

HOUSE BILL 113

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

John Heaton

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE HAZARDOUS WASTE ACT
TO REMOVE AUTHORITY OF THE ENVIRONMENTAL IMPROVEMENT BOARD TO
REQUIRE FINANCIAL ASSURANCE FROM FEDERAL GOVERNMENT
FACILITIES; PROVIDING FOR REFUND OF LIABILITY ASSURANCE
DEPOSITS.

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

Section 1. 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 regulations for the
management of hazardous waste as may be necessary to protect
public health and the environment, that are equivalent to and
no more stringent than federal regulations adopted by the
federal environmental protection agency pursuant to the
federal Resource Conservation and Recovery Act of 1976, as

.130625.2

underscored material = new
~~[bracketed material]~~ = delete

underscoring material = new
~~[bracketed material] = delete~~

1 amended:

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

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

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

21 (b) record-keeping practices that
22 accurately identify the quantities of hazardous waste
23 generated, the constituents of the waste that are significant
24 in quantity or in potential harm to human health or the
25 environment and the disposition of the waste;

(c) labeling practices for any
containers used for the storage, transport or disposal of the

underscored material = new
~~[bracketed material] = delete~~

1 hazardous waste that will identify accurately the waste;

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

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

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

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

22 (h) the use of a manifest system and
23 any other reasonable means necessary to assure that all
24 hazardous waste generated is designated for treatment,
25 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

.130625.2

underscored material = new
~~[bracketed material]~~ = delete

1 issued pursuant to the Hazardous Waste Act and that the
2 generator of hazardous waste has a program in place to reduce
3 the volume or quality and toxicity of waste to the degree
4 determined by the generator to be economically practicable
5 and that the proposed method of treatment, storage or
6 disposal is that practicable method currently available to
7 the generator that minimizes the present and future threat to
8 human health and the environment;

9 (3) establishing standards applicable to
10 transporters of hazardous waste identified or listed under
11 this subsection or of fuel produced from any such hazardous
12 waste or of fuel from such waste and any other material, as
13 may be necessary to protect human health and the environment,
14 including but not limited to requirements for:

15 (a) record-keeping concerning the
16 hazardous waste transported and its source and delivery
17 points;

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

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

23 (d) transportation of all the hazardous
24 waste only to the hazardous waste treatment, storage or
25 disposal facilities 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

.130625.2

underscored material = new
~~[bracketed material]~~ = delete

1 Conservation and Recovery Act of 1976, as amended [~~42 U.S.C.~~
2 ~~6901 et seq.~~];

3 (4) establishing standards applicable to
4 distributors or marketers of any fuel produced from hazardous
5 waste, or any fuel that contains hazardous waste, for:

6 (a) furnishing the information stating
7 the location and general description of the facility; and

8 (b) furnishing the information
9 describing the production or energy recovery activity carried
10 out at the facility;

11 (5) establishing performance standards as
12 may be necessary to protect human health and the environment
13 applicable to owners and operators of facilities for the
14 treatment, storage or disposal of hazardous waste identified
15 or listed under this section, distinguishing, where
16 appropriate, between new facilities and facilities in
17 existence on the date of promulgation, including [~~but not~~
18 ~~limited to~~] requirements for:

19 (a) maintaining the records of all
20 hazardous waste identified or listed under this subsection
21 that is treated, stored or disposed of, as the case may be,
22 and the manner in which such waste was treated, stored or
23 disposed of;

24 (b) satisfactory reporting, monitoring,
25 inspection and compliance with the manifest system referred
to in Subparagraph (h) of Paragraph (2) of this subsection;

(c) treatment, storage or disposal of

underscored material = new
~~[bracketed material] = delete~~

1 all such waste and any liquid that is not a hazardous waste,
2 except with respect to underground injection control into
3 deep injection wells, received by the facility pursuant to
4 such operating methods, techniques and practices as may be
5 satisfactory to the secretary;

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

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

11 (f) maintenance and operation of the
12 facilities and requiring any additional qualifications as to
13 ownership, continuity of operation, training for personnel
14 and financial responsibility except on federal government
15 facilities or from federal contract operators, including
16 financial responsibility for corrective action except on
17 federal government facilities or from federal contract
18 operators, as may be necessary or desirable;

