

SENATE BILL NO. 422—SENATOR TITUS

MARCH 19, 2007

Referred to Committee on Natural Resources

SUMMARY—Requires the creation of a registry and inventory of greenhouse gases emitted in this State. (BDR 40-678)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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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 pollution; requiring the State Environmental Commission to establish a registry of greenhouse gases emitted by affected units in this State; requiring the State Department of Conservation and Natural Resources to issue a statewide inventory of greenhouse gas emissions; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the State Environmental Commission may adopt certain regulations to prevent, abate and control air pollution and establish standards for air quality. (NRS 445B.210) Also under existing law, a district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more (currently Clark and Washoe Counties) must establish a program for the control of air pollution and administer that program. In any other county, or in any city, a similar program may be established through cooperative or interlocal agreement or the county or city may establish its own program for the control of air pollution. (NRS 445B.500)

Section 5 of this bill requires the Commission to establish, by regulation, a statewide registry of greenhouse gases emitted by certain generators of electricity in this State. **Section 4** of this bill defines a "greenhouse gas" to mean carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons and sulphur hexafluoride. **Section 5** requires the Commission to prescribe the requirements and procedures for reporting the emissions of greenhouse gases that must be included in the registry, methods for identifying and measuring the greenhouse gases that must be reported and methods for independently verifying the information that is reported. The Commission is required to establish the reporting period, but the



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period must not be longer than 1 year. Finally, **section 5** authorizes the Commission to establish procedures for the voluntary reporting of emissions of greenhouse gases from sources that are not otherwise required to report.

Section 6.5 of this bill requires the State Department of Conservation and Natural Resources to issue, at least every 4 years, a statewide inventory of greenhouse gas emissions in this State. The inventory must include the sources, types and amounts of the greenhouse gases, together with the Department's evaluation of the emissions, and must be supported with documentation.

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

Section 1. Chapter 445B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6.5, inclusive, of this act.

Sec. 2. *“Affected unit” means a facility for the generation of electricity that:*

- 1. Has a maximum design capacity of at least 5 megawatts;*
- 2. Emits a greenhouse gas; and*
- 3. Generates electricity for sale.*

Sec. 3. (Deleted by amendment.)

Sec. 4. *“Greenhouse gas” means:*

- 1. Carbon dioxide;*
- 2. Hydrofluorocarbons;*
- 3. Methane;*
- 4. Nitrous oxide;*
- 5. Perfluorocarbons; and*
- 6. Sulphur hexafluoride.*

Sec. 5. 1. *In addition to any regulation adopted pursuant to NRS 445B.210 to prevent, abate and control air pollution, the Commission shall, by regulation, establish a statewide registry of greenhouse gases emitted by affected units in this State during the reporting period established by the Commission.*

2. The regulations must include, without limitation, provisions setting forth:

(a) The requirements and procedures for reporting emissions of greenhouse gases;

(b) Methods for identifying, measuring and otherwise determining the greenhouse gases that must be reported for inclusion in the registry;

(c) Methods for independently verifying the information reported for inclusion in the registry; and

(d) The reporting period, except that the period must not be longer than 1 year.



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1 **3. The Commission may establish procedures for the**
2 **inclusion in the registry of greenhouse gases emitted from a**
3 **source other than an affected unit.**

4 **Sec. 6.** (Deleted by amendment.)

5 **Sec. 6.5. 1. The Department shall, not later than**
6 **December 31, 2008, and at least every 4 years thereafter, issue a**
7 **statewide inventory of greenhouse gas emissions.**

8 **2. The inventory must include, without limitation:**

9 **(a) The sources, types and amounts of the greenhouse gases**
10 **emitted in this State;**

11 **(b) The Department's evaluation of the emissions; and**

12 **(c) Documentation for the information set forth in paragraphs**
13 **(a) and (b).**

14 **Sec. 7.** NRS 445B.105 is hereby amended to read as follows:

15 445B.105 As used in NRS 445B.100 to 445B.640, inclusive,
16 **and sections 2 to 6.5, inclusive, of this act,** unless the context
17 otherwise requires, the words and terms defined in NRS 445B.110
18 to 445B.155, inclusive, **and sections 2 and 4 of this act** have the
19 meanings ascribed to them in those sections.

