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SENATE BILL 353

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO THE ENVIRONMENT; PROVIDING THAT THE PROVISIONS OF
THE HAZARDOUS WASTE ACT AND THE GROUND WATER PROTECTION ACT DO
NOT APPLY TO CERTAIN ABOVE GROUND STORAGE TANKS; AMENDING
SECTIONS OF THE NMSA 1978.

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~~ is used to contain petroleum, including
crude oil or ~~any~~ a fraction thereof that is liquid at
standard conditions of temperature and pressure of sixty

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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]~~ a:

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 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 ~~[the]~~ oil field service industry
20 operations;

21 ~~[(7) tank associated with an emergency
22 generator system;~~

23 ~~(8) pipes]~~ (7) pipe connected to ~~[any]~~ a tank
24 that is described in Paragraphs (1) through ~~[(7)]~~ (6) of this
25 subsection; ~~[or~~

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1 ~~(9) tanks~~ (8) 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]~~ its refining, processing or pipeline
5 business;

6 (9) tank associated with a boat marina;

7 (10) tank associated with a railroad facility;

8 or

9 (11) tank that stores nonhazardous lubricant
10 oils;

11 B. "board" means the environmental improvement
12 board;

13 C. "combustible liquid" means any liquid having a
14 flash point at or above one hundred degrees Fahrenheit and
15 below two hundred degrees Fahrenheit;

16 ~~[C.]~~ D. "corrective action" means an action taken
17 in accordance with rules of the board to investigate, minimize,
18 eliminate or clean up a release to protect the public health,
19 safety and welfare or the environment;

20 ~~[D.]~~ E. "director" or "secretary" means the
21 secretary of environment;

22 ~~[E.]~~ F. "disposal" means the discharge, deposit,
23 injection, dumping, spilling, leaking or placing of ~~[any]~~ a
24 solid waste or hazardous waste into or on ~~[any]~~ land or water
25 so that ~~[such]~~ the solid waste or hazardous waste or a

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1 constituent thereof may enter the environment or be emitted
2 into the air or discharged into [~~any waters~~] water, including
3 ground [~~waters~~] water;

4 [~~F.~~] G. "division" or "department" means the
5 department of environment;

6 [~~G.~~] H. "federal agency" means [~~any~~] a department,
7 agency or other instrumentality of the federal government [~~and~~
8 ~~any~~] or an independent agency or establishment of that
9 government, including [~~any~~] a government corporation and the
10 government printing office;

11 [~~H.~~] I. "generator" means [~~any~~] a person producing
12 hazardous waste;

13 [~~I.~~] J. "hazardous agricultural waste" means
14 hazardous waste generated as part of his licensed activity by
15 [~~any~~] a person licensed pursuant to the Pesticide Control Act
16 or [~~any~~] hazardous waste designated as hazardous agricultural
17 waste by the board, but does not include animal excrement in
18 connection with farm, ranch or feedlot operations;

19 [~~J.~~] K. "hazardous substance incident" means [~~any~~]
20 an emergency incident involving a chemical or chemicals,
21 including but not limited to transportation wrecks, accidental
22 spills or leaks, fires or explosions, which incident creates
23 the reasonable probability of injury to human health or
24 property;

25 [~~K.~~] L. "hazardous waste" means [~~any~~] a solid waste

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1 or combination of solid wastes that because of [~~their~~] its
2 quantity, concentration or physical, chemical or infectious
3 characteristics may:

4 (1) cause or significantly contribute to an
5 increase in mortality or an increase in serious irreversible or
6 incapacitating reversible illness; or

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

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

17 (b) fly ash waste;

18 (c) bottom ash waste;

19 (d) slag waste;

20 (e) flue gas emission control waste
21 generated primarily from the combustion of coal or other fossil
22 fuels;

23 (f) solid waste from the extraction,
24 beneficiation or processing of ores and minerals, including
25 phosphate rock and overburden from the mining of uranium ore;

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1 or

2 (g) cement kiln dust waste;

3 [~~L-~~] M. "manifest" means the form used for
4 identifying the quantity, composition, origin, routing and
5 destination of hazardous waste during transportation from point
6 of generation to point of disposal, treatment or storage;

