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HOUSE BILL 701

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Donald E. Bratton

AN ACT

**RELATING TO HAZARDOUS MATERIALS; AMENDING THE HAZARDOUS WASTE
ACT TO PROVIDE FOR THE REGULATION OF THE MANAGEMENT OF USED
OIL.**

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

**Section 1. Section 74-4-3 NMSA 1978 (being Laws 1977,
Chapter 313, Section 3, as amended) is amended to read:**

**"74-4-3. DEFINITIONS. --As used in the Hazardous Waste
Act:**

**A. "board" means the environmental improvement
board;**

**B. "director" or "secretary" means the secretary
of environment;**

**C. "disposal" means the discharge, deposit,
injection, dumping, spilling, leaking or placing of any solid**

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1 waste or hazardous waste into or on any land or water so that
2 such solid waste or hazardous waste or constituent thereof may
3 enter the environment or be emitted into the air or discharged
4 into any waters, including ground waters;

5 D. "division" or "department" means the department
6 of environment;

7 E. "federal agency" means any department, agency
8 or other instrumentality of the federal government and any
9 independent agency or establishment of that government,
10 including any government corporation and the government
11 printing office;

12 F. "generator" means any person producing
13 hazardous waste;

14 G. "hazardous agricultural waste" means hazardous
15 waste generated as part of his licensed activity by any person
16 licensed pursuant to the Pesticide Control Act or any
17 hazardous waste designated as hazardous agricultural waste by
18 the board, but does not include animal excrement in connection
19 with farm, ranch or feedlot operations;

20 H. "hazardous substance incident" means any
21 emergency incident involving a chemical or chemicals,
22 including but not limited to transportation wrecks, accidental
23 spills or leaks, fires or explosions, which incident creates
24 the reasonable probability of injury to human health or
25 property;

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1 I. "hazardous waste" means any solid waste or
2 combination of solid wastes [~~which~~] that because of their
3 quantity, concentration or physical, chemical or infectious
4 characteristics may:

5 (1) cause or significantly contribute to an
6 increase in mortality or an increase in serious irreversible
7 or incapacitating reversible illness; or

8 (2) pose a substantial present or potential
9 hazard to human health or the environment when improperly
10 treated, stored, transported, disposed of or otherwise
11 managed. "Hazardous waste" does not include any of the
12 following, until the board determines that they are subject to
13 Subtitle C of the federal Resource Conservation and Recovery
14 Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling
15 fluids, produced waters and other wastes associated with the
16 exploration, development or production of crude oil or natural
17 gas or geothermal energy; [~~any~~] fly ash waste; bottom ash
18 waste; slag waste; flue gas emission control waste generated
19 primarily from the combustion of coal or other fossil fuels;
20 solid waste from the extraction, beneficiation or processing
21 of ores and minerals, including phosphate rock and overburden
22 from the mining of uranium ore; or cement kiln dust waste;

23 J. "manifest" means the form used for identifying
24 the quantity, composition, origin, routing and destination of
25 hazardous waste during transportation from point of generation

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1 to point of disposal, treatment or storage;

2 K. "person" means any individual, trust, firm,
3 joint stock company, federal agency, corporation including a
4 government corporation, partnership, association, state,
5 municipality, commission, political subdivision of a state or
6 any interstate body;

7 L. "regulated substance" means:

8 (1) any substance defined in Section 101(14)
9 of the federal Comprehensive Environmental Response,
10 Compensation and Liability Act of 1980, but not including any
11 substance regulated as a hazardous waste under Subtitle C of
12 the federal Resource Conservation and Recovery Act of 1976, as
13 amended; and

14 (2) petroleum, including crude oil or any
15 fraction thereof that is liquid at standard conditions of
16 temperature and pressure of sixty degrees Fahrenheit and
17 fourteen and seven-tenths pounds per square inch absolute;

18 M "solid waste" means any garbage, refuse, sludge
19 from a waste treatment plant, water supply treatment plant or
20 air pollution control facility and other discarded material,
21 including solid, liquid, semisolid or contained gaseous
22 material resulting from industrial, commercial, mining and
23 agricultural operations, and from community activities, but
24 does not include solid or dissolved materials in domestic
25 sewage or solid or dissolved materials in irrigation return

