

1 SENATE BILL 230

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF CHAPTER 74
12 NMSA 1978 TO EXCLUDE FUEL STORAGE TANKS USED SOLELY BY CROP
13 DUSTING OR CROP SPRAYING SERVICES FROM THE DEFINITION OF "ABOVE
14 GROUND STORAGE TANK".

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 74-4-3 NMSA 1978 (being Laws 1977,
18 Chapter 313, Section 3, as amended) is amended to read:

19 "74-4-3. DEFINITIONS.--As used in the Hazardous Waste
20 Act:

21 A. "above ground storage tank" means a single tank
22 or a combination of tanks, including underground pipes
23 connected thereto, that [~~are~~] is used to contain petroleum,
24 including crude oil or any fraction thereof that is liquid at
25 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:

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 used solely by a crop
24 dusting or crop spraying service;

25 [~~8~~] (9) pipes connected to any tank that is

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1 described in Paragraphs (1) through [~~(7)~~] (8) of this
2 subsection; or

3 [~~(9)~~] (10) tanks or related pipelines and
4 facilities owned or used by a refinery, natural gas processing
5 plant or pipeline company in the regular course of [~~their~~] its
6 refining, processing or pipeline business;

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

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

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

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

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

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

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1 including any government corporation and the government
2 printing office;

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

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

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

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

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

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

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

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

8 (b) fly ash waste;

9 (c) bottom ash waste;

10 (d) slag waste;

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

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

18 (g) cement kiln dust waste;

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

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

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1 municipality, commission, political subdivision of a state or
2 any interstate body;

3 N. "regulated substance" means:

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) septic tank;

7 (3) 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 (4) surface impoundment, pit, pond or lagoon;

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

15 (6) flow-through process tank;

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

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

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

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

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

3 (11) pipes connected to any tank that is
4 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 74-6B-3 NMSA 1978 (being Laws 1990,
11 Chapter 124, Section 3, as amended) is amended to read:

12 "74-6B-3. DEFINITIONS.--As used in the Ground Water
13 Protection Act:

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

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

25 (2) pipeline facility, including gathering

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

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1 board;

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

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

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

11 F. "owner":

12 (1) means:

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

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

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

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

25 (b) had an underground storage tank

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1 taken out of operation after January 1, 1974 and removed from
2 the ground prior to November 8, 1984; or

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

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

7 H. "regulated substance" means:

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

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

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

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

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

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

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

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

13 (2) septic tank;

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

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

20 (5) storm water or wastewater collection
21 system;

22 (6) flow-through process tank;

23 (7) liquid trap, tank or associated gathering
24 lines directly related to oil or gas production and gathering
25 operations;

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

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

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

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