

Assembly Bill No. 535—Committee on Natural Resources,

Agriculture, and Mining

CHAPTER.....

AN ACT relating to public safety; providing for the registration and regulation of facilities that manufacture explosives for sale 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 regulated facility where highly hazardous substances are located or explosives are manufactured for sale if such a substance or explosive is newly introduced into the facility; abolishing the requirement that the division establish a schedule for those 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:

Section 1. Chapter 459 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *“Explosive” means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses other than electric circuit breakers, detonators and other detonating agents, smokeless powders, other explosive or incendiary devices and any chemical compound, mechanical mixture or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that ignition by fire, friction, concussion, percussion, or detonation of the compound, mixture or device or any part thereof may cause an explosion. The term includes any mixture of ammonium nitrate and fuel oil. The term does not include any ammunition, powder, percussion caps, fuses, quills, matches, primers or explosive materials specified in 18 U.S.C. § 845(a)(4)-(6).*

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

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

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

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

Sec. 4. NRS 459.380 is hereby amended to read as follows:

459.380 The legislature hereby declares that the purposes of NRS 459.380 to 459.3874, inclusive, are to:

1. Protect the health, safety and general welfare of the residents of this state from the effects of the improper handling of hazardous chemicals *or explosives* at the point where ~~they~~ :
 - (a) *The chemicals* are produced, used or stored in this state; *or*
 - (b) *The explosives are manufactured for sale in this state;*
 2. Ensure that the employees of this state who are required to work with hazardous chemicals *or explosives* are guaranteed a safe and healthful working environment;
 3. Protect the natural resources of this state by preventing and mitigating accidental or unexpected releases of hazardous chemicals into the environment; and
 4. Ensure the safe and adequate handling of ~~hazardous~~ :
 - (a) *Hazardous* chemicals *that are* produced, used, stored or handled in this state ~~it~~ ; and
 - (b) *Explosives that are manufactured for sale in this state.*
- Sec. 5.** NRS 459.3802 is hereby amended to read as follows:
459.3802 As used in NRS 459.380 to 459.3874, inclusive, *and sections 2 and 3 of this act*, unless the context otherwise requires, the words and terms defined in NRS 459.3804 to 459.3812, inclusive, *and section 2 of this act*, have the meanings ascribed to them in those sections.
- Sec. 6.** NRS 459.3808 is hereby amended to read as follows:
459.3808 “Hazard” means a characteristic of a:
 1. Highly hazardous substance designated as such in NRS 459.3816 or any regulations adopted pursuant thereto;
 2. System involving the use of such a highly hazardous substance;
 3. Manufacturing plant using or producing a highly hazardous substance;
 4. *Regulated facility that manufactures explosives for sale;* or~~4.~~ 5. Process relating to a highly hazardous substance, which makes possible a chemical accident ~~it~~ *or explosion.*
- Sec. 7.** NRS 459.381 is hereby amended to read as follows:
459.381 “Regulated facility” means a building, equipment and contiguous area where ~~highly~~ :
 1. *Highly* hazardous substances are produced, used, stored or handled ~~it~~ ; or
 2. *Explosives are manufactured for sale.*
- Sec. 8.** NRS 459.3812 is hereby amended to read as follows:
459.3812 “Risk” means a risk posed by ~~it~~ :
 1. *A* highly hazardous substance that is produced, used, stored or handled at a regulated facility ~~it~~ ; or
 2. *An explosive that is manufactured for sale at a regulated facility.*
- Sec. 9.** NRS 459.3813 is hereby amended to read as follows:
459.3813 1. Except as otherwise provided in this section and NRS 459.3814, the provisions of NRS 459.380 to 459.3874, inclusive, and this section , *and sections 2 and 3 of this act*, apply to a regulated facility that ~~produces~~ :

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

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

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

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

~~[(2)]~~ **(II)** Each quantity released is equal to or greater than a maximum quantity allowable as established by regulation of the state environmental commission ~~[(1)]~~ ; or

(b) Manufactures explosives for sale.