20 **Sec. 8.** NRS 445B.210 is hereby amended to read as follows:

21 445B.210 The Commission may:

22 1. Subject to the provisions of NRS 445B.215, adopt
23 regulations consistent with the general intent and purposes of NRS
24 445B.100 to 445B.640, inclusive, **and sections 2 to 6.5, inclusive,**
25 **of this act** to prevent, abate and control air pollution.

26 2. Establish standards for air quality.

27 3. Require access to records relating to emissions which cause
28 or contribute to air pollution.

29 4. Cooperate with other governmental agencies, including
30 other states and the Federal Government.

31 5. Establish such requirements for the control of emissions as
32 may be necessary to prevent, abate or control air pollution.

33 6. By regulation:

34 (a) Designate as a hazardous air pollutant any substance which,
35 on or after October 1, 1993, is on the federal list of hazardous air
36 pollutants pursuant to 42 U.S.C. § 7412(b); and

37 (b) Delete from designation as a hazardous air pollutant any
38 substance which, after October 1, 1993, is deleted from the federal
39 list of hazardous air pollutants pursuant to 42 U.S.C. § 7412(b),

40 ➔ based upon the Commission's determination of the extent to
41 which such a substance presents a risk to the public health.

42 7. Hold hearings to carry out the provisions of NRS 445B.100
43 to 445B.640, inclusive, **and sections 2 to 6.5, inclusive, of this act,**
44 except as otherwise provided in those sections.



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8. Establish fuel standards for both stationary and mobile sources of air contaminants. Fuel standards for mobile sources of air contaminants must be established to achieve air quality standards that protect the health of the residents of the State of Nevada.

9. Require elimination of devices or practices which cannot be reasonably allowed without generation of undue amounts of air contaminants.

Sec. 9. NRS 445B.220 is hereby amended to read as follows:

445B.220 In carrying out the purposes of NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 6.5, inclusive, of this act*, the Commission, in addition to any other action which may be necessary or appropriate to carry out ~~such~~ *those* purposes, may:

1. Cooperate with appropriate federal officers and agencies of the Federal Government, other states, interstate agencies, local governmental agencies and other interested parties in all matters relating to air pollution control in preventing or controlling the pollution of the air in any area.

2. Recommend measures for control of air pollution originating in this State.

Sec. 10. NRS 445B.230 is hereby amended to read as follows:

445B.230 The Department shall:

1. Make such determinations and issue such orders as may be necessary to implement the purposes of NRS 445B.100 to 445B.640, inclusive ~~H~~, *and sections 2 to 6.5, inclusive, of this act*.

2. Apply for and receive grants or other funds or gifts from public or private agencies.

3. Cooperate and contract with other governmental agencies, including other states and the Federal Government.

4. Conduct investigations, research and technical studies consistent with the general purposes of NRS 445B.100 to 445B.640, inclusive ~~H~~, *and sections 2 to 6.5, inclusive, of this act*.

5. Prohibit as specifically provided in NRS 445B.300 and 445B.320 and as generally provided in NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 6.5, inclusive, of this act* the installation, alteration or establishment of any equipment, device or other article capable of causing air pollution.

6. Require the submission of such preliminary plans and specifications and other information as it deems necessary to process permits.

7. Enter into and inspect at any reasonable time any premises containing an air contaminant source or a source under construction for purposes of ascertaining compliance with NRS 445B.100 to 445B.640, inclusive ~~H~~, *and sections 2 to 6.5, inclusive, of this act*.

8. Specify the manner in which incinerators may be constructed and operated.



9. Institute proceedings to prevent continued violation of any order issued by the Director and to enforce the provisions of NRS 445B.100 to 445B.640, inclusive ~~§~~ , and *sections 2 to 6.5, inclusive, of this act.*

10. Require access to records relating to emissions which cause or contribute to air pollution.

11. Take such action in accordance with the rules, regulations and orders promulgated by the Commission as may be necessary to prevent, abate and control air pollution.

