
ASSEMBLY BILL NO. 535—COMMITTEE ON NATURAL RESOURCES, AGRICULTURE
AND MINING

(ON BEHALF OF COMMISSION ON WORKPLACE SAFETY)

MARCH 15, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Expands and revises provisions governing regulation of facilities where highly hazardous substances are produced, used, stored or handled. (BDR 40-779)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to public safety; providing in skeleton form for the registration and regulation of facilities that produce and store explosives by the division of environmental protection of the state department of conservation and natural resources; requiring an assessment of risks through analysis of hazards to be conducted at a facility where highly hazardous substances are located when such a substance is newly introduced into the facility; abolishing the requirement that the division establish a schedule for such assessments; providing penalties; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 459 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2.** ***“Explosive” means gunpowders, powders used for blasting,***
4 ***all forms of high explosives, blasting materials, fuses other than electric***
5 ***circuit breakers, detonators and other detonating agents, smokeless***
6 ***powders, other explosive or incendiary devices and any chemical***
7 ***compound, mechanical mixture or device that contains any oxidizing and***
8 ***combustible units, or other ingredients, in such proportions, quantities or***
9 ***packing that ignition by fire, friction, concussion, percussion, or***
10 ***detonation of the compound, mixture or device or any part thereof may***
11 ***cause an explosion. The term includes any mixture of ammonium nitrate***
12 ***and fuel oil.***

1 **Sec. 3. 1. At least 60 days before a highly hazardous substance or**
2 **explosive is newly introduced into a regulated facility, the owner or**
3 **operator of the facility shall submit the facility to an assessment of risks**
4 **through analysis of hazards.**

5 **2. The owner or operator of a regulated facility shall not newly**
6 **introduce into the facility a highly hazardous substance or explosive:**

7 **(a) Until the recommendations in the plan to abate hazards proposed**
8 **by the person who conducted the assessment are carried out; or**

9 **(b) If written modifications are proposed to the plan to abate hazards,**
10 **until a plan to reduce accidents is issued by the division pursuant to NRS**
11 **459.386 and the owner of the facility complies with the requirements of**
12 **the plan.**

13 **Sec. 4.** NRS 459.3802 is hereby amended to read as follows:

14 459.3802 As used in NRS 459.380 to 459.3874, inclusive, **and**
15 **sections 2 and 3 of this act**, unless the context otherwise requires, the
16 words and terms defined in NRS 459.3804 to 459.3812, inclusive, **and**
17 **section 2 of this act**, have the meanings ascribed to them in those sections.

18 **Sec. 5.** NRS 459.381 is hereby amended to read as follows:

19 459.381 “Regulated facility” means a building, equipment and
20 contiguous area where ~~highly~~ :

21 **1. Highly** hazardous substances are produced, used, stored or handled
22 ~~highly~~ ; or

23 **2. Explosives are produced and stored.**

24 **Sec. 6.** NRS 459.3813 is hereby amended to read as follows:

25 459.3813 1. Except as otherwise provided in this section and NRS
26 459.3814, the provisions of NRS 459.380 to 459.3874, inclusive, and this
27 section , **and sections 2 and 3 of this act**, apply to a regulated facility that
28 ~~produces~~ :

29 **(a) Produces**, uses, stores or handles a highly hazardous substance in a
30 quantity:

31 ~~(a)~~ **(1)** Equal to or greater than the amount set forth in NRS
32 459.3816; or

33 ~~(b)~~ **(2)** Less than the amount set forth in NRS 459.3816 if there are
34 two or more releases from the regulated facility of the same or different
35 highly hazardous substances during any 12-month period and:

36 ~~(1)~~ **(I)** The release of the highly hazardous substances is reportable
37 pursuant to 40 C.F.R. Part 302; or

38 ~~(2)~~ **(II)** Each quantity released is equal to or greater than a
39 maximum quantity allowable as established by regulation of the state
40 environmental commission ~~highly~~ ; or

41 **(b) Produces and stores explosives.**

2. A regulated facility described in ~~paragraph (b)~~ **subparagraph (2) of paragraph (a)** of subsection 1 is exempt from complying with the provisions of NRS 459.380 to 459.3874, inclusive, and this section, **and sections 2 and 3 of this act**, if:

(a) The division determines that the regulated facility has:

(1) Carried out the detailed plan to abate hazards recommended pursuant to subsection 8 of NRS 459.3852; and

(2) Complied with such other provisions of NRS 459.380 to 459.3874, inclusive, and this section, **and sections 2 and 3 of this act**, and the regulations adopted pursuant thereto, as the division requires; and

(b) The regulated facility obtains an exemption from the state environmental commission. The state environmental commission shall adopt by regulation the procedures for obtaining such an exemption.