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)]~~ **3** 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. 10. 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, which is hereby created as a special revenue fund.

Sec. 11. NRS 459.3826 is hereby amended to read as follows:

459.3826 1. Each owner or operator of a new regulated facility shall, within 10 days after the opening of the facility, tender the base fee and any additional fee imposed by the state environmental commission of the state department of conservation and natural resources pursuant to NRS 459.3824 for the first fiscal year with the form for registration of the facility.

2. Each owner or operator of a regulated facility registering a new highly hazardous substance *or explosive* at the facility shall tender the fee computed from the inventory of the highly hazardous substance *or explosive* when he registers the substance ~~or~~ *or explosive*.

Sec. 12. 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~~ ; *or*

(b) *Manufactures any explosive for sale.*

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 ~~or~~ ;

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

(b) *A list of the explosives manufactured for sale at the facility and the quantity of each, if the facility manufactures explosives for sale;*

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

~~—(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 ~~{1}~~ :

(a) *Not later than 90 days after a substance is added to the list of highly hazardous substances, if the facility produces, uses, stores or handles highly hazardous substances;*

(b) *Not later than 90 days after an explosive is added to the list of explosives that are manufactured for sale at the facility, if the facility manufactures explosives for sale;*

(c) *At least 90 days before a highly hazardous substance is newly introduced into the facility, if the facility produces, uses, stores or handles highly hazardous substances; and*

(d) *At least 90 days before an explosive is newly introduced into the facility, if the facility manufactures explosives for sale.*

Sec. 13. NRS 459.3836 is hereby amended to read as follows:

459.3836 1. ~~{The}~~ *Except as otherwise provided in section 3 of this act, the* owner or operator of a facility shall submit the facility to an assessment of risks through analysis of hazards at least every 5 years. The assessment must be conducted by a person or persons who possess the qualifications required pursuant to NRS 459.3842 and are selected by the owner or operator with the approval of the division.

2. In addition to other duties deemed necessary by the owner or operator or the division, the person conducting the assessment shall confirm the accuracy of the facility's current registration and report on safety.

3. The person conducting the assessment shall, at the conclusion of the assessment, issue a report of findings, conclusions and recommendations. One executed original of this report must be sent by the consultant directly to the division.

Sec. 14. NRS 459.384 is hereby amended to read as follows:

459.384 1. The owner or operator of a regulated facility shall, ~~{within 60 days after being notified by the division of the schedule established for the facility pursuant to NRS 459.3838,}~~ *before submitting the facility to an assessment of risks through analysis of hazards,* designate a person or persons who are capable of performing an assessment of risks through analysis of hazards on its facility.

2. If any personnel of a regulated facility possess the necessary qualifications to conduct the assessment, the owner or operator of that facility may designate any of those persons to conduct the assessment.

3. Each person designated to conduct the assessment shall present appropriate documentation demonstrating his ability to perform the assessment. The documentation must include:

(a) The person's qualifications in:

- (1) Engineering related to chemical processes;
- (2) Engineering related to safety;
- (3) Preparation of operating procedures;
- (4) Preparation or review of procedures for maintenance;
- (5) Preparation or review of procedures for safety;
- (6) Preparation or review of programs to train operators;
- (7) Performance or review of investigations of accidents;
- (8) Performance of analyses of hazards;
- (9) Performance of risk assessments of risk;
- (10) Preparation or review of plans for response to emergencies;
- (11) Performance of audits of programs to manage risks; and
- (12) Knowledge of the state of the art as it relates to the technology of the processes used;

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

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

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

Sec. 15. NRS 459.3848 is hereby amended to read as follows:

459.3848 The findings of the person who conducted the assessment must include, without limitation:

1. The identity and quality of all highly hazardous substances produced, used, stored, handled, or that could unwittingly be produced in the event of a breakdown of equipment, human error, defect in design or procedural failure, or the imposition of an external force;