Sec. 11. NRS 445B.500 is hereby amended to read as follows: 445B.500 1. Except as otherwise provided in this section and in NRS 445B.310:

(a) The district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control of air pollution and administer the program within its jurisdiction unless superseded.

(b) The program:

(1) Must include, without limitation, standards for the control of emissions, emergency procedures and variance procedures established by ordinance or local regulation which are equivalent to or stricter than those established by statute or state regulation;

(2) May, in a county whose population is 400,000 or more, include requirements for the creation, receipt and exchange for consideration of credits to reduce and control air contaminants in accordance with NRS 445B.508; and

(3) Must provide for adequate administration, enforcement, financing and staff.

(c) The district board of health, county board of health or board of county commissioners is designated as the air pollution control agency of the county for the purposes of NRS 445B.100 to 445B.640, inclusive, and *sections 2 to 6.5, inclusive, of this act, and* the Federal Act insofar as it pertains to local programs, and that agency is authorized to take all action necessary to secure for the county the benefits of the Federal Act.

(d) Powers and responsibilities provided for in NRS 445B.210, 445B.240 to 445B.470, inclusive, 445B.560, 445B.570, 445B.580 and 445B.640 are binding upon and inure to the benefit of local air pollution control authorities within their jurisdiction.

2. The local air pollution control board shall carry out all provisions of NRS 445B.215 with the exception that notices of public hearings must be given in any newspaper, qualified pursuant to the provisions of chapter 238 of NRS, once a week for 3 weeks. The notice must specify with particularity the reasons for the proposed regulations and provide other informative details. NRS



1 445B.215 does not apply to the adoption of existing regulations
2 upon transfer of authority as provided in NRS 445B.610.

3 3. In a county whose population is 400,000 or more, the local
4 air pollution control board may delegate to an independent hearing
5 officer or hearing board its authority to determine violations and
6 levy administrative penalties for violations of the provisions of NRS
7 445B.100 to 445B.450, inclusive, and 445B.500 to 445B.640,
8 inclusive, *and sections 2 to 6.5, inclusive, of this act* or any
9 regulation adopted pursuant to those sections. If such a delegation is
10 made, 17.5 percent of any penalty collected must be deposited in the
11 county treasury in an account to be administered by the local air
12 pollution control board to a maximum of \$17,500 per year. The
13 money in the account may only be used to defray the administrative
14 expenses incurred by the local air pollution control board in
15 enforcing the provisions of NRS 445B.100 to 445B.640, inclusive
16 ~~§~~, *and sections 2 to 6.5, inclusive, of this act*. The remainder of
17 the penalty must be deposited in the county school district fund of
18 the county where the violation occurred.

19 4. Any county whose population is less than 100,000 or any
20 city may meet the requirements of this section for administration
21 and enforcement through cooperative or interlocal agreement with
22 one or more other counties, or through agreement with the State, or
23 may establish its own program for the control of air pollution. If the
24 county establishes such a program, it is subject to the approval of
25 the Commission.

26 5. No district board of health, county board of health or board
27 of county commissioners may adopt any regulation or establish a
28 compliance schedule, variance order or other enforcement action
29 relating to the control of emissions from plants which generate
30 electricity by using steam produced by the burning of fossil fuel.

31 6. For the purposes of this section, "plants which generate
32 electricity by using steam produced by the burning of fossil fuel"
33 means plants that burn fossil fuels in a boiler to produce steam for
34 the production of electricity. The term does not include any plant
35 which uses technology for a simple or combined cycle combustion
36 turbine, regardless of whether the plant includes duct burners.

37 **Sec. 12.** (Deleted by amendment.)

38 **Sec. 13.** NRS 445B.540 is hereby amended to read as follows:

39 445B.540 1. A county or area whose local jurisdiction over
40 air pollution control has been superseded may establish or restore a
41 local air pollution control program if such program is approved as
42 adequate by the Commission.

