

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.

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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 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; authorizing the distribution of additional amounts from the Fund to cover the cost for cleaning up certain discharges; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

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



For the purposes of this existing law, **sections 1 and 2** of this bill expand the definitions of "operator" and "storage tank." (NRS 445C.250, 445C.280) **Section 1** expands the definition of "operator" from a person who owns, controls, or is responsible for the operation of a storage tank to a person who: (1) owns, controls or is responsible for the operation and management of a storage tank or a discharge from a storage tank; (2) was previously in charge of a storage tank immediately before the use of the storage tank was discontinued; (3) owns the property on which the storage tank is or was previously located; or (4) owns property on which a discharge from a storage tank has occurred and is responsible for the management and cleanup of the discharge. **Section 3** of this bill makes a conforming change by removing a conflicting definition of "operator." **Section 2** revises the definition of "storage tank" to include the distribution piping associated with the tank. **Sections 4-8** of this bill make conforming changes by replacing certain references to a "tank" with "storage tank."

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

Existing law allocates the costs of payment relating to the cleanup of discharges of petroleum from storage tanks between the Fund and the operator of the storage tank. (NRS 445C.370, 445C.380) Existing law limits to \$1,900,000 the total amount that may be paid from the Fund in any 1 fiscal year to certain operators. (NRS 445C.380) **Section 6** of this bill increases this amount to \$1,950,000.

Existing law provides that any further cost for cleaning up or for damages which is in excess of the amount paid to an operator from the Fund must be paid by the operator. (NRS 445C.380) **Section 6** provides that any further cost for damages which is in excess of the amounts paid to an operator from the Fund must be paid by the operator. **Section 6** additionally provides that any further cost for cleaning up which is in excess of the amount paid to an operator must be paid by the operator unless: (1) the Division requires additional cleanup to occur to comply with certain requirements; and (2) the Board determines that certain conditions are met, including that the discharge cannot be cleaned up within the amount already paid to the operator from the Fund. **Section 6** provides that if these conditions are met and the amount paid to the operator from the Fund has been exhausted, the Board may approve the operator to receive an additional \$1,000,000 from the Fund for cleaning up each storage tank. **Section 6** authorizes the Board to approve additional \$1,000,000 allotments for cleaning up each storage tank that are in addition to the initial additional \$1,000,000 allotment if: (1) the conditions continue to be met; and (2) the initial amount and the additional \$1,000,000 allotment have been exhausted.

Existing law prescribes a specific allocation with respect to the operator which is a small business who is responsible for a discharge. (NRS 445C.380) **Section 6** removes the definition of "small business" in existing law and instead requires the Board to Review Claims to define "small business" by regulation. **Sections 4 and 8** remove references to 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:

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

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

*1. Owns, controls or is responsible for the operation and management of a storage tank ~~[-]~~ or a discharge from a storage tank;*

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

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

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

**Sec. 2.** NRS 445C.280 is hereby amended to read as follows:

445C.280 "Storage tank" means any tank , *and the distribution piping associated with the tank*, used to store petroleum, except petroleum for use in a chemical process.

**Sec. 3.** NRS 445C.320 is hereby amended to read as follows:

445C.320 Notwithstanding any provision of NRS 445C.150 to 445C.410, inclusive, to the contrary, and except as otherwise provided in this section:

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

2. Except as otherwise provided in this subsection, money from the Fund expended by the Division pursuant to this section must be used to augment, and must not be used to replace or supplant, any money available from other sources for the cleanup of discharges, including, without limitation, reimbursements by operators required to be made to the Division pursuant to NRS 445C.340 and



1 445C.360. If no money is available from those other sources, the  
2 Division may expend money from the Fund pursuant to this section  
3 to reimburse the Division for any costs specified in subsection 1.

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

6 (a) Petroleum, the operator of the tank shall reimburse the  
7 Division for the operator's share of the costs for cleaning up the  
8 discharge.

9 (b) A petrochemical, the person who is responsible for the  
10 discharge shall reimburse the Division for the person's share of the  
11 costs for cleaning up the discharge.

12 ➤ The Division shall, upon being reimbursed pursuant to this  
13 subsection, deposit that money in the Fund.

14 4. As used in this section:

15 (a) "Discharge" means, unless authorized by state or federal law,  
16 any:

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

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

20 (b) ~~"Operator" means a person who owns, controls or is~~  
21 ~~responsible for the operation of a tank.~~

22 ~~—(c)—~~ "Petrochemical" means a chemical derived from petroleum  
23 or a petroleum feedstock, including, without limitation,  
24 perchloroethylene and any degradation product of  
25 perchloroethylene.

26 ~~[(d)]~~ (c) "Tank" means a storage tank or a mobile tank used to  
27 transport petroleum or a petrochemical received for sale or use in  
28 this State.

