AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL
ACT AND THE HAZARDOUS WASTE ACT TO ALLOW FOR THE PROMULGATION
OF RULES MORE STRINGENT THAN FEDERAL LAW; REQUIRING A
DETERMINATION, AFTER NOTICE AND A HEARING, THAT A MORE
STRINGENT RULE WILL BE MORE PROTECTIVE OF THE PUBLIC HEALTH
AND ENVIRONMENT; REORGANIZING A RULEMAKING PROVISION RELATED
TO OZONE INTO THE POWERS AND DUTIES SECTION OF THE AIR
QUALITY CONTROL ACT; REPEALING SECTION 74-2-5.3 NMSA 1978
(BEING LAWS 2009, CHAPTER 98, SECTION 1).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 74-2-4 NMSA 1978 (being Laws 1967,
Chapter 277, Section 4, as amended) is amended to read:

"74-2-4. LOCAL AUTHORITY.--
A. A county or municipality meeting the
qualifications set forth in Paragraph (1) or (2) of
Subsection J of Section 74-2-2 NMSA 1978 may assume
jurisdiction as a local authority by adopting an ordinance
providing for the local administration and enforcement of the
Air Quality Control Act. The ordinance shall:

(1) create a local board to perform, within
the boundaries of the local authority, those functions
delegated to the environmental improvement board under the
Air Quality Control Act, except any functions reserved
exclusively for the environmental improvement board;

(2) create a local agency to administer and enforce the provisions of the Air Quality Control Act within the boundaries of the local authority that shall, within the boundaries of the local authority, perform all of the duties required of the department and exert all of the powers granted to the department, except for those duties and powers reserved exclusively for the department; and

(3) provide for the appointment of a director who shall perform for the local authority the same duties as required of the secretary under the Air Quality Control Act, except the duties and powers reserved exclusively for the secretary.

B. At least a majority of the members of a local board shall be individuals who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the local board on issues related to the federal act or the Air Quality Control Act.

C. Prior to adopting any ordinance regulating air pollution, public hearings and consultations shall be held as directed by the local authority adopting the ordinance. The provisions of any ordinance shall be consistent with the substantive provisions of the Air Quality Control Act and shall provide for standards and regulations not lower than
those required by regulations adopted by the environmental improvement board.

D. Notwithstanding the provisions of Subsection A of this section, the environmental improvement board and the secretary shall retain jurisdiction and control for the administration and enforcement of the Air Quality Control Act as determined in that act with respect to any act or failure to act, governmental or proprietary, of any local authority that causes or contributes to air pollution, including proceeding against a local authority as provided in Section 74-2-12 NMSA 1978. "Failure to act", as used in this section, includes failure to act against any person violating the applicable ordinance or regulation adopted pursuant thereto.

E. Any local authority that is located within a transportation-related pollutant nonattainment area or maintenance area may provide for a vehicle emission inspection and maintenance program for vehicles registered at an address within the jurisdiction of the local authority and under twenty-six thousand pounds gross vehicle weight rating powered by an internal combustion engine, which program shall be at least as stringent as that required under the federal act or under federal air quality standards. Any two or more local authorities may adopt identical rules and regulations necessary to implement the vehicle emission inspection and
maintenance program, including examining the alternatives of public or private operation of the program.

F. Any local authority that has implemented a vehicle emission inspection and maintenance program may extend the enforcement of that program by entering into joint powers agreements with any municipality or county within the designated airshed or with the department.

G. No tax shall be imposed to fund any vehicle emission inspection and maintenance program until the local authority has submitted the question of imposition of a tax to the registered voters of the local authority and those registered voters have approved the imposition of the tax.

H. A local authority having a vehicle emission inspection and maintenance program shall conduct the vehicle emission inspection and maintenance program through a decentralized privately owned and operated system unless air quality emissions result in automatic implementation of another type of program under the terms of a contingency plan required and approved by the United States environmental protection agency. The local authority shall set the emission inspection fee by ordinance.

I. A local authority having a vehicle emission inspection and maintenance program is authorized to adopt rules, regulations and guidelines governing the establishment of private vehicle emission inspection and maintenance
stations. No private vehicle emission inspection and
maintenance station shall test vehicles unless the station
possesses a valid permit issued by the local agency. Permit
fees shall be determined by ordinance of the local authority
and shall not exceed two hundred dollars ($200) per year per
station. Additionally, a local authority may charge a permit
fee of up to thirty-five dollars ($35.00) per year for each
vehicle emissions mechanic and for each vehicle emissions
inspector. The imposition of permit fees does not require a
vote of the registered voters of the local authority.