43 2. A district, county or city which has an air pollution control
44 program in operation on July 1, 1971, may continue its program if
45 within 1 year after July 1, 1971, the program is approved as



adequate by the Commission. Such approval shall be deemed granted unless the Commission specifically disapproves the program after a public hearing. Nothing in NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 6.5, inclusive, of this act* is to be construed as invalidating any rule, regulation, enforcement action, variance, permit, cease and desist order, compliance schedule, or any other legal action taken by any existing air pollution control authority pursuant to former NRS 445.400 to 445.595, inclusive, on or before July 1, 1971, unless it is specifically repealed, superseded or disapproved, pursuant to NRS 445B.215.

Sec. 14. NRS 445B.590 is hereby amended to read as follows:

445B.590 1. The Account for the Management of Air Quality is hereby created in the State General Fund, to be administered by the Department.

2. Money in the Account for the Management of Air Quality must be expended only:

(a) To carry out and enforce the provisions of NRS 445B.100 to 445B.640, inclusive, and *sections 2 to 6.5, inclusive, of this act and* of any regulations adopted pursuant to those sections, including, without limitation, the direct and indirect costs of:

(1) Preparing regulations and recommendations for legislation regarding those provisions;

(2) Furnishing guidance for compliance with those provisions;

(3) Reviewing and acting upon applications for operating permits;

(4) Administering and enforcing the terms and conditions of operating permits;

(5) Monitoring emissions and the quality of the ambient air;

(6) Preparing inventories and tracking emissions;

(7) Performing modeling, analyses and demonstrations; and

(8) Establishing and administering a program for the provision of assistance, pursuant to 42 U.S.C. § 7661f, to small businesses operating stationary sources; and

(b) In any other manner required as a condition to the receipt of federal money for the purposes of NRS 445B.100 to 445B.640, inclusive *+*, *and sections 2 to 6.5, inclusive, of this act*.

3. All interest earned on the money in the Account for the Management of Air Quality must be credited to the Account. Claims against the Account for the Management of Air Quality must be paid as other claims against the State are paid.

Sec. 15. NRS 445B.600 is hereby amended to read as follows:

445B.600 NRS 445B.100 to 445B.595, inclusive, *and sections 2 to 6.5, inclusive, of this act* does not abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of



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1 any person to damages or other relief on account of injury to
2 persons or property and to maintain any action or other appropriate
3 proceeding therefor in the courts of this State or the courts of the
4 United States on a tort claim against the United States or a federal
5 agency as authorized by federal statutes.

6 **Sec. 16.** NRS 445B.610 is hereby amended to read as follows:

7 445B.610 1. All rules, regulations and standards promulgated
8 by the State Commission of Environmental Protection pertaining to
9 air pollution control in force on July 1, 1973, ~~[shall]~~ remain in effect
10 until such time as revised by the State Environmental Commission
11 pursuant to NRS 445B.100 to 445B.640, inclusive ~~[,]~~, *and sections*
12 *2 to 6.5, inclusive, of this act.*

13 2. Any and all action taken by the State Commission of
14 Environmental Protection, including but not limited to existing
15 orders, notices of violation, variances, permits, cease and desist
16 orders and compliance schedules, shall remain in full force and
17 effect and binding upon the State Environmental Commission, the
18 Director, the Department and all persons to whom such action may
19 apply on or after July 1, 1973.

20 3. In the event that a local air pollution control program
21 described in NRS 445B.500 is transferred in whole or in part from
22 an existing air pollution control agency to another agency, all rules
23 and regulations adopted by the existing agency may be readopted as
24 amended to reflect the transfer of authorities by the new agency
25 immediately upon such transfer, and the provisions of NRS
26 445B.215 ~~[shall]~~ *do* not apply to such readoption.

27 4. If a transfer of local authority as described in subsection 3
28 occurs, all orders, notices of violation, variances, cease and desist
29 orders, compliance schedules and other legal action taken by the
30 existing air pollution control board, control officer ~~[,]~~ or hearing
31 board ~~[shall]~~ remain in full force and effect, and ~~[shall]~~ *must* not be
32 invalidated by reason of such transfer.