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

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

(i) the taking of corrective action

underscored material = new
~~[bracketed material] = delete~~

1 beyond a facility's boundaries where necessary to protect
2 human health and the environment unless the owner or operator
3 of the facility concerned demonstrates to the satisfaction of
4 the secretary that, despite the owner's or operator's best
5 efforts, the owner or operator was unable to obtain the
6 necessary permission to undertake such action. Regulations
7 adopted and promulgated under this subparagraph shall take
8 effect immediately and shall apply to all facilities
9 operating under permits issued under Paragraph (6) of this
10 subsection and to all landfills, surface impoundments and
11 waste pile units, including any new units, replacements of
12 existing units or lateral expansions of existing units, that
13 receive hazardous waste after July 26, 1982. No private
14 entity shall be precluded by reason of criteria established
15 under Subparagraph (f) of this paragraph from the ownership
16 or operation of facilities providing hazardous waste
17 treatment, storage or disposal services where the entity can
18 provide assurance of financial responsibility except on
19 federal government facilities or from federal contract
20 operators and continuity of operation consistent with the
21 degree and duration of risks associated with the treatment,
22 storage or disposal of specified hazardous waste;

23 (6) requiring each person owning or
24 operating or both an existing facility or planning to
25 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

.130625.2

underscored material = new
~~[bracketed material] = delete~~

1 established by the board;

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

9 (8) defining major and minor modifications;
10 and

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

19 B. The board shall adopt regulations:

20 (1) concerning hazardous substance
21 incidents; and
22 (2) requiring notification to the department
23 of any hazardous substance incidents.

24 C. The board shall adopt regulations concerning
25 underground storage tanks as may be necessary to protect
public health and the environment that are equivalent to and
no more stringent than federal regulations adopted by the

underscoring material = new
~~[bracketed material] = delete~~

1 federal environmental protection agency pursuant to the
2 federal Resource Conservation and Recovery Act of 1976, as
3 amended, and that shall include:

- 4 (1) standards for the installation,
5 operation and maintenance of underground storage tanks;
- 6 (2) requirements for financial
7 responsibility except on federal government facilities or
8 from federal contract operators;
- 9 (3) standards for inventory control;
- 10 (4) standards for the detection of leaks
11 from and the integrity testing and monitoring of underground
12 storage tanks;
- 13 (5) standards for the closure and
14 dismantling of underground storage tanks;
- 15 (6) requirements for record-keeping; and
- 16 (7) requirements for the reporting,
17 containment and remediation of all leaks from any underground
18 storage tanks.

19 D. Notwithstanding the provisions of Subsection A
20 of this section, the board may adopt regulations for the
21 management of hazardous waste and hazardous waste
22 transformation that are more stringent than federal
23 regulations adopted by the federal environmental protection
24 agency pursuant to the federal Resource Conservation and
25 Recovery Act of 1976, as amended, if the board determines,
after notice and public hearing, that such federal
regulations are not sufficient to protect public health and

.130625.2

underscored material = new
~~[bracketed material] = delete~~

1 the environment. As used in this subsection,
2 "transformation" means an incinerator, pyrolysis,
3 distillation, gasification or biological conversion other
4 than composting.

5 E. In the event the board wishes to adopt
6 regulations that are identical with regulations adopted by an
7 agency of the federal government, the board, after notice and
8 hearing, may adopt such regulations by reference to the
9 federal regulations without setting forth the provisions of
10 the federal regulations."

11 Section 2. Section 74-4-10 NMSA 1978 (being Laws 1981
12 (1st S.S.), Chapter 8, Section 9, as amended) is amended to
13 read:

14 "74-4-10. ENFORCEMENT--COMPLIANCE ORDERS--CIVIL
15 PENALTIES.--

16 A. Whenever on the basis of any information the
17 secretary determines that any person has violated, is
18 violating or threatens to violate any requirement of the
19 Hazardous Waste Act, any regulation adopted and promulgated
20 pursuant to that act or any condition of a permit issued
21 pursuant to that act, the secretary may:

22 (1) issue a compliance order stating with
23 reasonable specificity the nature of the violation or
24 threatened violation and requiring compliance immediately or
25 within a specified time period or assessing a civil penalty
for any past or current violation, or both; or

(2) commence a civil action in district

underscoring material = new
~~[bracketed material] = delete~~

1 court for appropriate relief, including a temporary or
2 permanent injunction.

