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SENATE BILL 61

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Carroll H. Leavell

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE HAZARDOUS WASTE ACT AND THE GROUND WATER PROTECTION ACT TO CLARIFY DEFINITIONS OF STORAGE TANKS AND TO PROVIDE FOR COMPLIANCE WITH THE FEDERAL ENERGY POLICY ACT OF 2005.

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 [~~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~~] used for storing heating oil for consumptive
23 use on the premises where stored;

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

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1 (9) tanks or related pipelines and facilities
2 owned or used by a refinery, natural gas processing plant or
3 pipeline company in the regular course of their refining,
4 processing or pipeline business;

5 B. "board" means the environmental improvement
6 board;

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

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

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

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

21 G. "federal agency" means any department, agency or
22 other instrumentality of the federal government and any
23 independent agency or establishment of that government,
24 including any government corporation and the government
25 printing office;

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

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

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

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

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

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

24 "Hazardous waste" does not include any of the following, until
25 the board determines that they are subject to Subtitle C of the

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1 federal Resource Conservation and Recovery Act of 1976, as
2 amended, 42 U.S.C. 6901 et seq.:

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

6 (b) fly ash waste;

7 (c) bottom ash waste;

8 (d) slag waste;

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

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

16 (g) cement kiln dust waste;

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

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

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1 N. "regulated substance" means:

2 (1) [~~any~~] a substance defined in Section
3 101(14) of the federal Comprehensive Environmental Response,
4 Compensation, and Liability Act of 1980, but not including
5 [~~any~~] a substance regulated as a hazardous waste under Subtitle
6 C of the federal Resource Conservation and Recovery Act of
7 1976, as amended; and

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

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

25 P. "storage" means the containment of hazardous

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1 waste, either on a temporary basis or for a period of years, in
2 such a manner as not to constitute disposal of such hazardous
3 waste;

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

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

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

11 T. "treatment" means any method, technique or
12 process, including neutralization, designed to change the
13 physical, chemical or biological character or composition of
14 [~~any~~] a hazardous waste so as to neutralize [~~such~~] the waste or
15 so as to render [~~such~~] the waste nonhazardous, safer for
16 transport, amenable to recovery, amenable to storage or reduced
17 in volume. "Treatment" includes any activity or processing
18 designed to change the physical form or chemical composition of
19 hazardous waste so as to render it nonhazardous;

20 U. "underground storage tank" means a single tank
21 or combination of tanks, including underground pipes connected
22 thereto, that are used to contain an accumulation of regulated
23 substances and the volume of which, including the volume of the
24 underground pipes connected thereto, is ten percent or more
25 beneath the surface of the ground. "Underground storage tank"

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1 does not include any:

2 (1) farm, ranch or residential tank of one
3 thousand one hundred gallons or less capacity used for storing
4 motor fuel [~~or heating oil~~] for noncommercial purposes;

5 (2) septic tank;

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

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

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

14 (6) flow-through process tank;

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

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

22 (9) tank [~~associated with an emergency~~
23 ~~generator system~~] used for storing heating oil for consumptive
24 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 74-4-4 NMSA 1978 (being Laws 1977,
11 Chapter 313, Section 4, as amended) is amended to read:

12 "74-4-4. DUTIES AND POWERS OF THE BOARD.--

13 A. The board shall adopt rules for the management
14 of hazardous waste, as may be necessary to protect public
15 health and the environment, that are equivalent to and no more
16 stringent than federal regulations adopted by the federal
17 environmental protection agency pursuant to the federal
18 Resource Conservation and Recovery Act of 1976, as amended:

19 (1) for the identification and listing of
20 hazardous wastes, taking into account toxicity, persistence and
21 degradability, potential for accumulation in tissue and other
22 related factors, including flammability, corrosiveness and
23 other hazardous characteristics; provided that, except as
24 authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board
25 shall not identify or list any solid waste or combination of

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1 solid wastes as a hazardous waste that has not been listed and
2 designated as a hazardous waste by the federal environmental
3 protection agency pursuant to the federal Resource Conservation
4 and Recovery Act of 1976, as amended;

5 (2) establishing standards applicable to
6 generators identified or listed under this subsection,
7 including requirements for:

8 (a) furnishing information on the
9 location and description of the generator's facility and on the
10 production or energy recovery activity occurring at that
11 facility;

