

Amendment No. 811

Senate Amendment to Assembly Bill No. 40 Second Reprint	(BDR 40-343)
Proposed by: Senate Committee on Natural Resources	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

ALA/WLK



Date: 5/28/2021

A.B. No. 40—Revises provisions relating to petroleum storage tanks.  
(BDR 40-343)





## 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 the method by which certain representatives who are members of the Board to Review Claims in the Division of Environmental Protection of the State Department of Conservation and Natural Resources are nominated; 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."

Existing law creates the Board to Review Claims in the Division and provides that the Board consists of certain members, including representatives of certain fields of enterprise. Existing law requires the Governor to appoint each representative from a list of three persons who are nominated by persons engaged in that field of enterprise in this State, through their trade association if one exists. (NRS 445C.300) Section 2.5 of this bill requires the persons engaged in each field of enterprise, through their trade association if one exists, to submit to the Governor the name of their nominee or a list of names of not more than three nominees. Section 2.5 requires the Governor to appoint as the representatives: (1) the person named as the nominee; or (2) if a list of nominees is submitted, one of the persons listed as a nominee.

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** of this bill 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 and the liability for damages for such discharges between the Fund and the operator of the storage tank. (NRS 445C.370, 445C.380) Existing law limits the total amount that may be paid from the Fund in any 1 fiscal year to certain operators to \$1,900,000 for the cleanup of such discharges and \$1,900,000 for liability for such damages. (NRS 445C.380) **Section 6** of this bill increases each of these amounts 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** 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 in compliance with certain requirements; and (2) the Board determines that certain conditions are met. **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 allotment of not more than \$1,000,000 from the Fund for cleaning up discharged petroleum at the site of the storage tank. **Section 6** authorizes the Board to approve additional allotments of not more than \$1,000,000 per allotment for cleaning up discharged petroleum at the site of the storage tank if: (1) the conditions continue to be met; and (2) the previous allotment has been exhausted. **Section 6** further requires an operator which has received an additional allotment to pay a certain amount of the costs of cleaning up discharged petroleum at the site of the storage tank depending on the type of operator.

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** of this bill 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~~ *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. 2.5.** NRS 445C.300 is hereby amended to read as follows:

445C.300 1. The Board to Review Claims is hereby created in the Division. The Board consists of:

- (a) The Administrator of the Division;
- (b) The Director of the Department;
- (c) The State Fire Marshal;
- (d) A representative of refiners of petroleum;
- (e) A representative of independent dealers in petroleum;
- (f) A representative of independent retailers of petroleum; and
- (g) A representative of the general public.

2. An officer designated as a member of the Board may designate a substitute.

*Persons engaged in a field of enterprise in this State that is listed in paragraph (d), (e) or (f) of subsection 1, through their trade association if one exists, shall submit to the Governor the name of their nominee or a list of names of not more than three nominees.* The Governor shall appoint *the person so nominated or, if more than one person is nominated, one of the persons from the list of nominees as* the ~~respective representatives~~ *representative* designated as ~~members~~ *a member* of the Board. ~~Each representative of a field of enterprise must be appointed from a list of three persons nominated by persons engaged in that field in this State, through their trade association if one exists.~~

3. The Board shall select its Chair. The Administrator of the Division shall provide administrative assistance to the Board as required.

4. Each member who is appointed by the Governor is entitled to receive a salary of not more than \$80, as fixed by the Board, for each day’s attendance at a meeting of the Board.

5. While engaged in the business of the Board, each member of the Board is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

**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

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

10 2. Except as otherwise provided in this subsection, money from the Fund  
11 expended by the Division pursuant to this section must be used to augment, and  
12 must not be used to replace or supplant, any money available from other sources for  
13 the cleanup of discharges, including, without limitation, reimbursements by  
14 operators required to be made to the Division pursuant to NRS 445C.340 and  
15 445C.360. If no money is available from those other sources, the Division may  
16 expend money from the Fund pursuant to this section to reimburse the Division for  
17 any costs specified in subsection 1.

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

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

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

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

27 4. As used in this section:

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

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

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

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

34 ~~—(c)—~~ "Petrochemical" means a chemical derived from petroleum or a petroleum  
35 feedstock, including, without limitation, perchloroethylene and any degradation  
36 product of perchloroethylene.

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

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

40 445C.360 1. The operator of every storage tank, and every person who for  
41 compensation puts petroleum into a storage tank, shall report to the Division every  
42 discharge from that *storage* tank of which the operator or other person is aware or  
43 has reason to believe has occurred. The Division shall undertake or contract for  
44 cleaning up the discharge unless the operator or another person is already acting  
45 properly to clean it up. If the Division cleans up the discharge, the operator shall  
46 reimburse the Division for the operator's share of the costs. If, in cleaning up the  
47 discharge, the Division expends money from the Fund in accordance with NRS  
48 445C.320, the Division shall, upon being reimbursed by the operator of the storage  
49 tank pursuant to this subsection, deposit that money in the Fund.

50 2. ~~Each~~ *Before a storage tank is eligible for the coverage provided by NRS*  
51 *445C.380, each* operator who is required *pursuant to subsection 1 of NRS*  
52 *445C.340* or who chooses to register a *storage* tank must, unless the *storage* tank  
53 has been tested for tightness under the federal standards embodied in 40 C.F.R. ~~§~~

~~280.43e 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 *1.* 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]]~~ (a) 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]]~~ *paragraph* 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 *the tanks* and \$1,980,000 for damages.

