

SENATE BILL 28

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

INTRODUCED BY

Gay G. Kernan

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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

.209128.1

underscored material = new

[bracketed material] = delete

Amendments: new = bold, blue, highlight

delete = bold, red, highlight, strikethrough

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

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

(2) pipeline facility, including gathering lines, that is regulated under [~~the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979~~] SCONC→~~49 U.S.C. 601~~←SCONC SCONC→Chapter 601 of Title 49 of the United States Code←SCONC or that is an intrastate pipeline facility regulated under state laws [~~comparable to either act~~] as provided in SCONC→~~49 U.S.C. 601~~←SCONC SCONC→Chapter 601 of Title 49 of the United States Code←SCONC and that is determined by the United States secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

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

(4) storm water or wastewater collection

system;

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or to oil field service industry operations;

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

(8) pipes connected to any tank that is described in Paragraphs (1) through (7) of this subsection; or

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

B. "board" means the environmental improvement board;

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

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

E. "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

~~[such]~~ the solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

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

G. "federal agency" means any department, agency or other instrumentality of the federal government and any independent agency or establishment of that government, including any government corporation and the government ~~[printing]~~ publishing office;

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

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

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

K. "hazardous waste" means any solid waste or combination of solid wastes that because of their quantity,

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

concentration or physical, chemical or infectious characteristics may:

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

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

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

(b) fly ash waste;

(c) bottom ash waste;

(d) slag waste;

(e) flue gas emission control waste

generated primarily from the combustion of coal or other fossil fuels;

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

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

(g) cement kiln dust waste;

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

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

N. "regulated substance" means:

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

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

O. "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended, 86 Stat. 880, or source, special nuclear or byproduct material as defined by the federal Atomic Energy Act of 1954, as amended, 68 Stat. 923;

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

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

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

S. "tank tester" means any individual who tests storage tanks;

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

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

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

render the waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume.

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

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

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

(2) septic tank;

(3) pipeline facility, including gathering lines, that is regulated under ~~[the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979]~~ ~~SCONC→49 U.S.C. 601←SCONC~~
~~SCONC→Chapter 601 of Title 49 of the United States Code←SCONC~~
or that is an intrastate pipeline facility regulated under state laws ~~[comparable to either act]~~ as provided in ~~SCONC→49 U.S.C. 601←SCONC~~ ~~SCONC→Chapter 601 of Title 49 of the United States Code←SCONC~~ and that is determined by the United States

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(4) surface impoundment, pit, pond or lagoon;
(5) storm water or wastewater collection system;

(6) flow-through process tank;
(7) liquid trap, tank or associated gathering lines directly related to oil or gas production and gathering operations;

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

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

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

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

[V-] W. "used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

chemical impurities."

SECTION 2. Section 74-4-4.4 NMSA 1978 (being Laws 1987, Chapter 179, Section 6, as amended) is amended to read:

"74-4-4.4. STORAGE TANKS--REGISTRATION--INSTALLER CERTIFICATION--TESTER CERTIFICATION--FEES.--

A. By rule, the board shall require an owner of a storage tank to register the tank with the department and impose reasonable conditions for registration, including the submission of plans, specifications and other relevant information relating to the tank. For purposes of this subsection only, the term "owner" means: in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns the storage tank; and in the case of a storage tank in use before November 8, 1984 but no longer in use on that date, any person who owned the tank immediately before the discontinuation of its use. The owner of a tank taken out of operation on or before January 1, 1974 shall not be required to notify under this subsection. The owner of a tank taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984 shall not be required to notify under this subsection. Evidence of current registration pursuant to this subsection shall be available for inspection at the site of the storage tank.

B. By rule, the board shall require any person who, beginning thirty days after the United States environmental

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

protection agency administrator prescribes the form of notice pursuant to Section 9002(a)(5) of the federal Resource Conservation and Recovery Act of 1976 and for eighteen months thereafter, deposits a regulated substance into a storage tank to give notice of the registration requirements of Subsection A of this section to the owner and operator of the tank.

C. By rule, the board may require tank installers and tank testers to obtain certification from the department and develop procedures for certification that will ensure that storage tanks are installed, [~~and~~] repaired and tested in a manner that will not encourage or facilitate leaking. If the board requires certification, it is unlawful for a person to install, [~~or~~] repair or test a storage tank unless [~~he~~] the person is a certified tank installer or certified tank tester. In accordance with the Uniform Licensing Act, the department may suspend or revoke the certification for a tank installer or tank tester upon grounds that [~~he~~] the person:

- (1) exercised fraud, misrepresentation or deception in obtaining [~~his~~] certification;
- (2) exhibited gross incompetence in the installation, [~~or~~] repair or testing of a storage tank; or
- (3) was derelict in the performance of a duty as a certified tank installer or certified tank tester.

D. By rule, the board shall provide a schedule of fees sufficient to defray the reasonable and necessary costs

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

of:

(1) reviewing and acting upon applications for the registration of storage tanks;

(2) reviewing and acting upon applications for the certification of tank installers and certification of tank testers; and

(3) implementing and enforcing any provision of the Hazardous Waste Act applicable to storage tanks, [~~and~~] tank installers and tank testers, including standards for the installation, operation and maintenance of storage tanks and for the certification of tank installers and tank testers."

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

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

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

(1) farm, ranch or residential tank used for

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

storing motor fuel for noncommercial purposes;

(2) pipeline facility, including gathering lines, that [are] is regulated under [~~the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979~~] ~~SCONC→49 U.S.C. 601←SCONC~~ ~~SCONC→Chapter 601 of Title 49 of the United States Code←SCONC~~ or that is an intrastate pipeline facility regulated under state laws [~~comparable to either act~~] as provided in ~~SCONC→49 U.S.C. 601←SCONC~~ ~~SCONC→Chapter 601 of Title 49 of the United States Code←SCONC~~ and that is determined by the United States secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

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

(4) storm water or wastewater collection

system;

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or oil field service industry operations;

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

(8) pipes connected to any tank that is

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

described in Paragraphs (1) through (7) of this subsection; or

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

B. "board" means the environmental improvement board;

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

D. "department" means the department of environment;

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

F. "owner":

(1) means:

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

(b) in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, a person who owned the tank immediately before the

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

discontinuation of its use; and

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

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

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

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

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

H. "regulated substance" means:

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

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

I. "release" means a spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into ground water, surface water or subsurface soils in

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

amounts exceeding twenty-five gallons;

J. "secretary" means the secretary of environment;

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

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

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

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

(2) septic tank;

(3) pipeline facility, including gathering lines, that is regulated under [~~the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979~~] SCONC → 49 U.S.C. 601 ← SCONC SCONC → Chapter 601 of Title 49 of the United States Code ← SCONC or that is an intrastate pipeline facility regulated under state laws

.209128.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

~~[comparable to either act]~~ as provided in ~~SCONC~~→~~49 U.S.C. 601~~
←SCONC SCONC→Chapter 601 of Title 49 of the United States Code
←SCONC and that is determined by the United States secretary of
transportation to be connected to a pipeline, or to be operated
or intended to be capable of operating at pipeline pressure or
as an integral part of a pipeline;

(4) surface impoundment, pit, pond or lagoon;
(5) storm water or wastewater collection
system;

(6) flow-through process tank;
(7) liquid trap, tank or associated gathering
lines directly related to oil or gas production and gathering
operations;

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

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

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

(11) pipes connected to any tank that is
described in Paragraphs (1) through (10) of this subsection."