7 [~~M-~~] N. "person" means [~~any~~] an individual, trust,
8 firm, joint stock company, federal agency, corporation,
9 including a government corporation, partnership, association,
10 state, municipality, commission, political subdivision of a
11 state or [~~any~~] an interstate body;

12 [~~N-~~] 0. "regulated substance" means:

13 (1) [~~any~~] a substance defined in Section
14 101(14) of the federal Comprehensive Environmental Response,
15 Compensation, and Liability Act of 1980, but not including
16 [~~any~~] a substance regulated as a hazardous waste under Subtitle
17 C of the federal Resource Conservation and Recovery Act of
18 1976, as amended; and

19 (2) petroleum, including crude oil or [~~any~~] a
20 fraction thereof that is liquid at standard conditions of
21 temperature and pressure of sixty degrees Fahrenheit and
22 fourteen and seven-tenths pounds per square inch absolute;

23 [~~0-~~] P. "solid waste" means [~~any~~] garbage, refuse,
24 sludge from a waste treatment plant, water supply treatment
25 plant or air pollution control facility and other discarded

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1 material, including solid, liquid, semisolid or contained
2 gaseous material resulting from industrial, commercial, mining
3 and agricultural operations, and from community activities, but
4 does not include solid or dissolved materials in domestic
5 sewage or solid or dissolved materials in irrigation return
6 flows or industrial discharges that are point sources subject
7 to permits under Section 402 of the federal Water Pollution
8 Control Act, as amended, 86 Stat. 880, or source, special
9 nuclear or byproduct material as defined by the federal Atomic
10 Energy Act of 1954, as amended, 68 Stat. 923;

11 [P.] Q. "storage" means the containment of
12 hazardous waste, either on a temporary basis or for a period of
13 years, in such a manner as not to constitute disposal of such
14 hazardous waste;

15 [Q.] R. "storage tank" means an above ground
16 storage tank or an underground storage tank;

17 [R.] S. "tank installer" means [any] an individual
18 who installs or repairs a storage tank;

19 [S.] T. "transporter" means a person engaged in the
20 movement of hazardous waste, not including movement at the site
21 of generation, disposal, treatment or storage;

22 [T.] U. "treatment" means [any] a method, technique
23 or process, including neutralization, designed to change the
24 physical, chemical or biological character or composition of
25 [any] a hazardous waste so as to neutralize [such] the waste or

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1 so as to render [~~such~~] the waste nonhazardous, safer for
2 transport, amenable to recovery, amenable to storage or reduced
3 in volume. "Treatment" includes [~~any~~] an activity or
4 processing designed to change the physical form or chemical
5 composition of hazardous waste so as to render it nonhazardous;

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

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

16 (2) septic tank;

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

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

23 (5) storm water or wastewater collection
24 system;

25 (6) flow-through process tank;

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1 (7) liquid trap, tank or associated gathering
2 lines directly related to oil or gas production and gathering
3 operations;

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

8 [~~(9)~~ tank associated with an emergency
9 generator system;

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

13 [~~(11)~~ pipes] (10) pipe connected to [any] a
14 tank that is described in Paragraphs (1) through [~~(10)~~] (9) of
15 this subsection; and

16 [~~V.~~] W. "used oil" means [any] oil [~~that has been~~]
17 refined from crude oil, or [any] a synthetic oil, that has been
18 used and as a result of such use is contaminated by physical or
19 chemical impurities."

