

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2-15-07

SPONSOR Ashbill LAST UPDATED _____ HB _____

SHORT TITLE Above Ground Storage Tank Definition SB 845

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
(\$1.0)	(\$1.0)	(\$1.0)	Recurring	Underground Storage Tank Fee Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
 Energy, Minerals and Natural Resources (EMNRD)
 New Mexico Department of Agriculture (NMDOA)

SUMMARY

Synopsis of Bill

Senate Bill 845 amends the Hazardous Waste Act (Section 74-4-3 NMSA 1978) definition of “above ground storage tank” to exclude tanks containing petroleum products used by crop-dusting or crop-spraying services. SB 845 also amends the Ground Water Protection Act (Section 74-6B-3 NMSA 1978) definition of “above ground storage tank” to exclude tanks containing petroleum products used by crop-dusting or crop-spraying services. This bill also amends language in both Acts for gender neutrality and readability.

FISCAL IMPLICATIONS

NMED estimates SB 845 would reduce annual tank registration fees by approximately \$1.0 thousand.

SIGNIFICANT ISSUES

The purpose of the state Hazardous Waste Act and the Ground Water Protection Act are to regulate substances acknowledged to be hazardous, which pose a potential threat to human health and the environment. The Petroleum Storage Tank Regulations (20.5 NMAC) establish minimum standards to reduce these risks.

Senate Bill 845 would provide a categorical exemption from above-ground petroleum storage tank regulations for tanks containing petroleum products used by commercial crop-dusting or crop-spraying services. Tank fees currently run \$100.00 per tank.

OTHER SUBSTANTIVE ISSUES

The New Mexico Hazardous Waste Act (Act) was amended in 2001 to require NMED to regulate above ground storage tanks (ASTs) containing petroleum as an integral part of the underground-storage tank program. The Act required developing and adopting regulations for aboveground tanks that were substantially similar to regulations previously in place for underground-storage tanks, including measures for release prevention, release reporting, and corrective action. These regulations, once adopted by the Environmental Improvement Board (EIB), provided the same preventative measures for aboveground storage tanks and underground-storage tanks. The 2001 amendments to the Hazardous Waste Act also gave owners and operators of ASTs access to the corrective action fund for reimbursing required environmental remediation activities, provided that the owner was in compliance with the petroleum storage tank regulations (20.5 NMAC).

Regulation development involved the public participation of tank owners, marketers, corrective action contractors, tank manufacturers and installers, environmental groups and state and local government agencies for approximately a two-year period.

NMED maintains that tank systems that contain petroleum products for the purpose of fueling aircraft involved in commercial activities related to agriculture are no different from tanks used by any other industrial commercial petroleum storage tank owners, such as gasoline service stations, municipal vehicle fleets, government agencies, construction companies. Accordingly, NMED concludes that these tanks should be subject to the same requirements that are designed to protect New Mexico's limited ground-water resources.

It is likely that the proposed amendment would provide an unfair economic advantage to this category of tank owners. One goal of the petroleum storage tank regulations is to provide a "level playing field" with respect to both underground storage tank owners and aboveground storage tank owners. Though exempt from state law under SB 845, underground storage tanks used for crop-dusting or crop-spraying services would still be regulated pursuant to federal law. NMED suggests that the proposed amendment would weaken this regulatory equivalency.

Both federal and state laws provide an exemption from regulation of petroleum storage tanks for

“farm tanks”. Those exemptions require that farm tanks be located on farm property where crops are grown or animals are raised. The exemption for “farm tanks” does not extend to commercial, for-profit operations that are ancillary to the farming operation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Aboveground storage tank owners that have tanks used in the crop spraying industry will be required to upgrade their facilities to meet regulatory requirements. NMED reports that of the approximately six such facilities in New Mexico that currently have aboveground storage tank systems used in the crop spraying industry, four are already in compliance with the regulatory requirements.

POSSIBLE QUESTIONS

1. If enacted, would other segments of petroleum tank operators request similar exemptions?
2. If enacted, what resources would be available to the relevant aboveground storage tank operator for any remediation that may be required?

MA/nt