J. Before a local authority adopts an ordinance
that is more stringent than the federal act or applicable
federal regulations, or that applies to sources not subject
to regulation pursuant to the federal act or regulations, the
local authority shall make a determination, based on
substantial evidence and after notice and public hearing,
that the proposed ordinance will be more protective of public
health and the environment."

SECTION 2. Section 74-2-5 NMSA 1978 (being Laws 1967,
Chapter 277, Section 5, as amended) is amended to read:

"74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT
BOARD--LOCAL BOARD.--

A. The environmental improvement board or the
local board shall prevent or abate air pollution.

B. The environmental improvement board or the
local board shall:

(1) adopt, promulgate, publish, amend and repeal rules and standards consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution, including:

(a) rules prescribing air standards within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction or any part thereof; and

(b) standards of performance that limit carbon dioxide emissions to no more than one thousand one hundred pounds per megawatt-hour on and after January 1, 2023 for a new or existing source that is an electric generating facility with an original installed capacity exceeding three hundred megawatts and that uses coal as a fuel source; and

(2) adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction or any part thereof.

C. If the environmental improvement board or the local board determines that emissions from sources within the environmental improvement board's jurisdiction or the local
board's jurisdiction cause or contribute to ozone concentrations in excess of ninety-five percent of the primary national ambient air quality standard for ozone promulgated pursuant to the federal act, the environmental improvement board or the local board shall adopt a plan, including rules, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the standard. Rules adopted pursuant to this subsection shall be limited to sources of emissions within the area of the state where the ozone concentrations exceed ninety-five percent of the primary national ambient air quality standard.

D. Rules adopted by the environmental improvement board or the local board may:

(1) include rules to protect visibility in mandatory class I areas to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas; provided that the rules shall be at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas;

(2) prescribe standards of performance for sources and emission standards for hazardous air pollutants
that shall be at least as stringent as required by federal standards of performance;

(3) include rules governing emissions from solid waste incinerators that shall be at least as stringent as any applicable federal emission limitations;

(4) include rules requiring the installation of control technology for mercury emissions that removes the greater of what is achievable with best available control technology or ninety percent of the mercury from the input fuel for all coal-fired power plants, except for coal-fired power plants constructed and generating electric power and energy before July 1, 2007;

(5) require notice to the department or the local agency of the intent to introduce or permit the introduction of an air contaminant into the air within the geographical area of the environmental improvement board's jurisdiction or the local board's jurisdiction; and

(6) require any person emitting any air contaminant to:

(a) install, use and maintain emission monitoring devices;

(b) sample emissions in accordance with methods and at locations and intervals as may be prescribed by the environmental improvement board or the local board;

(c) establish and maintain records of
the nature and amount of emissions;

(d) submit reports regarding the nature and amounts of emissions and the performance of emission control devices; and

(e) provide any other reasonable information relating to the emission of air contaminants.

E. Any rule adopted pursuant to this section shall be at least as stringent as federal law, if any, relating to control of motor vehicle emissions.

F. In making its rules, the environmental improvement board or the local board shall give weight it deems appropriate to all facts and circumstances, including:

(1) character and degree of injury to or interference with health, welfare, visibility and property;

(2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and

(3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

G. Before the environmental improvement board or local board adopts a rule that is more stringent than the federal act or federal regulations, or that applies to
sources not subject to regulation pursuant to the federal act or regulations, the environmental improvement board or local board shall make a determination, based on substantial evidence and after notice and public hearing, that the proposed rule will be more protective of public health and the environment."

SECTION 3. Section 74-4-4 NMSA 1978 (being Laws 1977, Chapter 313, Section 4, as amended) is amended to read:

"74-4-4. DUTIES AND POWERS OF THE BOARD.--

A. The board shall adopt rules for the management of hazardous waste, as may be necessary to protect public health and the environment, that are equivalent to and at least as stringent as federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended:

(1) for the identification and listing of hazardous wastes, taking into account toxicity, persistence and degradability, potential for accumulation in tissue and other related factors, including flammability, corrosiveness and other hazardous characteristics; provided that, except as authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board shall not identify or list any solid waste or combination of solid wastes as a hazardous waste that has not been listed and designated as a hazardous waste by the...
federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(2) establishing standards applicable to generators identified or listed under this subsection, including requirements for:

(a) furnishing information on the location and description of the generator's facility and on the production or energy recovery activity occurring at that facility;