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1 flows or industrial discharges [~~which~~] that are point sources
2 subject to permits under Section 402 of the federal Water
3 Pollution Control Act, as amended (86 Stat. 880), or source,
4 special nuclear or byproduct material as defined by the
5 federal Atomic Energy Act of 1954, as amended (68 Stat. 923);

6 N. "storage" means the containment of hazardous
7 waste, either on a temporary basis or for a period of years,
8 in such a manner as not to constitute disposal of such
9 hazardous waste;

10 O. "tank installer" means any individual who
11 installs or repairs an underground storage tank;

12 P. "transporter" means a person engaged in the
13 movement of hazardous waste, not including movement at the
14 site of generation, disposal, treatment or storage;

15 Q. "treatment" means any method, technique or
16 process, including neutralization, designed to change the
17 physical, chemical or biological character or composition of
18 any hazardous waste so as to neutralize such waste or so as to
19 render such waste nonhazardous, safer for transport, amenable
20 to recovery, amenable to storage or reduced in volume. Such
21 term includes any activity or processing designed to change
22 the physical form or chemical composition of hazardous waste
23 so as to render it nonhazardous; [~~and~~]

24 R. "underground storage tank" means a single tank
25 or combination of tanks, including underground pipes connected

1 thereto, that are used to contain an accumulation of regulated
2 substances and the volume of which, including the volume of
3 the underground pipes connected thereto, is ten percent or
4 more beneath the surface of the ground. The term does not
5 include any:

6 (1) farm, ranch or residential tank of one
7 thousand one hundred gallons or less capacity used for storing
8 motor fuel or heating oil for noncommercial purposes;

9 (2) septic tank;

10 (3) pipeline facility, including gathering
11 lines that are regulated under the federal Natural Gas
12 Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or
13 the federal Hazardous Liquid Pipeline Safety Act of 1979, 49
14 U.S.C. App. 2001, et seq., or that is an intrastate pipeline
15 facility regulated under state laws comparable to either act;

16 (4) surface impoundment, pit, pond or lagoon;

17 (5) storm water or wastewater collection
18 system;

19 (6) flow-through process tank;

20 (7) liquid trap or associated gathering lines
21 directly related to oil or gas production and gathering
22 operations;

23 (8) storage tank situated in an underground
24 area, such as a basement, cellar, mineworking drift, shaft or
25 tunnel, if the storage tank is situated upon or above the

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1 surface of the undesignated floor; or

2 (9) pipes connected to any tank that is
3 described in Paragraphs (1) through (8) of this subsection;
4 and

5 S. "used oil" means any oil that has been refined
6 from crude oil, or any synthetic oil, that has been used and
7 as a result of such use is contaminated by physical or
8 chemical impurities."

9 Section 2. Section 74-4-4 NMSA 1978 (being Laws 1977,
10 Chapter 313, Section 4, as amended) is amended to read:

11 "74-4-4. DUTIES AND POWERS OF THE BOARD. --

12 A. The board shall adopt regulations for the
13 management of hazardous waste as may be necessary to protect
14 public health and the environment, that are equivalent to and
15 no more stringent than federal regulations adopted by the
16 federal environmental protection agency pursuant to the
17 federal Resource Conservation and Recovery Act of 1976, as
18 amended:

19 (1) for the identification and listing of
20 hazardous wastes, taking into account toxicity, persistence
21 and degradability, potential for accumulation in tissue and
22 other related factors, including flammability, corrosiveness
23 and other hazardous characteristics; provided that, except as
24 authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the
25 board shall not identify or list any solid waste or

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1 combination of solid wastes as a hazardous waste that has not
2 been listed and designated as a hazardous waste by the federal
3 environmental protection agency pursuant to the federal
4 Resource Conservation and Recovery Act of 1976, as amended;

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

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

12 (b) record-keeping practices that
13 accurately identify the quantities of hazardous waste
14 generated, the constituents of the waste that are significant
15 in quantity or in potential harm to human health or the
16 environment and the disposition of the waste;

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

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

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

25 (f) implementation of programs to

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1 reduce the volume or quantity and toxicity of the hazardous
2 waste generated;

