage or disposal of hazardous waste identified or  
7 listed under this section, distinguishing, where appropriate,  
8 between new facilities and facilities in existence on the date  
9 of promulgation, including requirements for:

10 (a) maintaining the records of all  
11 hazardous waste identified or listed under this subsection that  
12 is treated, stored or disposed of, as the case may be, and the  
13 manner in which [~~such~~] the waste was treated, stored or  
14 disposed of;

15 (b) satisfactory reporting, monitoring,  
16 inspection and compliance with the manifest system referred to  
17 in Subparagraph (h) of Paragraph (2) of this subsection;

18 (c) treatment, storage or disposal of  
19 all such waste and any liquid that is not a hazardous waste,  
20 except with respect to underground injection control into deep  
21 injection wells, received by the facility pursuant to such  
22 operating methods, techniques and practices as may be  
23 satisfactory to the secretary;

24 (d) location, design and construction of  
25 hazardous waste treatment, disposal or storage facilities;

.174441.3

underscored material = new  
[bracketed material] = delete

1 (e) contingency plans for effective  
2 action to minimize unanticipated damage from any treatment,  
3 storage or disposal of any hazardous waste;

4 (f) maintenance and operation of the  
5 facilities and requiring any additional qualifications as to  
6 ownership, continuity of operation, training for personnel and  
7 financial responsibility, including financial responsibility  
8 for corrective action, as may be necessary or desirable;

9 (g) compliance with the requirements of  
10 Paragraph (6) of this subsection respecting permits for  
11 treatment, storage or disposal;

12 (h) the taking of corrective action for  
13 all releases of hazardous waste or constituents from ~~any~~ a  
14 solid waste management unit at a treatment, storage or disposal  
15 facility, regardless of the time at which waste was placed in  
16 the unit; and

17 (i) the taking of corrective action  
18 beyond a facility's boundaries where necessary to protect human  
19 health and the environment unless the owner or operator of that  
20 facility demonstrates to the satisfaction of the secretary  
21 that, despite the owner's or operator's best efforts, the owner  
22 or operator was unable to obtain the necessary permission to  
23 undertake such action. Rules adopted and promulgated under  
24 this subparagraph shall take effect immediately and shall apply  
25 to all facilities operating under permits issued under

.174441.3

underscoring material = new  
[bracketed material] = delete

1 Paragraph (6) of this subsection and to all landfills, surface  
2 impoundments and waste pile units, including any new units,  
3 replacements of existing units or lateral expansions of  
4 existing units, that receive hazardous waste after July 26,  
5 1982. No private entity shall be precluded by reason of  
6 criteria established under Subparagraph (f) of this paragraph  
7 from the ownership or operation of facilities providing  
8 hazardous waste treatment, storage or disposal services where  
9 the entity can provide assurance of financial responsibility  
10 and continuity of operation consistent with the degree and  
11 duration of risks associated with the treatment, storage or  
12 disposal of specified hazardous waste;

13 (6) requiring each person owning or operating,  
14 or both, an existing facility or planning to construct a new  
15 facility for the treatment, storage or disposal of hazardous  
16 waste identified or listed under this subsection to have a  
17 permit issued pursuant to requirements established by the  
18 board;

19 (7) establishing procedures for the issuance,  
20 suspension, revocation and modification of permits issued under  
21 Paragraph (6) of this subsection, which rules shall provide for  
22 public notice, public comment and an opportunity for a hearing  
23 prior to the issuance, suspension, revocation or major  
24 modification of any permit unless otherwise provided in the  
25 Hazardous Waste Act;

.174441.3

underscored material = new  
[bracketed material] = delete

1 (8) defining major and minor modifications;  
2 and

3 (9) establishing procedures for the inspection  
4 of facilities for the treatment, storage and disposal of  
5 hazardous waste that govern the minimum frequency and manner of  
6 the inspections, the manner in which records of the inspections  
7 shall be maintained and the manner in which reports of the  
8 inspections shall be filed; provided, however, that inspections  
9 of permitted facilities shall occur no less often than every  
10 two years.

11 B. The board shall adopt rules:

12 (1) concerning hazardous substance incidents;  
13 and

14 (2) requiring notification to the department  
15 of any hazardous substance incidents.

16 C. The board shall adopt rules concerning storage  
17 tanks as may be necessary to protect public health and the  
18 environment and that, in the case of underground storage tanks,  
19 are equivalent to and no more stringent than federal  
20 regulations adopted by the federal environmental protection  
21 agency pursuant to the federal Resource Conservation and  
22 Recovery Act of 1976, as amended.

23 D. The board shall adopt rules concerning storage  
24 tanks that implement the federal Energy Policy Act of 2005,  
25 Pub. L. 109-58, as amended, and that are equivalent to and no



underscored material = new  
[bracketed material] = delete

1 more stringent than the Energy Policy Act and its grant  
2 guidelines and regulations.