12 (b) record keeping practices that
13 accurately identify the quantities of hazardous waste
14 generated, the constituents of the waste that are significant
15 in quantity or in potential harm to human health or the
16 environment and the disposition of the waste;

17 (c) labeling practices for any
18 containers used for the storage, transport or disposal of the
19 hazardous waste that will identify accurately the waste;

20 (d) use of safe containers tested for
21 safe storage and transportation of the hazardous waste;

22 (e) furnishing the information on the
23 general chemical composition of the hazardous waste to persons
24 transporting, treating, storing or disposing of the waste;

25 (f) implementation of programs to reduce

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1 the volume or quantity and toxicity of the hazardous waste
2 generated;

3 (g) submission of reports to the
4 secretary at such times as the secretary deems necessary,
5 setting out the quantities of hazardous waste identified or
6 listed pursuant to the Hazardous Waste Act that the generator
7 has generated during a particular time period and the
8 disposition of all hazardous waste reported, the efforts
9 undertaken during a particular time period to reduce the volume
10 and toxicity of waste generated and the changes in volume and
11 toxicity of waste actually achieved during a particular time
12 period in comparison with previous time periods; and

13 (h) the use of a manifest system and any
14 other reasonable means necessary to assure that all hazardous
15 waste generated is designated for treatment, storage or
16 disposal in, and arrives at, treatment, storage or disposal
17 facilities, other than facilities on the premises where the
18 waste is generated, for which a permit has been issued pursuant
19 to the Hazardous Waste Act; ~~and~~ that the generator of
20 hazardous waste has a program in place to reduce the volume or
21 quality and toxicity of waste to the degree determined by the
22 generator to be economically practicable and that the proposed
23 method of treatment, storage or disposal is that practicable
24 method currently available to the generator that minimizes the
25 present and future threat to human health and the environment;

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1 (3) establishing standards applicable to
2 transporters of hazardous waste identified or listed under this
3 subsection or of fuel produced from any such hazardous waste or
4 of fuel from such waste and any other material, as may be
5 necessary to protect human health and the environment,
6 including but not limited to requirements for:

7 (a) record keeping concerning the
8 hazardous waste transported and its source and delivery points;

9 (b) transportation of the hazardous
10 waste only if properly labeled;

11 (c) compliance with the manifest system
12 referred to in Subparagraph (h) of Paragraph (2) of this
13 subsection; and

14 (d) transportation of all the hazardous
15 waste only to the hazardous waste treatment, storage or
16 disposal [~~facilities~~] facility that the shipper designates on
17 the manifest form to be a facility holding a permit issued
18 pursuant to the Hazardous Waste Act or the federal Resource
19 Conservation and Recovery Act of 1976, as amended;

20 (4) establishing standards applicable to
21 distributors or marketers of any fuel produced from hazardous
22 waste, or any fuel that contains hazardous waste, for:

23 (a) furnishing the information stating
24 the location and general description of the facility; and

25 (b) furnishing the information

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1 describing the production or energy recovery activity carried
2 out at the facility;

3 (5) establishing performance standards as may
4 be necessary to protect human health and the environment
5 applicable to owners and operators of facilities for the
6 treatment, storage or disposal of hazardous waste identified or
7 listed under this section, distinguishing, where appropriate,
8 between new facilities and facilities in existence on the date
9 of promulgation, including requirements for:

10 (a) maintaining the records of all
11 hazardous waste identified or listed under this subsection that
12 is treated, stored or disposed of, as the case may be, and the
13 manner in which [~~such~~] the waste was treated, stored or
14 disposed of;

15 (b) satisfactory reporting, monitoring,
16 inspection and compliance with the manifest system referred to
17 in Subparagraph (h) of Paragraph (2) of this subsection;

18 (c) treatment, storage or disposal of
19 all such waste and any liquid that is not a hazardous waste,
20 except with respect to underground injection control into deep
21 injection wells, received by the facility pursuant to such
22 operating methods, techniques and practices as may be
23 satisfactory to the secretary;

24 (d) location, design and construction of
25 hazardous waste treatment, disposal or storage facilities;

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1 (e) contingency plans for effective
2 action to minimize unanticipated damage from any treatment,
3 storage or disposal of any hazardous waste;

4 (f) maintenance and operation of the
5 facilities and requiring any additional qualifications as to
6 ownership, continuity of operation, training for personnel and
7 financial responsibility, including financial responsibility
8 for corrective action, as may be necessary or desirable;

