

ASSEMBLY BILL NO. 40—COMMITTEE ON NATURAL RESOURCES

(ON BEHALF OF THE DIVISION OF ENVIRONMENTAL PROTECTION OF THE STATE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Natural Resources

SUMMARY—Revises provisions relating to petroleum storage tanks. (BDR 40-343)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to storage tanks; revising provisions governing responsibility for discharges from certain storage tanks; revising the requirements relating to the eligibility of a storage tank for the coverage of certain costs from the Fund for Cleaning Up Discharges of Petroleum; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law: (1) the State Department of Conservation and Natural
2 Resources is required to impose fees on the importation of certain fuels into this
3 State; and (2) the Division of Environmental Protection of the Department is
4 required to impose an annual fee on certain operators of storage tanks for the
5 registration of storage tanks used to store petroleum in this State. (NRS 445C.330,
6 445C.340) The money collected from such fees is required to be deposited into the
7 Fund for Cleaning Up Discharges of Petroleum, and used, in part, to: (1) reimburse
8 the Division for the costs of cleaning up discharges involving petroleum, heating oil
9 and certain petrochemicals from storage tanks and mobile tanks; and (2) provide
10 financial assistance to operators of petroleum storage tanks for certain costs related
11 to compliance with federal laws and regulations relating to preventing discharge of
12 petroleum from a storage tank. (NRS 445C.310, 445C.320, 445C.360-445C.380)
13 The Board to Review Claims is required by existing law to adopt regulations
14 relating to the Fund. (NRS 445C.310)

15 For the purposes of this existing law, **sections 1 and 2** of this bill expand the
16 definitions of “operator” and “storage tank.” (NRS 445C.250, 445C.280) **Section 1**
17 of this bill expands the definition of “operator” from a person who owns, controls,
18 or is responsible for the operation of a storage tank to a person who: (1) owns,



19 controls or is responsible for the operation and management of a storage tank or a
20 discharge from a storage tank; (2) was previously in charge of a storage tank
21 immediately before the use of the storage tank was discontinued; (3) owns the
22 property on which the storage tank is or was previously located; or (4) owns the
23 property on which a discharge from a storage tank has occurred and is responsible
24 for the management and cleanup of the discharge. **Section 3** of this bill makes a
25 conforming change by removing a conflicting definition of "operator." **Section 2** of
26 this bill revises the definition of "storage tank" to include the distribution piping
27 associated with the tank. **Sections 4-8** of this bill make conforming changes by
28 replacing certain references to a "tank" with "storage tank."

29 Federal regulations set forth tank tightness testing standards for storage tanks.
30 (40 C.F.R. § 280.43(c)) Unless a tank has been tested for tightness according to
31 those federal regulations since July 1, 1988, existing law requires each operator
32 who is required, or who chooses, to register a tank to test the tank pursuant to those
33 federal regulations before the tank is eligible for coverage of certain costs from the
34 Fund. (NRS 445C.360) Federal regulations additionally set forth line tightness
35 testing standards. (40 C.F.R. § 280.44(b)) **Section 4** of this bill instead requires
36 that, before a storage tank is eligible for the coverage of certain costs from the
37 Fund, the operator must, unless the storage tank has been tested for tank and line
38 tightness according to both federal regulations within the previous 6 months,
39 demonstrate that: (1) the storage tank is being monitored for a discharge; and (2) a
40 discharge has not occurred.

41 Existing law allocates the costs of payment relating to the cleanup of discharges
42 of petroleum from storage tanks between the Fund and the operator of the storage
43 tank. (NRS 445C.370, 445C.380) Existing law prescribes a specific allocation with
44 respect to the owner of a small business who is responsible for a discharge. (NRS
45 445C.380) **Section 6** of this bill removes the definition of "small business" in
46 existing law and instead requires the Board to Review Claims to define "small
47 business" by regulation. **Sections 4 and 8** of this bill remove references to
48 inapplicable existing law relating to the allocation of costs for discharges.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 445C.250 is hereby amended to read as
2 follows:

3 445C.250 "Operator" means a person who ~~owns~~:

4 *1. Owns, controls or is responsible for the operation and*
5 *management of a storage tank ~~or~~ or a discharge from a storage*
6 *tank;*

7 *2. Previously owned, controlled or was responsible for the*
8 *operation and management of a storage tank immediately before*
9 *the use of the storage tank was discontinued;*

10 *3. Owns the property on which a storage tank is operated and*
11 *managed, or was previously operated and managed if the use of*
12 *the storage tank was discontinued; or*

13 *4. Owns property on which a discharge from a storage tank*
14 *has occurred and is responsible for the management and cleanup*
15 *of the discharge.*



1 **Sec. 2.** NRS 445C.280 is hereby amended to read as follows:
2 445C.280 “Storage tank” means any tank, *and the distribution*
3 *pipng associated with the tank*, used to store petroleum, except
4 petroleum for use in a chemical process.

5 **Sec. 3.** NRS 445C.320 is hereby amended to read as follows:
6 445C.320 Notwithstanding any provision of NRS 445C.150 to
7 445C.410, inclusive, to the contrary, and except as otherwise
8 provided in this section:

9 1. The Division may expend not more than \$2,000,000 from
10 the Fund per fiscal year as reimbursement for necessary costs
11 incurred by the Division in the response to and cleanup of
12 discharges in the State, including discharges from a storage tank and
13 discharges from a mobile tank that occur during the transportation
14 of petroleum or a petrochemical on roads and highways. The Interim
15 Finance Committee may approve the expenditure of more than
16 \$2,000,000 from the Fund in a fiscal year for the purposes described
17 in this subsection. If a discharge also involves another hazardous
18 material, the Division may expend money pursuant to this section in
19 the cleanup of the discharge and the other hazardous material. The
20 Division shall not expend money from the Fund pursuant to this
21 section to clean up discharges from pipelines.

22 2. Except as otherwise provided in this subsection, money from
23 the Fund expended by the Division pursuant to this section must be
24 used to augment, and must not be used to replace or supplant, any
25 money available from other sources for the cleanup of discharges,
26 including, without limitation, reimbursements by operators required
27 to be made to the Division pursuant to NRS 445C.340 and
28 445C.360. If no money is available from those other sources, the
29 Division may expend money from the Fund pursuant to this section
30 to reimburse the Division for any costs specified in subsection 1.

31 3. If the Division expends money pursuant to this section to
32 clean up a discharge involving:

33 (a) Petroleum, the operator of the tank shall reimburse the
34 Division for the operator’s share of the costs for cleaning up the
35 discharge.

36 (b) A petrochemical, the person who is responsible for the
37 discharge shall reimburse the Division for the person’s share of the
38 costs for cleaning up the discharge.

39 ↪ The Division shall, upon being reimbursed pursuant to this
40 subsection, deposit that money in the Fund.

41 4. As used in this section:

42 (a) “Discharge” means, unless authorized by state or federal law,
43 any:

44 (1) Release of a petrochemical into water or soil; or



1 (2) Release, leaking or spilling of petroleum or a
2 petrochemical from a tank into water or soil.

3 (b) ~~“Operator” means a person who owns, controls or is~~
4 ~~responsible for the operation of a tank.~~

5 ~~—(c)~~ “Petrochemical” means a chemical derived from petroleum
6 or a petroleum feedstock, including, without limitation,
7 perchloroethylene and any degradation product of
8 perchloroethylene.

9 ~~[(d)]~~ (c) “Tank” means a storage tank or a mobile tank used to
10 transport petroleum or a petrochemical received for sale or use in
11 this State.

12 **Sec. 4.** NRS 445C.360 is hereby amended to read as follows:

13 445C.360 1. The operator of every storage tank, and every
14 person who for compensation puts petroleum into a storage tank,
15 shall report to the Division every discharge from that *storage* tank of
16 which the operator or other person is aware or has reason to believe
17 has occurred. The Division shall undertake or contract for cleaning
18 up the discharge unless the operator or another person is already
19 acting properly to clean it up. If the Division cleans up the
20 discharge, the operator shall reimburse the Division for the
21 operator’s share of the costs. If, in cleaning up the discharge,
22 the Division expends money from the Fund in accordance with NRS
23 445C.320, the Division shall, upon being reimbursed by the operator
24 of the storage tank pursuant to this subsection, deposit that money in
25 the Fund.