2. *The identity and quantity of all explosives that are manufactured for sale at the regulated facility;*

3. The nature, age and condition of all of the equipment and instruments ~~involved in the handling and management of~~ *used to handle and manage* a highly hazardous substance *or explosive* at the *regulated* facility, and the schedules for ~~their~~ *the* testing and maintenance ~~;~~
~~—3. of the equipment and instruments;~~

4. The measures and precautions designed to protect against the intrusions of internal or external forces and events ~~;~~ or to control or contain discharges within the *regulated* facility;

~~4.~~ 5. Any training or managerial practices in place which impart knowledge to appropriate personnel regarding the dangers posed by a release of a highly hazardous substance *or a discharge of an explosive* and

the training provided to prepare ~~{them}~~ **those personnel** for the safe operation of the facility and for unanticipated occurrences;

~~{5.}~~ **6.** Any other preventive maintenance, capability to respond at the **regulated** facility to an emergency ~~{}~~ or other internal mechanism developed to safeguard against the occurrence of an accidental release of a highly hazardous substance **or accidental discharge of an explosive** or any other aspect or component of the facility deemed relevant by the division;

~~{6.}~~ **7.** The practices, procedures and equipment designed to forestall a hazard at the ~~{covered}~~ **regulated** facility; and

~~{7.}~~ **8.** Any other information which is relevant to carry out the purposes of the report.

Sec. 16. NRS 459.385 is hereby amended to read as follows:

459.385 The conclusions of the person who conducted the assessment must include, without limitation:

1. The nature and magnitude of any hazard at the regulated facility;
2. The likelihood of a chemical accident resulting from the hazard at the regulated facility;
3. The circumstances that would result in a discharge of a highly hazardous substance **or explosive** at the regulated facility;
4. The effectiveness of the systems and procedures for safety at the regulated facility and for the control of any hazards; and
5. Any other information which is relevant for **the** purposes of the report.

Sec. 17. NRS 459.3852 is hereby amended to read as follows:

459.3852 The recommendations of the person who conducted the assessment must include, without limitation, the following information if applicable to the facility:

1. Alternative processes, procedures or equipment which ~~{might}~~ **may** reduce the risk of a release of a highly hazardous substance **or a discharge of an explosive** at the regulated facility while yielding the same or commensurate results;

2. The ~~{need}~~ **requirement** for :

(a) A change in a process;

~~{3. The need for a}~~

(b) A chemical substitution or change;

~~{4. The need for}~~

(c) Any additional safety equipment;

~~{5. The need for a mitigation system;~~

~~—6. The need for}~~

(d) A mitigation system;

(e) Any additional preventive maintenance or responses at the **regulated** facility to emergencies, to safeguard against a hazard;

~~{7. The need for}~~ **and**

(f) Any additional planning near the **regulated** facility to meet emergencies;

~~[8.]~~ 3. A detailed plan to abate hazards suitable for adoption as an accident reduction plan to reduce accidents; and

~~[9.]~~ 4. Any other information which is relevant for *the* purposes of the report.

Sec. 18. NRS 459.3872 is hereby amended to read as follows:

459.3872 1. If any person 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, the division may institute a civil action in a court of competent jurisdiction for injunctive or any other appropriate relief to prohibit and prevent the violation and the court may proceed in the action in a summary manner.

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

Sec. 19. NRS 459.3874 is hereby amended to read as follows:

459.3874 1. The civil administrative penalties are:

Category of Offense

Penalty in U.S. Dollars

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:]~~ *the fee required pursuant to NRS 459.3824:* 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 penalty not to exceed \$10,000 per day of the violation, and each day's continuance of the violation constitutes a separate and distinct violation. Any penalty imposed pursuant to this subsection may be recovered with costs in a summary proceeding by the attorney general.

Sec. 20. NRS 459.3838 is hereby repealed.

Sec. 21. The amendatory provisions of this act do not apply to offenses that were committed before October 1, 1999.