9 (g) compliance with the requirements of
10 Paragraph (6) of this subsection respecting permits for
11 treatment, storage or disposal;

12 (h) the taking of corrective action for
13 all releases of hazardous waste or constituents from ~~[any]~~ a
14 solid waste management unit at a treatment, storage or disposal
15 facility, regardless of the time at which waste was placed in
16 the unit; and

17 (i) the taking of corrective action
18 beyond a facility's boundaries where necessary to protect human
19 health and the environment unless the owner or operator of that
20 facility demonstrates to the satisfaction of the secretary
21 that, despite the owner's or operator's best efforts, the owner
22 or operator was unable to obtain the necessary permission to
23 undertake such action. Rules adopted and promulgated under
24 this subparagraph shall take effect immediately and shall apply
25 to all facilities operating under permits issued under

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1 Paragraph (6) of this subsection and to all landfills, surface
2 impoundments and waste pile units, including any new units,
3 replacements of existing units or lateral expansions of
4 existing units, that receive hazardous waste after July 26,
5 1982. No private entity shall be precluded by reason of
6 criteria established under Subparagraph (f) of this paragraph
7 from the ownership or operation of facilities providing
8 hazardous waste treatment, storage or disposal services where
9 the entity can provide assurance of financial responsibility
10 and continuity of operation consistent with the degree and
11 duration of risks associated with the treatment, storage or
12 disposal of specified hazardous waste;

13 (6) requiring each person owning or operating,
14 or both, an existing facility or planning to construct a new
15 facility for the treatment, storage or disposal of hazardous
16 waste identified or listed under this subsection to have a
17 permit issued pursuant to requirements established by the
18 board;

19 (7) establishing procedures for the issuance,
20 suspension, revocation and modification of permits issued under
21 Paragraph (6) of this subsection, which rules shall provide for
22 public notice, public comment and an opportunity for a hearing
23 prior to the issuance, suspension, revocation or major
24 modification of any permit unless otherwise provided in the
25 Hazardous Waste Act;

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1 (8) defining major and minor modifications;

2 and

3 (9) establishing procedures for the inspection
4 of facilities for the treatment, storage and disposal of
5 hazardous waste that govern the minimum frequency and manner of
6 the inspections, the manner in which records of the inspections
7 shall be maintained and the manner in which reports of the
8 inspections shall be filed; provided, however, that inspections
9 of permitted facilities shall occur no less often than every
10 two years.

11 B. The board shall adopt rules:

12 (1) concerning hazardous substance incidents;
13 and

14 (2) requiring notification to the department
15 of any hazardous substance incidents.

16 C. The board shall adopt rules concerning storage
17 tanks as may be necessary to protect public health and the
18 environment and that, in the case of underground storage tanks,
19 are equivalent to and no more stringent than federal
20 regulations adopted by the federal environmental protection
21 agency pursuant to the federal Resource Conservation and
22 Recovery Act of 1976, as amended.

23 D. The board shall adopt rules concerning storage
24 tanks that implement the federal Energy Policy Act of 2005,
25 Pub. L. 109-58, as amended, and that are equivalent to and no

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1 more stringent than the Energy Policy Act and its grant
2 guidelines and regulations.

3 E. Rules adopted pursuant to this [subsection]
4 section shall include:

5 (1) standards for the installation, operation,
6 [~~and~~] maintenance, repair and replacement of storage tanks;

7 (2) requirements for financial responsibility;

8 (3) standards for inventory control;

9 (4) standards for the detection of leaks from
10 and the integrity-testing and monitoring of storage tanks;

11 (5) standards for the closure and dismantling
12 of storage tanks;

13 (6) requirements for record keeping; [~~and~~]

14 (7) requirements for the reporting,
15 containment and remediation of all leaks from any storage
16 tanks; and

17 (8) criteria and procedures for classifying a
18 storage tank facility as ineligible, and reclassifying a
19 storage tank facility as eligible, for the delivery, deposit,
20 acceptance or sale of petroleum products.

21 F. The criteria and procedures adopted by the board
22 pursuant to this section shall require the department to
23 classify a storage tank facility as ineligible for delivery,
24 deposit, acceptance or sale of petroleum products if the
25 storage tank facility has not installed required equipment for

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1 spill prevention, overfill protection, leak detection or
2 corrosion protection, including required corrosion protection
3 equipment for a buried metal flexible connector.