3. As used in this section, "highly hazardous substance" means any substance designated as such in NRS 459.3816 or any regulations adopted pursuant thereto.

Sec. 7. NRS 459.3824 is hereby amended to read as follows:

459.3824 1. The owner of a regulated facility shall pay to the division an annual fee based on the fiscal year. The annual fee for each facility is the sum of a base fee set by the state environmental commission and any additional fee imposed by the commission pursuant to subsection 2. The annual fee must be prorated and may not be refunded.

2. The state environmental commission may impose an additional fee upon the owner of a regulated facility in an amount determined by the commission to be necessary to enable the division to carry out its duties pursuant to NRS 459.380 to 459.3874, inclusive. The additional fee must be based on a graduated schedule adopted by the commission which takes into consideration the quantity of hazardous substances **or explosives** located at each facility.

3. After the payment of the initial annual fee, the division shall send the owner of a regulated facility a bill in July for the annual fee for the fiscal year then beginning which is based on the applicable reports for the preceding year.

4. The owner of a regulated facility shall submit, with any payment required by this section, the number assigned by the department of taxation, for the imposition and collection of taxes pursuant to chapter 364A of NRS, to the business for which the payment is made.

5. All fees collected pursuant to this section and any interest earned thereon must be deposited with the state treasurer for credit to the fund for precaution against chemical accidents ~~and~~ **and explosives**, which is hereby created as a special revenue fund.

Sec. 8. NRS 459.3828 is hereby amended to read as follows:

459.3828 1. The division shall develop and issue a form for registration to be completed by the owner or operator of each facility in the state which at any time ~~{produces,}~~ :

(a) *Produces*, uses, stores or handles any highly hazardous substance in the quantity required to make it hazardous, or more ~~{}~~ ; or

(b) *Produces and stores any explosive.*

2. This form must provide, in addition to any other information that may be required by the division:

(a) A list of the highly hazardous substances produced, used, stored or handled at the facility and the quantity of each, which must identify whether those substances are end products, intermediate products, by-products or waste products ~~{}~~ ;

~~—(b)—A}~~ , *if the facility produces, uses, stores or handles highly hazardous substances;*

(b) *A list of the explosives produced and stored at the facility and the quantity of each, if the facility produces and stores explosives;*

(c) A general description of the process and principal equipment involved in the management of the substances ~~{}~~ ;

~~—(e)—or explosives;~~

(d) A description of the area in which the facility is situated, including its proximity to population and water supplies;

~~{(d)}~~ (e) The extent to which the hazards of the facility have been identified, evaluated and abated, and the expert knowledge and affiliation of the evaluators and any direct or indirect relationship between the evaluators and the owner or operator of the facility; and

~~{(e)}~~ (f) The name or names of all insurance carriers underwriting the environmental liability of the facility and the scope of these policies, including any limitations and exclusions.

~~{2.—Within 90 days after a substance is added to the list of highly hazardous substances and within 10 days after a listed substance is newly introduced into a facility, the}~~

3. *The* owner or operator of the facility shall file with the division the registration form developed and issued by the division and the report on safety of the facility required by NRS 459.383 ~~{}~~ *within 90 days:*

(a) *After a substance is added to the list of highly hazardous substances, if the facility produces, uses, stores or handles highly hazardous substances;*

(b) *Before a highly hazardous substance is newly introduced into the facility, if the facility produces, uses, stores or handles hazardous substances; and*

(c) *Before an explosive is newly introduced into the facility, if the facility produces and stores explosives.*

1 (b) The qualifications and experience of additional personnel who may
2 be assigned as needed; and

3 (c) The level of effort to be dedicated and a schedule, including the total
4 time, for performing the assessment, including the following:

- 5 (1) Names of personnel assigned;
6 (2) Expected dates of starting and completion;
7 (3) Estimated total hours for all personnel; and
8 (4) Scope and extent of usage of collateral items such as computers
9 and outside consultants.

10 **Sec. 11.** NRS 459.3872 is hereby amended to read as follows:

11 459.3872 1. If any person violates any of the provisions of NRS
12 459.380 to 459.386, inclusive, or 459.387, *or section 3 of this act*, or any
13 regulation or order adopted or issued pursuant thereto, the division may
14 institute a civil action in a court of competent jurisdiction for injunctive or
15 any other appropriate relief to prohibit and prevent the violation and the
16 court may proceed in the action in a summary manner.