3 B. Any order issued pursuant to Subsection A of
4 this section may include a suspension or revocation of any
5 permit issued by the secretary. Any penalty assessed in the
6 order shall not exceed ten thousand dollars (\$10,000) per day
7 of noncompliance for each violation. In assessing the
8 penalty, the secretary shall take into account the
9 seriousness of the violation and any good-faith efforts to
10 comply with the applicable requirements. For violations
11 related to underground storage tanks, "per violation" means
12 per tank.

13 C. If a violator fails to take corrective actions
14 within the time specified in a compliance order, the
15 secretary may:

16 (1) assess a civil penalty of not more than
17 twenty-five thousand dollars (\$25,000) for each day of
18 continued noncompliance with the order; and

19 (2) suspend or revoke any permit issued to
20 the violator pursuant to the Hazardous Waste Act.

21 D. Whenever on the basis of any information the
22 secretary determines that the immediate termination of a
23 research, development and demonstration permit is necessary
24 to protect human health ~~[and]~~ or the environment, the
25 secretary may order an immediate termination of all research,
development and demonstration operations permitted pursuant
to the Hazardous Waste Act at the facility.

underscored material = new
~~[bracketed material] = delete~~

1 E. Whenever on the basis of any information the
2 secretary determines that there is or has been a release of
3 hazardous waste into the environment from a facility
4 authorized to operate under Section 74-4-9 NMSA 1978, the
5 secretary may issue an order requiring corrective action,
6 including corrective action beyond a facility's boundaries or
7 other response measure as he deems necessary to protect human
8 health or the environment or may commence an action in
9 district court in the district in which the facility is
10 located for appropriate relief, including a temporary or
11 permanent injunction.

12 F. Any order issued under Subsection E of this
13 section may include a suspension or revocation of
14 authorization to operate under Section 74-4-9 NMSA 1978 and
15 shall state with reasonable specificity the nature of the
16 required corrective action or other response measure and
17 shall specify a time for compliance. If any person named in
18 an order fails to comply with the order, the secretary may
19 assess, and the person shall be liable to the state for, a
20 civil penalty in an amount not to exceed ten thousand dollars
21 (\$10,000) for each day of noncompliance with the order.

22 G. Any order issued pursuant to this section, any
23 other enforcement proceeding initiated pursuant to this
24 section or any claim for personal or property injury arising
25 from any conduct for which evidence of financial
responsibility except on federal government facilities or
from federal contract operators must be provided may be

underscored material = new
~~[bracketed material] = delete~~

1 issued to or taken against the insurer or guarantor of an
2 owner or operator of a treatment, storage or disposal
3 facility or underground storage tank if:

4 (1) the owner or operator is in bankruptcy,
5 reorganization or arrangement pursuant to the federal
6 Bankruptcy Code; or

7 (2) jurisdiction in any state or federal
8 court cannot with reasonable diligence be obtained over an
9 owner or operator likely to be solvent at the time of
10 judgment.

11 H. Any order issued pursuant to this section shall
12 become final unless, no later than thirty days after the
13 order is served, the person named in the order submits a
14 written request to the secretary for a public hearing. Upon
15 such request, the secretary shall promptly conduct a public
16 hearing. The secretary shall appoint an independent hearing
17 officer to preside over the public hearing. The hearing
18 officer shall make and preserve a complete record of the
19 proceedings and forward his recommendation based on the
20 record to the secretary, who shall make the final decision.

21 I. In connection with any proceeding under this
22 section, the secretary may issue subpoenas for the attendance
23 and testimony of witnesses and the production of relevant
24 papers, books and documents and may promulgate rules for
25 discovery procedures.

J. Penalties collected pursuant to an
administrative order shall be deposited in the state treasury

underscoring material = new
~~[bracketed material] = delete~~

1 to be credited to the hazardous waste emergency fund."

2 Section 3. TEMPORARY PROVISION.--A payment submitted to
3 the department of environment pursuant to financial assurance
4 requirements imposed on a federal facility contractor prior
5 to the effective date of this section shall be refunded. On
6 the effective date of this section, the department shall
7 issue an administrative order removing the financial
8 assurance requirement of a hazardous waste permit for a
9 federal facility.

10 - 14 -
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25