

Assembly Bill No. 536—Committee on Natural Resources,

Agriculture, and Mining

CHAPTER.....

AN ACT relating to public safety; requiring permits to construct or operate new processes which include any activity involving highly hazardous substances at any regulated facility where those substances are located; requiring a permit to construct, alter the construction of or modify certain processes at a place of employment where certain explosives are located; providing that certain monetary penalties must be deposited in the fund for precaution against chemical accidents; 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, 3 and 4 of this act.

Sec. 2. “Process” means:

1. Any activity that involves a substance listed in NRS 459.3816 or in a regulation of the division adopted pursuant to NRS 459.3833, and includes, without limitation, the use, storage, manufacture, handling or on-site movement of the substance, or any combination thereof.

2. A group of vessels that are used in connection with such an activity, including vessels that are:

(a) Interconnected; or

(b) Separate, but located in such a manner which makes possible the release of a substance.

Sec. 3. “Vessel” means a reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose or other container.

Sec. 4. 1. *No owner or operator of a regulated facility may commence construction or operation of any new process subject to regulation pursuant to NRS 459.380 to 459.3874, inclusive, and sections 2, 3 and 4 of this act, unless he first obtains all appropriate permits from the division to construct the new process or commence operation of the new process, or both. Before issuing any such permits, the division shall consult with the division of industrial relations of the department of business and industry.*

2. An application for such a permit must be submitted on a form prescribed by the division.

3. The division may require the applicant to comply with requirements that it establishes by regulation before issuing any permits for construction and operation of the process.

4. The division may charge and collect a fee for the issuance of such a permit. 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 created pursuant to NRS 459.3824.

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 *Assembly Bill No. 535 of this ~~act,~~ session, and sections 2, 3 and 4 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 *Assembly Bill No. 535 of this ~~act,~~ session, and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 5.5. 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 ~~and~~, *and sections 2, 3 and 4 of this act*. 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 penalties collected pursuant to NRS 459.3833, 459.3834 and 459.3874*, 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. 6. 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 *Assembly Bill No. 535 of this ~~act,~~ session, or section 4 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 *Assembly Bill No. 535 of this ~~act,~~ session, or section 4 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. 7. NRS 459.3874 is hereby amended to read as follows:
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 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
- L. Failure to obtain a permit for the
construction of a new regulated
facility:.....\$25,000***

The civil administrative penalty prescribed in category L may be assessed against a contractor who is constructing the regulated facility only if the contractor is contractually responsible for obtaining all appropriate permits for the construction of the regulated facility and the contractor knows or has reason to know the planned use of the regulated facility.

2. The division may compromise and settle any claim for any penalty ~~under~~ ***as set forth in*** 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~~ ***as set forth in*** 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, ~~for~~ section 3 of ***Assembly Bill No. 535 of this ~~act,~~ session, or section 4 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. 8. Chapter 618 of NRS is hereby amended by adding thereto the provisions set forth as sections 9 and 10 of this act.

Sec. 9. 1. No owner or operator of a place of employment may commence the construction of, substantially alter the construction of, or modify any major process used to protect the lives, safety and health of employees at a place of employment where an explosive is manufactured, or used, processed, handled, moved on site or stored in relation to its

manufacture, unless he first obtains a permit therefor from the division. Before issuing any permit, the division shall consult with the division of environmental protection of the state department of conservation and natural resources.

2. An application for such a permit must be submitted on a form prescribed by the division.

3. The division may require the applicant to comply with requirements that it establishes by regulation before issuing such a permit.

4. The division may charge and collect a fee for the issuance of such a permit.

5. The division shall adopt such regulations as are necessary to carry out the provisions of this section.

6. Notwithstanding any provision of this section to the contrary, the provisions of this section do not apply to the mining industry.

7. Except as otherwise provided in subsection 8, as used in this section, "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.

8. For the purposes of this section, an explosive does not include:

(a) Ammunition for small arms, or any component thereof;

(b) Black powder commercially manufactured in quantities that do not exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers that are intended to be used solely for sporting, recreation or cultural purposes:

(1) In an antique firearm, as that term is defined in 18 U.S.C. § 921(a)(16), as that section existed on January 1, 1999; or

(2) In an antique device which is exempted from the definition of "destructive device" pursuant to 18 U.S.C. § 921(a)(4), as that section existed on January 1, 1999; or

(c) Any explosive that is manufactured under the regulation of a military department of the United States, or that is distributed to, or possessed or stored by, the military or naval service or any other agency of the United States, or an arsenal, a navy yard, a depot or any other establishment owned by or operated on behalf of the United States.

Sec. 10. If any person violates the provisions of section 9 of this act, the division may:

1. Maintain an action in a court of competent jurisdiction for injunctive or any other appropriate relief to prohibit and prevent the violation. The court may proceed in the action in a summary manner.

2. Unless a greater penalty is provided in this chapter, require the violator to pay an administrative fine of not more than \$25,000.

Sec. 11. The amendatory provisions of this act do not apply to offenses that were committed before January 1, 2000.

Sec. 12. This act becomes effective:

1. Upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and
2. On January 1, 2000, for all other purposes.

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