26 2. ~~Each~~ *Before a storage tank is eligible for the coverage*
27 *provided by NRS 445C.380, each* operator who is required
28 *pursuant to subsection 1 of NRS 445C.340* or who chooses to
29 register a *storage* tank must, unless the *storage* tank has been tested
30 for tightness under the federal standards embodied in 40 C.F.R. ~~§~~
31 ~~280.43e since July 1, 1988, test the tank pursuant to those standards~~
32 ~~before it is eligible for the coverage provided by NRS 445C.370 and~~
33 ~~445C.380.] §§ 280.43(c) and 280.44(b) within the previous 6~~
34 *months, demonstrate that:*

- 35 (a) *The storage tank is being monitored for a discharge; and*
36 (b) *A discharge has not occurred.*

37 **Sec. 5.** NRS 445C.370 is hereby amended to read as follows:

38 445C.370 The costs resulting from a discharge from a storage
39 tank which has a capacity of 1,100 gallons or less and is used to
40 store heating oil for consumption on the same premises where the
41 oil is stored must be paid as follows, to the extent applicable:

42 1. The first \$250 for cleaning up and the first \$250 of liability
43 for damages to a person other than this State or the operator of the
44 *storage* tank, or both amounts, by the operator.



1 2. If necessary to protect the environment or the public health
2 and safety, the next \$250,000 for cleaning up and the next \$250,000
3 for damages to a person other than this State or the operator of the
4 *storage* tank, or both amounts, from the Fund. These limits apply to
5 any one discharge and to the total for discharges from storage tanks
6 controlled by any one operator in any fiscal year. For the purpose of
7 this limitation, a group of operators more than 50 percent of whose
8 net worth is beneficially owned by the same person or persons
9 constitutes one operator.

10 3. Any further cost for cleaning up or for damages, by the
11 operator.

12 **Sec. 6.** NRS 445C.380 is hereby amended to read as follows:

13 445C.380 If the costs resulting from a discharge from any
14 other storage tank exceed \$5,000, the costs must be paid as follows,
15 to the extent applicable:

16 1. By an operator which is an agency, department, division or
17 political subdivision of the State, 10 percent or \$10,000, whichever
18 is less, of the first \$1,000,000 for cleaning up each *storage* tank and
19 of the first \$1,000,000 of liability for damages from each *storage*
20 tank to any person other than this State or the operator of the *storage*
21 tank, or both amounts. The balance of the first \$1,000,000 for
22 cleaning up each *storage* tank or for damages from each *storage*
23 tank must be paid from the Fund, but the total amount paid from the
24 Fund pursuant to this subsection in any one fiscal year for
25 discharges from two or more storage tanks under the control of any
26 one operator must not exceed \$1,980,000 for cleaning up and
27 \$1,980,000 for damages.

28 2. By an operator which is a small business, 10 percent of the
29 first \$1,000,000 for cleaning up each *storage* tank and of the first
30 \$1,000,000 of liability for damages from each *storage* tank to a
31 person other than this State or the operator of the *storage* tank, or
32 both amounts. The total amount paid by an operator pursuant to this
33 subsection must not exceed \$50,000 for cleaning up and \$50,000 for
34 damages regardless of the number of storage tanks involved. The
35 balance of the first \$1,000,000 for cleaning up each *storage* tank or
36 for damages from each *storage* tank must be paid from the Fund, but
37 the total amount paid from the Fund pursuant to this subsection in
38 any one fiscal year for discharges from two or more storage tanks
39 under the control of any one operator must not exceed \$1,900,000
40 for cleaning up and \$1,900,000 for damages. For the purpose of this
41 limitation, a group of operators more than 50 percent of whose net
42 worth is beneficially owned by the same person or persons
43 constitutes one operator.