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

22 "74-6B-3. DEFINITIONS. -- As used in the Ground Water
23 Protection Act:

24 A. "above ground storage tank" means a single tank
25 or combination of tanks, including underground pipes connected

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1 thereto, that ~~[are]~~ is used to contain petroleum, including
2 crude oil or ~~[any]~~ a fraction thereof that is liquid at
3 standard conditions of temperature and pressure of sixty
4 degrees Fahrenheit and fourteen and seven-tenths pounds per
5 square inch absolute, and the volume of which is more than
6 ninety percent above the surface of the ground. The term does
7 not include ~~[any]~~ a:

8 (1) farm, ranch or residential tank used for
9 storing motor fuel or heating oil for noncommercial purposes;

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

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

16 (4) storm water or wastewater collection
17 system;

18 (5) flow-through process tank;

19 (6) liquid trap, tank or associated gathering
20 lines or other storage methods or devices related to oil, gas
21 or mining exploration, production, transportation, refining,
22 processing or storage, or ~~[the]~~ oil field service industry
23 operations;

24 ~~[(7) tank associated with an emergency~~
25 ~~generator system;~~

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

4 ~~(9) tanks~~ (8) tank or related [~~pipelines~~]
5 pipeline and [~~facilities~~] facility owned or used by a refinery,
6 natural gas processing plant or pipeline company in the regular
7 course of [~~their~~] its refining, processing or pipeline
8 business;

9 (9) tank associated with a boat marina;
10 (10) tank associated with a railroad facility;

11 or

12 (11) tank that stores nonhazardous lubricant
13 oils;

14 B. "board" means the environmental improvement
15 board;

16 C. "combustible liquid" means a liquid having a
17 flash point at or above one hundred degrees Fahrenheit and
18 below two hundred degrees Fahrenheit;

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

23 [~~D.~~] E. "department" means the department of
24 environment;

25 [~~E.~~] F. "operator" means [~~any~~] a person in control

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1 of or having responsibility for the daily operation of a
2 storage tank;

3 [~~F.~~] G. "owner" means:

4 (1) in the case of a storage tank in use or
5 brought into use on or after November 8, 1984, a person who
6 owns the storage tank; and

7 (2) in the case of a storage tank in use
8 before November 8, 1984 but no longer in use after that date, a
9 person who owned the tank immediately before the
10 discontinuation of its use;

11 [~~G.~~] H. "person" means an individual or [~~any~~] a
12 legal entity, including all governmental entities;

13 [~~H.~~] I. "regulated substance" means:

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

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

23 [~~I.~~] J. "release" means a spilling, leaking,
24 emitting, discharging, escaping, leaching or disposing from a
25 storage tank into ground water, surface water or subsurface

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1 soils in amounts exceeding twenty-five gallons;

2 [J-] K. "secretary" means the secretary of
3 environment;

4 [K-] L. "site" means a place where there is or was
5 at a previous time one or more storage tanks and may include
6 areas contiguous to the actual location or previous location of
7 the tanks;

8 [L-] M. "storage tank" means an above ground
9 storage tank or an underground storage tank; and

10 [M-] N. "underground storage tank" means a single
11 tank or combination of tanks, including underground pipes
12 connected thereto, that [are] is used to contain an
13 accumulation of regulated substances and the volume of which,
14 including the volume of the underground pipes connected
15 thereto, is ten percent or more beneath the surface of the
16 ground. The term does not include [any] a:

17 (1) farm, ranch or residential tank of one
18 thousand one hundred gallons or less capacity used for storing
19 motor fuel or heating oil for noncommercial purposes;

20 (2) septic tank;

21 (3) pipeline facility, including gathering
22 lines regulated under the federal Natural Gas Pipeline Safety
23 Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act
24 of 1979, or that is an intrastate pipeline facility regulated
25 under state laws comparable to either act;

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

2 (5) storm water or wastewater collection

3 system;

4 (6) flow-through process tank;

5 (7) liquid trap, tank or associated gathering

6 lines directly related to oil or gas production and gathering

7 operations;

8 (8) storage tank situated in an underground

9 area, such as a basement, cellar, mineworking drift, shaft or

10 tunnel, if the storage tank is situated upon or above the

11 surface of the undesignated floor;

12 [~~(9)~~] ~~tank associated with an emergency~~

13 ~~generator system;~~

14 ~~(10)~~] (9) tank exempted by rule of the board

15 after finding that the type of tank is adequately regulated

16 under another federal or state law; or

17 [~~(11)~~ pipes] (10) pipe connected to [~~any~~] a

18 tank that is described in Paragraphs (1) through [~~(10)~~] (9) of

19 this subsection. "

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