3 E. Rules adopted pursuant to this [subsection]  
4 section shall include:

5 (1) standards for the installation, operation,  
6 [~~and~~] maintenance, repair and replacement of storage tanks;

7 (2) requirements for financial responsibility;

8 (3) standards for inventory control;

9 (4) standards for the detection of leaks from  
10 and the integrity-testing and monitoring of storage tanks;

11 (5) standards for the closure and dismantling  
12 of storage tanks;

13 (6) requirements for record keeping; [~~and~~]

14 (7) requirements for the reporting,  
15 containment and remediation of all leaks from any storage  
16 tanks; and

17 (8) criteria and procedures for classifying a  
18 storage tank facility as ineligible, and reclassifying a  
19 storage tank facility as eligible, for the delivery, deposit,  
20 acceptance or sale of petroleum products.

21 F. The criteria and procedures adopted by the board  
22 pursuant to this section shall require the department to  
23 classify a storage tank facility as ineligible for delivery,  
24 deposit, acceptance or sale of petroleum products if the  
25 storage tank facility has not installed required equipment for

.174441.3

underscored material = new  
[bracketed material] = delete

1 spill prevention, overfill protection, leak detection or  
2 corrosion protection, including required corrosion protection  
3 equipment for a buried metal flexible connector.

4 G. The criteria and procedures adopted by the board  
5 pursuant to this section may allow the department to classify a  
6 storage tank facility as ineligible for delivery, deposit,  
7 acceptance or sale of petroleum products when the owner or  
8 operator has failed to comply with a written warning within a  
9 reasonable period of time and the warning concerns:

10 (1) improper operation or maintenance of  
11 required equipment for spill prevention, overfill protection,  
12 leak detection or corrosion protection;

13 (2) failure to maintain required financial  
14 responsibility for corrective action; or

15 (3) operation of the storage tank facility in  
16 a manner that creates an imminent threat to the public health  
17 and the environment.

18 H. Rules adopted by the board pursuant to this  
19 section shall allow the department to defer classifying a  
20 storage tank facility as ineligible for delivery, deposit,  
21 acceptance or sale of petroleum products for a limited period  
22 of up to one hundred eighty days if the ineligible  
23 classification would not be in the best interest of the public  
24 because it would jeopardize the availability of, or access to,  
25 motor fuel in any rural and remote areas.

.174441.3

underscored material = new  
[bracketed material] = delete

1           I. Rules adopted by the board pursuant to this  
2 section shall allow the department to authorize delivery or  
3 deposit of petroleum products to:

4                   (1) an emergency generator tank that is  
5 otherwise ineligible for delivery or deposit if a commercial  
6 power failure or other declared state of emergency exists and  
7 the emergency generator tank provides power supply, stores  
8 petroleum and is used solely in connection with an emergency  
9 system, legally required standby system or optional standby  
10 system; or

11                   (2) a storage tank facility that is otherwise  
12 ineligible for delivery or deposit if the delivery or deposit  
13 is necessary to test or calibrate a tank.

14           ~~[D-]~~ J. Notwithstanding the provisions of  
15 Subsection A of this section, the board may adopt rules for the  
16 management of hazardous waste and hazardous waste  
17 transformation that are more stringent than federal regulations  
18 adopted by the federal environmental protection agency pursuant  
19 to the federal Resource Conservation and Recovery Act of 1976,  
20 as amended, if the board determines, after notice and public  
21 hearing, that such federal regulations are not sufficient to  
22 protect public health and the environment. As used in this  
23 subsection, "transformation" means incineration, pyrolysis,  
24 distillation, gasification or biological conversion other than  
25 composting.

.174441.3

underscored material = new  
[bracketed material] = delete

1           ~~[E-]~~ K. The board shall adopt rules concerning the  
2 management of used oil that are equivalent to and no more  
3 stringent than federal regulations adopted by the federal  
4 environmental protection agency pursuant to the federal  
5 Resource Conservation and Recovery Act of 1976, as amended.

6           ~~[F-]~~ L. In the event the board wishes to adopt  
7 rules that are identical with regulations adopted by an agency  
8 of the federal government, the board, after notice and hearing,  
9 may adopt such rules by reference to the federal regulations  
10 without setting forth the provisions of the federal  
11 regulations."

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

14           "74-6B-3. DEFINITIONS.--As used in the Ground Water  
15 Protection Act:

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

25           (1) farm, ranch or residential tank used for

.174441.3

underscored material = new  
[bracketed material] = delete

1 storing motor fuel [~~or heating oil~~] for noncommercial purposes;

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

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

8 (4) storm water or wastewater collection  
9 system;

10 (5) flow-through process tank;

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

16 (7) tank [~~associated with an emergency~~  
17 ~~generator system~~] used for storing heating oil for consumptive  
18 use on the premises where stored;

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

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

.174441.3

underscored material = new  
[bracketed material] = delete

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

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

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

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

12 F. "owner":

13 (1) means:

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

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

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

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

.174441.3

underscored material = new  
[bracketed material] = delete

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

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

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

8                   H. "regulated substance" means:

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

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

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

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

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

.174441.3

underscored material = new  
[bracketed material] = delete

1 tanks;

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

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

11 (1) farm, ranch or residential tank of one  
12 thousand one hundred gallons or less capacity used for storing  
13 motor fuel [~~or heating oil~~] for noncommercial purposes;

14 (2) septic tank;

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

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

.174441.3



underscoring material = new  
[bracketed material] = delete

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 [~~associated with an emergency~~  
7 ~~generator system~~] used for storing heating oil for consumptive  
8 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 - 25 -

15

16

17

18

19

20

21

22

23

24

25