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

30 445C.360 1. The operator of every storage tank, and every  
31 person who for compensation puts petroleum into a storage tank,  
32 shall report to the Division every discharge from that *storage* tank of  
33 which the operator or other person is aware or has reason to believe  
34 has occurred. The Division shall undertake or contract for cleaning  
35 up the discharge unless the operator or another person is already  
36 acting properly to clean it up. If the Division cleans up the  
37 discharge, the operator shall reimburse the Division for the  
38 operator's share of the costs. If, in cleaning up the discharge,  
39 the Division expends money from the Fund in accordance with NRS  
40 445C.320, the Division shall, upon being reimbursed by the operator  
41 of the storage tank pursuant to this subsection, deposit that money in  
42 the Fund.

43 2. ~~[(Each)]~~ *Before a storage tank is eligible for the coverage*  
44 *provided by NRS 445C.380, each* operator who is required  
45 *pursuant to subsection 1 of NRS 445C.340* or who chooses to



register a *storage* tank must, unless the *storage* tank has been tested for tightness under the federal standards embodied in 40 C.F.R. ~~§ 280.43c since July 1, 1988, test the tank pursuant to those standards before it is eligible for the coverage provided by NRS 445C.370 and 445C.380.~~ §§ 280.43(c) and 280.44(b) within the previous 6 months, demonstrate that:

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

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

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

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

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

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

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

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

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

2. By an operator which is a small business, ~~10~~ 5 percent of the first \$1,000,000 for cleaning up each *storage* tank and of the



1 first \$1,000,000 of liability for damages from each *storage* tank to a  
2 person other than this State or the operator of the *storage* tank, or  
3 both amounts. The total amount paid by an operator pursuant to this  
4 subsection must not exceed \$50,000 for cleaning up and \$50,000 for  
5 damages regardless of the number of storage tanks involved. The  
6 balance of the first \$1,000,000 for cleaning up each *storage* tank or  
7 for damages from each *storage* tank must be paid from the Fund, but  
8 the total amount paid from the Fund pursuant to this subsection 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 ~~[\$1,900,000]~~  
11 *\$1,950,000* for cleaning up and ~~[\$1,900,000]~~ *\$1,950,000* for  
12 damages. For the purpose of this limitation, a group of operators  
13 more than 50 percent of whose net worth is beneficially owned by  
14 the same person or persons constitutes one operator.

15 3. By all other operators:

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

20 (b) Ninety percent of the first \$1,000,000 for cleaning up each  
21 *storage* tank ~~for~~ *and of the first \$1,000,000 of liability* for damages  
22 from each *storage* tank must be paid from the Fund.

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

30 4. *Any further cost for damages which is in excess of the*  
31 *amounts paid pursuant to subsections 1, 2 and 3 must be paid by*  
32 *the operator.*

33 5. Any further cost for cleaning up ~~for for damages~~ which is in  
34 excess of the amounts paid pursuant to subsections 1, 2 and 3 must  
35 be paid by the operator ~~for~~  
36 ~~—5.]~~ , unless:

37 (a) *The Division requires additional cleanup to occur to*  
38 *comply with any requirements of the Division concerning the*  
39 *cleanup of discharged petroleum; and*

40 (b) *The Board determines that:*

41 (1) *The discharge cannot be cleaned up within the amount*  
42 *paid pursuant to subsection 1, 2 or 3, as applicable;*

43 (2) *The operator is in compliance with any requirements of*  
44 *the Division concerning the cleanup of discharged petroleum;*



(3) The operator has obtained approval from the Division to develop a plan and a schedule to clean up the discharged petroleum;

(4) Except as otherwise provided in subparagraph (5), the operator is not liable pursuant to subsection 1 of NRS 445C.390;

(5) If the operator is liable pursuant to subsection 1 of NRS 445C.390, the operator has complied with subsection 2 of NRS 445C.390;

(6) The facility where the storage tank is located has complied with the applicable provisions of NRS 459.800 to 459.856, inclusive, for the immediately preceding 3 years; and

(7) The operator has not received money from a third-party for damages before July 1, 2021.

6. The Board may approve the operator to receive an additional \$1,000,000 from the Fund for cleaning up each storage tank if:

(a) The Division requires additional cleanup pursuant to paragraph (a) of subsection 5;

(b) The Board determines that the conditions in paragraph (b) of subsection 5 are met; and

(c) The amounts paid pursuant to subsection 1, 2 or 3, as applicable, for cleaning up each storage tank have been exhausted.

7. The Board may approve additional \$1,000,000 allotments for cleaning up each storage tank in addition to the amount paid pursuant to subsection 6 if:

(a) The conditions in paragraphs (a) and (b) of subsection 6 are met; and

(b) The amounts paid pursuant to subsection 6 and this subsection for cleaning up each storage tank have been exhausted.

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

~~[6.]~~ 9. For the purposes of this section, ~~[a small business is a business which receives less than \$500,000 in gross annual receipts from the site where the tank is located.]~~ the Board shall define by regulation "small business."



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

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

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

**Sec. 8.** NRS 445C.410 is hereby amended to read as follows:

445C.410 1. Except as otherwise specifically provided in NRS 445C.320, the provisions of NRS 445C.340 to 445C.400, inclusive, do not apply to any *storage* tank which:

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

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

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

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

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

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

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

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