17 2. Except as otherwise provided in NRS 445C.010 to 445C.120,
18 inclusive, a person who violates a provision of NRS 459.380 to 459.386,
19 inclusive, or 459.387, *or section 3 of this act*, or any regulation or order
20 adopted pursuant thereto is liable to a civil administrative penalty as set
21 forth in NRS 459.3874. If the violation is of a continuing nature, each day
22 during which it continues constitutes an additional, separate and distinct
23 offense. No civil administrative penalty may be levied until after
24 notification to the violator by certified mail or personal service. The notice
25 must include a reference to the section of the statute, regulation, order or
26 condition of a permit violated, a concise statement of the facts alleged to
27 constitute the violation, a statement of the amount of the civil penalties to
28 be imposed, and a statement of the violator's right to a hearing. The
29 violator has 20 days after receipt of the notice within which to deliver to
30 the division a written request for a hearing. After the hearing if requested,
31 and upon a finding that a violation has occurred, the administrator of the
32 division may issue a final order after assessing the amount of the fine
33 specified in the notice. If no hearing is requested, the notice becomes a
34 final order upon the expiration of the 20-day period. Payment of the
35 penalty is due when a final order is issued or when the notice becomes a
36 final order. The authority to levy a civil administrative penalty is in
37 addition to all other provisions for enforcement of NRS 459.380 to
38 459.387, inclusive, and the payment of a civil administrative penalty does
39 not affect the availability of any other provision for enforcement in
40 connection with the violation for which the penalty is levied.

41 **Sec. 12.** NRS 459.3874 is hereby amended to read as follows:

42 459.3874 1. The civil administrative penalties are:

<u>Category of Offense</u>	<u>Penalty in U.S. Dollars</u>
A. Failure to register a new or existing regulated facility:\$25,000 plus \$2,000 per day from the due date	
B. Failure to pay annual fee: 75 percent of the fee	
C. Failure to submit a safety report:\$10,000 plus \$1,000 per day from the due date	
D. Failure to conduct an assessment of risk through analysis of hazards pursuant to the conditions set forth in NRS 459.3844:	\$25,000
E. Failure to put into effect plan:	\$50,000
F. Failure to comply with plan to reduce accidents and schedule of compliance:.....	up to \$5,000
G. Failure to comply with approved plan to reduce accidents, each requirement:.....	up to \$10,000
H. Failure to provide information requested by the division:	\$25,000
I. Failure to grant access to employees or agents of division for inspections:	\$25,000
J. Failure to provide information or grant access to employees or agents of division during an emergency:	\$50,000
K. Falsification of information submitted to division: up to \$10,000 per incident	
2. The division may compromise and settle any claim for any penalty under this section in such amount in the discretion of the division as may appear appropriate and equitable under all of the circumstances, including the posting of a performance bond by the violator. If a violator is subject to the imposition of more than one civil administrative penalty for the same violation, the division shall compromise and settle the claim for the penalty under this section in such amount as to avoid the duplication of penalties.	
3. No penalty may be imposed pursuant to this section for the failure to perform a required act within the time required if the delay was caused by a natural disaster or other circumstances which are beyond the control of the violator.	
4. Any person who violates any of the provisions of NRS 459.380 to 459.386, inclusive, or 459.387, or section 3 of this act , or any regulation or order adopted or issued pursuant thereto, or an administrative order issued pursuant to subsection 2 of NRS 459.3872 or a court order issued pursuant to subsection 1 of NRS 459.3872, or who fails to pay a civil administrative penalty in full is subject, upon order of the court, to a civil	

1 penalty not to exceed \$10,000 per day of the violation, and each day's
2 continuance of the violation constitutes a separate and distinct violation.
3 Any penalty imposed pursuant to this subsection may be recovered with
4 costs in a summary proceeding by the attorney general.

5 **Sec. 13.** NRS 459.3838 is hereby repealed.

6 **Sec. 14.** The amendatory provisions of this act do not apply to
7 offenses that were committed before October 1, 1999.

TEXT OF REPEALED SECTION

459.3838 Schedule for assessments; establishment of priority system.

1. Within 60 days after receiving a completed form for registration and the annual fee from the owner or operator of a facility, the division shall establish for that facility a schedule for the assessment of risks through the analysis of hazards which is based on a priority system that is established considering the volume of hazardous substances at the facility and the population potentially affected by those substances.

2. The state environmental commission of the state department of conservation and natural resources shall adopt regulations for the establishment of a priority system.

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