(b) recordkeeping practices that accurately identify the quantities of hazardous waste generated, the constituents of the waste that are significant in quantity or in potential harm to human health or the environment and the disposition of the waste;

(c) labeling practices for any containers used for the storage, transport or disposal of the hazardous waste that will identify accurately the waste;

(d) use of safe containers tested for safe storage and transportation of the hazardous waste;

(e) furnishing the information on the general chemical composition of the hazardous waste to persons transporting, treating, storing or disposing of the waste;

(f) implementation of programs to
reduce the volume or quantity and toxicity of the hazardous
waste generated;

(g) submission of reports to the
secretary at such times as the secretary deems necessary,
setting out the quantities of hazardous waste identified or
listed pursuant to the Hazardous Waste Act that the generator
has generated during a particular time period and the
disposition of all hazardous waste reported, the efforts
undertaken during a particular time period to reduce the
volume and toxicity of waste generated and the changes in
volume and toxicity of waste actually achieved during a
particular time period in comparison with previous time
periods; and

(h) the use of a manifest system and
any other reasonable means necessary to ensure that all
hazardous waste generated is designated for treatment,
storage or disposal in, and arrives at, treatment, storage or
disposal facilities, other than facilities on the premises
where the waste is generated, for which a permit has been
issued pursuant to the Hazardous Waste Act; that the
generator of hazardous waste has a program in place to reduce
the volume or quality and toxicity of waste to the degree
determined by the generator to be economically practicable;
and that the proposed method of treatment, storage or
disposal is that practicable method currently available to
the generator that minimizes the present and future threat to
human health and the environment;

(3) establishing standards applicable to
transporters of hazardous waste identified or listed under
this subsection or of fuel produced from any such hazardous
waste or of fuel from such waste and any other material, as
may be necessary to protect human health and the environment,
including requirements for:

(a) recordkeeping concerning the
hazardous waste transported and its source and delivery
points;

(b) transportation of the hazardous
waste only if properly labeled;

(c) compliance with the manifest system
referred to in Subparagraph (h) of Paragraph (2) of this
subsection; and

(d) transportation of all the hazardous
waste only to the hazardous waste treatment, storage or
disposal facility that the shipper designates on the manifest
form to be a facility holding a permit issued pursuant to the
Hazardous Waste Act or the federal Resource Conservation and
Recovery Act of 1976, as amended;

(4) establishing standards applicable to
distributors or marketers of any fuel produced from hazardous
waste, or any fuel that contains hazardous waste, for:
(a) furnishing the information stating
the location and general description of the facility; and
(b) furnishing the information
describing the production or energy recovery activity carried
out at the facility;
(5) establishing performance standards as
may be necessary to protect human health and the environment
applicable to owners and operators of facilities for the
treatment, storage or disposal of hazardous waste identified
or listed under this section, distinguishing, where
appropriate, between new facilities and facilities in
existence on the date of promulgation, including requirements
for:

(a) maintaining the records of all
hazardous waste identified or listed under this subsection
that is treated, stored or disposed of, as the case may be,
and the manner in which the waste was treated, stored or
disposed of;
(b) satisfactory reporting, monitoring,
inspection and compliance with the manifest system referred
to in Subparagraph (h) of Paragraph (2) of this subsection;
(c) treatment, storage or disposal of
all such waste and any liquid that is not a hazardous waste,
except with respect to underground injection control into
deep injection wells, received by the facility pursuant to
such operating methods, techniques and practices as may be satisfactory to the secretary;

(d) location, design and construction of hazardous waste treatment, disposal or storage facilities;

(e) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any hazardous waste;

(f) maintenance and operation of the facilities and requiring any additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility, including financial responsibility for corrective action, as may be necessary or desirable;

(g) compliance with the requirements of Paragraph (6) of this subsection respecting permits for treatment, storage or disposal;

(h) the taking of corrective action for all releases of hazardous waste or constituents from a solid waste management unit at a treatment, storage or disposal facility, regardless of the time at which waste was placed in the unit; and

(i) the taking of corrective action beyond a facility's boundaries where necessary to protect human health and the environment unless the owner or operator of that facility demonstrates to the satisfaction of the
secretary that, despite the owner's or operator's best
efforts, the owner or operator was unable to obtain the
necessary permission to undertake such action. Rules adopted
and promulgated under this subparagraph shall take effect
immediately and shall apply to all facilities operating under
permits issued under Paragraph (6) of this subsection and to
all landfills, surface impoundments and waste pile units,
including any new units, replacements of existing units or
lateral expansions of existing units, that receive hazardous
waste after July 26, 1982. No private entity shall be
precluded by reason of criteria established under
Subparagraph (f) of this paragraph from the ownership or
operation of facilities providing hazardous waste treatment,
storage or disposal services where the entity can provide
assurance of financial responsibility and continuity of
operation consistent with the degree and duration of risks
associated with the treatment, storage or disposal of
specified hazardous waste;

