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HOUSE BILL 111

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

James G. Townsend

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF CHAPTER 74
NMSA 1978 TO EXCLUDE FUEL STORAGE TANKS OF LESS THAN TEN
THOUSAND GALLONS USED SOLELY 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) fuel storage tank of less than ten
24 thousand gallons used solely by a crop dusting or crop spraying
25 service;

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1 [~~(8)~~] (9) pipes connected to any tank that is
2 described in Paragraphs (1) through [~~(7)~~] (8) of this
3 subsection; or

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

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

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

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

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

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

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

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1 independent agency or establishment of that government,
2 including any government corporation and the government
3 printing office;

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

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

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

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

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

24 (2) pose a substantial present or potential
25 hazard to human health or the environment when improperly

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

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

9 (b) fly ash waste;

10 (c) bottom ash waste;

11 (d) slag waste;

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

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

19 (g) cement kiln dust waste;

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

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

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1 government corporation, partnership, association, state,
2 municipality, commission, political subdivision of a state or
3 any interstate body;

4 N. "regulated substance" means:

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

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

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

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1 Energy Act of 1954, as amended, 68 Stat. 923;

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

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

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

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

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

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

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

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

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

7 (2) septic tank;

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

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

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

16 (6) flow-through process tank;

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

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

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

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

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

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

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

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

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

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

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

1 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. "department" means the department of
9 environment;

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

13 F. "owner":

14 (1) means:

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

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

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

25 (a) had an underground storage tank

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1 taken out of operation on or before January 1, 1974;

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

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

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

9 H. "regulated substance" means:

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

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

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

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

24 K. "site" means a place where there is or was at a
25 previous time one or more storage tanks and may include areas

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1 contiguous to the actual location or previous location of the
2 tanks;

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

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

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

15 (2) septic tank;

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

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."