33 **Sec. 17.** NRS 445B.640 is hereby amended to read as follows:

34 445B.640 1. Except as otherwise provided in subsection 4
35 and NRS 445C.010 to 445C.120, inclusive, any person who violates
36 any provision of NRS 445B.100 to 445B.450, inclusive, and
37 445B.470 to 445B.640, inclusive, *and sections 2 to 6.5, inclusive,*
38 *of this act,* or any regulation in force pursuant thereto, other than
39 NRS 445B.570 on confidential information, is guilty of a civil
40 offense and shall pay an administrative fine levied by the
41 Commission of not more than \$10,000 per day per offense. Each
42 day of violation constitutes a separate offense.

43 2. The Commission shall by regulation establish a schedule of
44 administrative fines not exceeding \$500 for lesser violations of any
45 provision of NRS 445B.100 to 445B.450, inclusive, and 445B.470



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1 to 445B.640, inclusive, *and sections 2 to 6.5, inclusive, of this act*,
2 or any regulation in force pursuant thereto.

3 3. Action pursuant to subsection 1 or 2 is not a bar to
4 enforcement of the provisions of NRS 445B.100 to 445B.450,
5 inclusive, and 445B.470 to 445B.640, inclusive, *and sections 2 to*
6 *6.5, inclusive, of this act*, regulations in force pursuant thereto, and
7 orders made pursuant to NRS 445B.100 to 445B.450, inclusive, and
8 445B.470 to 445B.640, inclusive, *and sections 2 to 6.5, inclusive,*
9 *of this act* by injunction or other appropriate remedy, and the
10 Commission or the Director may institute and maintain in the name
11 of the State of Nevada any such enforcement proceedings.

12 4. Any person who fails to pay a fine levied pursuant to
13 subsection 1 or 2 within 30 days after the fine is imposed is guilty of
14 a misdemeanor. The provisions of this subsection do not apply to
15 persons found by the court to be indigent.

16 5. All administrative fines collected by the Commission
17 pursuant to this section must be deposited in the county school
18 district fund of the county where the violation occurred.

19 **Sec. 18.** NRS 445C.030 is hereby amended to read as follows:

20 445C.030 "Environmental requirement" means a requirement
21 contained in NRS 444.440 to 444.645, inclusive, 445A.300 to
22 445A.730, inclusive, 445B.100 to 445B.640, inclusive, *and sections*
23 *2 to 6.5, inclusive, of this act*, 459.400 to 459.600, inclusive,
24 459.700 to 459.856, inclusive, or 519A.010 to 519A.280, inclusive,
25 or in a regulation adopted pursuant to any of those ~~statutes.~~
26 *sections.*

27 **Sec. 19.** NRS 459.460 is hereby amended to read as follows:

28 459.460 1. NRS 459.400 to 459.600, inclusive, do not apply
29 to any activity or substance which is subject to control pursuant to
30 NRS 445A.300 to 445A.955, inclusive, and 459.010 to 459.290,
31 inclusive, except to the extent that they can be applied in a manner
32 which is not inconsistent with those sections.

33 2. The Director shall administer NRS 459.400 to 459.600,
34 inclusive, in a manner which avoids duplication of the provisions of
35 NRS 445A.300 to 445A.955, inclusive, and 445B.100 to 445B.640,
36 inclusive, *and sections 2 to 6.5, inclusive, of this act*, and the
37 Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§
38 136 et seq.

39 **Sec. 20.** NRS 459.930 is hereby amended to read as follows:

40 459.930 1. Notwithstanding any other provision of law to the
41 contrary and regardless of whether he is a participant in a program, a
42 person who:

43 (a) Is a bona fide prospective purchaser is not liable for any
44 response action or cleanup that may be required with respect to any
45 real property pursuant to NRS 445A.300 to 445A.730, inclusive,



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1 445B.100 to 445B.640, inclusive, *and sections 2 to 6.5, inclusive,*
2 *of this act*, 459.400 to 459.600, inclusive, or any other applicable
3 provision of law.