44 3. By all other operators:



1 (a) Ten percent of the first \$1,000,000 for cleaning up each
2 *storage* tank and of the first \$1,000,000 of liability for damages
3 from each *storage* tank to a person other than this State or the
4 operator of the *storage* tank, or both amounts.

5 (b) Ninety percent of the first \$1,000,000 for cleaning up each
6 *storage* tank or for damages from each *storage* tank must be paid
7 from the Fund.

8 ↪ The total amount paid from the Fund pursuant to paragraph (b) in
9 any one fiscal year for discharges from two or more storage tanks
10 under the control of any one operator must not exceed \$1,800,000
11 for cleaning up and \$1,800,000 for damages. For the purpose of this
12 limitation, a group of operators more than 50 percent of whose net
13 worth is beneficially owned by the same person or persons
14 constitutes one operator.

15 4. Any further cost for cleaning up or for damages which is in
16 excess of the amounts paid pursuant to subsections 1, 2 and 3 must
17 be paid by the operator.

18 5. A political subdivision of the State that receives money from
19 the Fund pursuant to subsection 1 to pay for the costs of cleaning up
20 shall hold one public hearing upon initiation of the cleanup and one
21 public hearing every 3 months thereafter until the cleanup is
22 completed to ensure that the cleanup complies with any
23 requirements of the Division concerning the cost-effectiveness of
24 cleaning up. The costs incurred by the political subdivision for the
25 hearing must not be attributed to the political subdivision as part of
26 the costs paid by the political subdivision pursuant to subsection 1.

27 6. For the purposes of this section, ~~[a small business is a~~
28 ~~business which receives less than \$500,000 in gross annual receipts~~
29 ~~from the site where the tank is located.]~~ *the Board shall define by*
30 *regulation "small business."*

31 **Sec. 7.** NRS 445C.390 is hereby amended to read as follows:

32 445C.390 1. Any person who, through willful or wanton
33 misconduct, through gross negligence or through violation of any
34 applicable statute or regulation, including specifically any state or
35 federal standard pertaining to the preparation or maintenance of sites
36 for storage tanks, proximately causes a discharge is liable to the
37 Division for any cost in cleaning up the discharge or paying for it to
38 be cleaned up.

39 2. If a discharge occurs, the site of the *storage* tank and any
40 other premises affected by the discharge must be brought
41 into compliance with any applicable standard as described in
42 subsection 1.



1 **Sec. 8.** NRS 445C.410 is hereby amended to read as follows:
2 445C.410 1. Except as otherwise specifically provided in
3 NRS 445C.320, the provisions of NRS 445C.340 to 445C.400,
4 inclusive, do not apply to any *storage* tank which:

5 (a) Contains petroleum being transported through this State in
6 interstate commerce, but do apply to a *storage* tank being used to
7 store petroleum received for sale or use in this State;

8 (b) Contains fuel for jet or turbine-powered aircraft, or is above
9 ground and has a capacity of 30,000 gallons or less, unless in either
10 case the operator complies with subsection 2; or

11 (c) Is above ground and has a capacity of more than 30,000
12 gallons.

13 2. The operator of a tank exempted by paragraph (b) of
14 subsection 1 may obtain the coverage provided by NRS ~~445C.370~~
15 ~~and~~ 445C.380 by applying to the Board, paying the fee set pursuant
16 to NRS 445C.340 for its registration, and, if the tank is used to store
17 fuel for jet or turbine-powered aircraft, reporting monthly the
18 number of gallons of fuel put into the tank and paying the fee
19 required by NRS 445C.330. Coverage pursuant to this subsection
20 begins 6 months after the tank is registered and the required fee first
21 paid.

22 **Sec. 9.** 1. This section becomes effective upon passage and
23 approval.

24 2. Sections 1 to 8, inclusive, of this act become effective:

25 (a) Upon passage and approval for the purpose of adopting any
26 regulations and performing any other preparatory administrative
27 tasks that are necessary to carry out the provisions of this act; and

28 (b) On July 1, 2021, for all other purposes.