(6) requiring each person owning or
operating, or both, an existing facility or planning to
construct a new facility for the treatment, storage or
disposal of hazardous waste identified or listed under this
subsection to have a permit issued pursuant to requirements
established by the board;

(7) establishing procedures for the
issuance, suspension, revocation and modification of permits issued under Paragraph (6) of this subsection, which rules shall provide for public notice, public comment and an opportunity for a hearing prior to the issuance, suspension, revocation or major modification of any permit unless otherwise provided in the Hazardous Waste Act;

(8) defining major and minor modifications; and

(9) establishing procedures for the inspection of facilities for the treatment, storage and disposal of hazardous waste that govern the minimum frequency and manner of the inspections, the manner in which records of the inspections shall be maintained and the manner in which reports of the inspections shall be filed; provided, however, that inspections of permitted facilities shall occur no less often than every two years.

B. The board shall adopt rules:

(1) concerning hazardous substance incidents; and

(2) requiring notification to the department of any hazardous substance incidents.

C. The board shall adopt rules concerning storage tanks as may be necessary to protect public health and the environment and that, in the case of underground storage tanks, are equivalent to and at least as stringent as federal
regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.


E. Rules adopted pursuant to this section shall include:

   (1) standards for the installation, operation, maintenance, repair and replacement of storage tanks;

   (2) requirements for financial responsibility;

   (3) standards for inventory control;

   (4) standards for the detection of leaks from and the integrity-testing and monitoring of storage tanks;

   (5) standards for the closure and dismantling of storage tanks;

   (6) requirements for recordkeeping;

   (7) requirements for the reporting, containment and remediation of all leaks from any storage tanks; and
(8) criteria and procedures for classifying a storage tank facility as ineligible, and reclassifying a storage tank facility as eligible, for the delivery, deposit, acceptance or sale of petroleum products.

F. The criteria and procedures adopted by the board pursuant to this section shall require the department to classify a storage tank facility as ineligible for delivery, deposit, acceptance or sale of petroleum products if the storage tank facility has not installed required equipment for spill prevention, overfill protection, leak detection or corrosion protection, including required corrosion protection equipment for a buried metal flexible connector.

G. The criteria and procedures adopted by the board pursuant to this section may allow the department to classify a storage tank facility as ineligible for delivery, deposit, acceptance or sale of petroleum products when the owner or operator has failed to comply with a written warning within a reasonable period of time and the warning concerns:

(1) improper operation or maintenance of required equipment for spill prevention, overfill protection, leak detection or corrosion protection;

(2) failure to maintain required financial responsibility for corrective action; or

(3) operation of the storage tank facility
in a manner that creates an imminent threat to the public
health and the environment.

H. Rules adopted by the board pursuant to this
section shall defer classifying a storage tank facility as
ineligible for delivery, deposit, acceptance or sale of
petroleum products if the ineligible classification would
jeopardize the availability of, or access to, motor fuel in
any rural and remote areas.

I. Rules adopted by the board pursuant to this
section shall allow the department to authorize delivery or
deposit of petroleum products to:

   (1) an emergency generator tank that is
otherwise ineligible for delivery or deposit if a commercial
power failure or other declared state of emergency exists and
the emergency generator tank provides power supply, stores
petroleum and is used solely in connection with an emergency
system, legally required standby system or optional standby
system; or

   (2) a storage tank facility that is
otherwise ineligible for delivery or deposit if the delivery
or deposit is necessary to test or calibrate a tank.

J. The board shall adopt rules concerning the
management of used oil that are equivalent to and at least as
stringent as federal regulations adopted by the federal
environmental protection agency pursuant to the federal

K. In the event the board wishes to adopt rules that are identical with regulations adopted by an agency of the federal government, the board, after notice and hearing, may adopt such rules by reference to the federal regulations without setting forth the provisions of the federal regulations.

L. Before the board adopts a rule for the management of hazardous waste, concerning storage tanks or concerning used oil, that is more stringent than the federal regulations, the board shall make a determination, based on substantial evidence and after notice and public hearing, that the proposed rule will be more protective of public health and the environment."

SECTION 4. REPEAL.--Section 74-2-5.3 NMSA 1978 (being Laws 2009, Chapter 98, Section 1) is repealed.

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.