4 (b) Is an innocent purchaser is not liable for any response action
5 or cleanup that may be required with respect to any real property
6 pursuant to NRS 445A.300 to 445A.730, inclusive, 445B.100 to
7 445B.640, inclusive, *and sections 2 to 6.5, inclusive, of this act*,
8 459.400 to 459.600, inclusive, or any other applicable provision of
9 law.

10 (c) Owns real property that:

11 (1) Is contiguous to or otherwise similarly situated with
12 respect to; and

13 (2) Is or may be contaminated by a release or threatened
14 release of a hazardous substance from,

15 ➔ other real property that the person does not own, is not liable for
16 any response action or cleanup that may be required with respect to
17 the release or threatened release, provided that the person meets the
18 requirements set forth in section 107(q)(1) of the Comprehensive
19 Environmental Response, Compensation, and Liability Act of 1980,
20 42 U.S.C. § 9607(q)(1).

21 2. A person described in paragraph (a), (b) or (c) of subsection
22 1 shall report to the Division, in a manner prescribed by the
23 Commission:

24 (a) Any of the following substances that are found on or at real
25 property owned by the person:

26 (1) Hazardous substances at or above the required reporting
27 levels designated pursuant to sections 102 and 103 of the
28 Comprehensive Environmental Response, Compensation, and
29 Liability Act of 1980, 42 U.S.C. §§ 9602 and 9603; and

30 (2) Petroleum products of such type and in such amount as
31 are required by the Division to be reported; and

32 (b) Any response action or cleanup that has been performed with
33 respect to the real property described in paragraph (a).

34 3. The provisions of this section do not otherwise limit the
35 authority of the Administrator, the Commission or the Division to
36 require any person who is responsible for the contamination or
37 pollution of real property, by improperly managing hazardous
38 substances at or on that real property, to perform a response action
39 or cleanup with respect to that real property.

40 4. If there are costs relating to a response action or cleanup that
41 are incurred and unrecovered by the State of Nevada with respect to
42 real property for which a bona fide prospective purchaser of the real
43 property is not liable pursuant to the provisions of this section, the
44 State of Nevada:



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(a) Has a lien against that real property in an amount not to exceed the increase in the fair market value of the real property that is attributable to the response action or cleanup, which increase in fair market value must be measured at the time of the sale or other disposition of the real property; or

(b) May, with respect to those incurred and unrecovered costs and by agreement with the bona fide prospective purchaser of the real property, obtain from that bona fide prospective purchaser:

(1) A lien on any other real property owned by the bona fide prospective purchaser; or

(2) Another form of assurance or payment that is satisfactory to the Administrator.

5. The provisions of this section:

(a) Do not affect the liability in tort of any party; and

(b) Apply only to real property that is acquired on or after the date that is 60 days after May 26, 2003.

6. As used in this section:

(a) "Administrator" means the Administrator of the Division.

(b) "Bona fide prospective purchaser" has the meaning ascribed to it in section 101(40) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(40).

(c) "Commission" means the State Environmental Commission.

(d) "Division" means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

(e) "Hazardous substance" has the meaning ascribed to it in NRS 459.620.

(f) "Innocent purchaser" means a person who qualifies for the exemption from liability set forth in section 107(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(b)(3).

(g) "Participant" has the meaning ascribed to it in NRS 459.622.

(h) "Program" means a program of voluntary cleanup and relief from liability set forth in NRS 459.610 to 459.658, inclusive.

(i) "Response action" means any action to mitigate, attempt to mitigate or assist in the mitigation of the effects of a leak or spill of or an accident involving a hazardous substance, including, without limitation, any action to:

(1) Contain and dispose of the hazardous substance;

(2) Clean and decontaminate the area affected by the leak, spill or accident; or

(3) Investigate the occurrence of the leak, spill or accident.

Sec. 21. This act becomes effective on July 1, 2007.