4 G. The criteria and procedures adopted by the board
5 pursuant to this section may allow the department to classify a
6 storage tank facility as ineligible for delivery, deposit,
7 acceptance or sale of petroleum products when the owner or
8 operator has failed to comply with a written warning within a
9 reasonable period of time and the warning concerns:

10 (1) improper operation or maintenance of
11 required equipment for spill prevention, overfill protection,
12 leak detection or corrosion protection;

13 (2) failure to maintain required financial
14 responsibility for corrective action; or

15 (3) operation of the storage tank facility in
16 a manner that creates an imminent threat to the public health
17 and the environment.

18 H. Rules adopted by the board pursuant to this
19 section shall allow the department to defer classifying a
20 storage tank facility as ineligible for delivery, deposit,
21 acceptance or sale of petroleum products for a limited period
22 of up to one hundred eighty days if the ineligible
23 classification would not be in the best interest of the public
24 because it would jeopardize the availability of, or access to,
25 motor fuel in any rural and remote areas.

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1 I. Rules adopted by the board pursuant to this
2 section shall allow the department to authorize delivery or
3 deposit of petroleum products to:

4 (1) an emergency generator tank that is
5 otherwise ineligible for delivery or deposit if a commercial
6 power failure or other declared state of emergency exists and
7 the emergency generator tank provides power supply, stores
8 petroleum and is used solely in connection with an emergency
9 system, legally required standby system or optional standby
10 system; or

11 (2) a storage tank facility that is otherwise
12 ineligible for delivery or deposit if the delivery or deposit
13 is necessary to test or calibrate a tank.

14 ~~[D-]~~ J. Notwithstanding the provisions of
15 Subsection A of this section, the board may adopt rules for the
16 management of hazardous waste and hazardous waste
17 transformation that are more stringent than federal regulations
18 adopted by the federal environmental protection agency pursuant
19 to the federal Resource Conservation and Recovery Act of 1976,
20 as amended, if the board determines, after notice and public
21 hearing, that such federal regulations are not sufficient to
22 protect public health and the environment. As used in this
23 subsection, "transformation" means incineration, pyrolysis,
24 distillation, gasification or biological conversion other than
25 composting.

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1 ~~[E-]~~ K. The board shall adopt rules concerning the
2 management of used oil that are equivalent to and no more
3 stringent than federal regulations adopted by the federal
4 environmental protection agency pursuant to the federal
5 Resource Conservation and Recovery Act of 1976, as amended.

6 ~~[F-]~~ L. In the event the board wishes to adopt
7 rules that are identical with regulations adopted by an agency
8 of the federal government, the board, after notice and hearing,
9 may adopt such rules by reference to the federal regulations
10 without setting forth the provisions of the federal
11 regulations."

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

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

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

25 (1) farm, ranch or residential tank used for

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1 storing motor fuel [~~or heating oil~~] for noncommercial purposes;

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

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

8 (4) storm water or wastewater collection
9 system;

10 (5) flow-through process tank;

11 (6) liquid trap, tank or associated gathering
12 lines or other storage methods or devices related to oil, gas
13 or mining exploration, production, transportation, refining,
14 processing or storage, or [~~the~~] oil field service industry
15 operations;

16 (7) tank [~~associated with an emergency~~
17 ~~generator system~~] used for storing heating oil for consumptive
18 use on the premises where stored;

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

22 (9) tanks or related pipelines and facilities
23 owned or used by a refinery, natural gas processing plant or
24 pipeline company in the regular course of their refining,
25 processing or pipeline business;

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1 B. "board" means the environmental improvement
2 board;

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

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

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

12 F. "owner":

13 (1) means:

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

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

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

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

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

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

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

8 H. "regulated substance" means:

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

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

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

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

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

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1 tanks;

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

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

11 (1) farm, ranch or residential tank of one
12 thousand one hundred gallons or less capacity used for storing
13 motor fuel [~~or heating oil~~] for noncommercial purposes;

14 (2) septic tank;

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

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

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

23 (6) flow-through process tank;

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

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underscoring material = new
[bracketed material] = delete

1 operations;

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

6 (9) tank [~~associated with an emergency~~
7 ~~generator system~~] used for storing heating oil for consumptive
8 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."

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