~~[[2]]~~ (b) By an operator which is a small business, ~~[[40]]~~ 5 percent 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 a person other than this State or the operator of the *storage* tank, or both amounts. The total amount paid by an operator pursuant to this ~~[[subsection]]~~ *paragraph* must not exceed \$50,000 for cleaning up and \$50,000 for damages regardless of the number of storage tanks involved. 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]]~~ *paragraph* in any one fiscal year for discharges from two or more storage tanks under the control of any one operator must not exceed ~~[[1,900,000]]~~ *\$1,950,000* for cleaning up *the storage tanks* and ~~[[1,900,000]]~~ *\$1,950,000* for damages. 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]]~~ (c) By all other operators:

~~[[a]]~~ (I) Ten percent 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 a person other than this State or the operator of the *storage* tank, or both amounts.

~~[(b)]~~ (2) Ninety percent of the first \$1,000,000 for cleaning up each *storage* tank ~~for~~ *and of the first \$1,000,000 of liability* for damages from each *storage* tank must be paid from the Fund.

➤ The total amount paid from the Fund pursuant to ~~paragraph (b)]~~ *subparagraph (2)* in any one fiscal year for discharges from two or more storage tanks under the control of any one operator must not exceed \$1,800,000 for cleaning up *the storage tanks* and \$1,800,000 for damages. 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.

~~[4.]~~ 2. Any *further cost for damages which is in excess of the amount paid pursuant to subsection 1 must be paid by the operator.*

3. *Except as otherwise provided in subsections 4 and 5, any further cost for cleaning up* ~~for for damages]~~ which is in excess of the ~~amounts]~~ *amount* paid pursuant to ~~subsections 1, 2 and 3]~~ *subsection 1* must be paid by the operator.

~~[5.]~~ 4. *The Board may approve an operator to receive an additional allotment of not more than \$1,000,000 from the Fund for cleaning up discharged petroleum at the site of a storage tank if:*

(a) *The Division requires additional cleanup to occur in compliance with any of the requirements of the Division concerning the cleanup of discharged petroleum;*

(b) *The Board determines that:*

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

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

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

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

(5) *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*

(6) *The operator has not received money for damages pursuant to subsection 1 before July 1, 2021; and*

(c) *The amount paid to the operator pursuant to subsection 1 for cleaning up the storage tank has been exhausted.*

5. *In addition to an allotment made pursuant to subsection 4, the Board may approve an operator to receive one or more additional allotments of not more than \$1,000,000 per allotment from the Fund for cleaning up discharged petroleum at the site of a storage tank if:*

(a) *The Division requires additional cleanup pursuant to paragraph (a) of subsection 4;*

(b) *The Board determines that the conditions in paragraph (b) of subsection 4 are met; and*

(c) *The amounts paid to the operator from the Fund for cleaning up discharged petroleum at the site of the storage tank have been exhausted.*

6. *If the Board approves an additional allotment for cleaning up discharged petroleum at the site of a storage tank pursuant to subsection 4 or 5, for each such allotment:*

(a) *An operator which is an agency, department, division or political subdivision of the State shall pay an amount equal to 10 percent or \$10,000, whichever is less, of the allotment for the costs of cleaning up discharged petroleum at the site of the storage tank.*



1       ***(b) An operator which is a small business shall pay an amount equal to 5***  
2 ***percent of the allotment for the costs of cleaning up discharged petroleum at the***  
3 ***site of the storage tank.***

4       ***(c) Any operator not described in paragraph (a) or (b) shall pay an amount***  
5 ***equal to 10 percent of the allotment for the costs of cleaning up discharged***  
6 ***petroleum at the site of the storage tank.***

7       7. A political subdivision of the State that receives money from the Fund  
8 pursuant to subsection 1, **4 or 5** to pay for the costs of cleaning up shall hold one  
9 public hearing upon initiation of the cleanup and one public hearing every 3 months  
10 thereafter until the cleanup is completed to ensure that the cleanup complies with  
11 any requirements of the Division concerning the cost-effectiveness of cleaning up.  
12 The costs incurred by the political subdivision for the hearing must not be attributed  
13 to the political subdivision as part of the costs paid by the political subdivision  
14 pursuant to subsection 1 ~~+~~

15 ~~—6—, 4 or 5.~~

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

19       9. As used in this section, “site” means the facility, whether situated on a  
20 single parcel or on multiple adjacent parcels, where the storage tank is located.

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

22       445C.390 1. Any person who, through willful or wanton misconduct,  
23 through gross negligence or through violation of any applicable statute or  
24 regulation, including specifically any state or federal standard pertaining to the  
25 preparation or maintenance of sites for storage tanks, proximately causes a  
26 discharge is liable to the Division for any cost in cleaning up the discharge or  
27 paying for it to be cleaned up.

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

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

32       445C.410 1. Except as otherwise specifically provided in NRS 445C.320,  
33 the provisions of NRS 445C.340 to 445C.400, inclusive, do not apply to any  
34 **storage** tank which:

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

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

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

42       2. The operator of a tank exempted by paragraph (b) of subsection 1 may  
43 obtain the coverage provided by NRS ~~[445C.370 and]~~ 445C.380 by applying to the  
44 Board, paying the fee set pursuant to NRS 445C.340 for its registration, and, if the  
45 tank is used to store fuel for jet or turbine-powered aircraft, reporting monthly the  
46 number of gallons of fuel put into the tank and paying the fee required by NRS  
47 445C.330. Coverage pursuant to this subsection begins 6 months after the tank is  
48 registered and the required fee first paid.

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

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

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

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