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

14 (h) the use of a manifest system and
15 any other reasonable means necessary to assure that all
16 hazardous waste generated is designated for treatment, storage
17 or disposal in, and arrives at, treatment, storage or disposal
18 facilities, other than facilities on the premises where the
19 waste is generated, for which a permit has been issued
20 pursuant to the Hazardous Waste Act and that the generator of
21 hazardous waste has a program in place to reduce the volume or
22 quality and toxicity of waste to the degree determined by the
23 generator to be economically practicable and that the proposed
24 method of treatment, storage or disposal is that practicable
25 method currently available to the generator that minimizes the

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1 present and future threat to human health and the environment;

2 (3) establishing standards applicable to
3 transporters of hazardous waste identified or listed under
4 this subsection or of fuel produced from any such hazardous
5 waste or of fuel from such waste and any other material, as
6 may be necessary to protect human health and the environment,
7 including but not limited to requirements for:

8 (a) record-keeping concerning the
9 hazardous waste transported and its source and delivery
10 points;

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

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

16 (d) transportation of all the hazardous
17 waste only to the hazardous waste treatment, storage or
18 disposal facilities that the shipper designates on the
19 manifest form to be a facility holding a permit issued
20 pursuant to the Hazardous Waste Act or the federal Resource
21 Conservation and Recovery Act of 1976, as amended [~~42 U.S.C.~~
22 ~~6901 et seq.~~];

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

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1 (a) furnishing the information stating
2 the location and general description of the facility; and

3 (b) furnishing the information
4 describing the production or energy recovery activity carried
5 out at the facility;

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

14 (a) maintaining the records of all
15 hazardous waste identified or listed under this subsection
16 that is treated, stored or disposed of, as the case may be,
17 and the manner in which such waste was treated, stored or
18 disposed of;

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

22 (c) treatment, storage or disposal of
23 all such waste and any liquid that is not a hazardous waste,
24 except with respect to underground injection control into deep
25 injection wells, received by the facility pursuant to such

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1 operating methods, techniques and practices as may be
2 satisfactory to the secretary;

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

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

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

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

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

21 (i) the taking of corrective action
22 beyond a facility's boundaries where necessary to protect
23 human health and the environment unless the owner or operator
24 of the facility concerned demonstrates to the satisfaction of
25 the secretary that, despite the owner's or operator's best

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1 efforts, the owner or operator was unable to obtain the
2 necessary permission to undertake such action. Regulations
3 adopted and promulgated under this subparagraph shall take
4 effect immediately and shall apply to all facilities operating
5 under permits issued under Paragraph (6) of this subsection
6 and to all landfills, surface impoundments and waste pile
7 units, including any new units, replacements of existing units
8 or lateral expansions of existing units, that receive
9 hazardous waste after July 26, 1982. No private entity shall
10 be precluded by reason of criteria established under
11 Subparagraph (f) of this paragraph from the ownership or
12 operation of facilities providing hazardous waste treatment,
13 storage or disposal services where the entity can provide
14 assurance of financial responsibility and continuity of
15 operation consistent with the degree and duration of risks
16 associated with the treatment, storage or disposal of
17 specified hazardous waste;

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

24 (7) establishing procedures for the issuance,
25 suspension, revocation and modification of permits issued

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

6 (8) defining major and minor modifications;

7 and

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

16 B. The board shall adopt regulations:

17 (1) concerning hazardous substance incidents;

18 and

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

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

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1 federal Resource Conservation and Recovery Act of 1976, as
2 amended, and that shall include:

3 (1) standards for the installation, operation
4 and maintenance of underground storage tanks;

5 (2) requirements for financial
6 responsibility;

7 (3) standards for inventory control;

8 (4) standards for the detection of leaks from
9 and the integrity testing and monitoring of underground
10 storage tanks;

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

13 (6) requirements for record-keeping; and

14 (7) requirements for the reporting,
15 containment and remediation of all leaks from any underground
16 storage tanks.

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

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

4 E. The board shall adopt regulations concerning
5 the management of used oil that are equivalent to and no more
6 stringent than federal regulations adopted by the federal
7 environmental protection agency pursuant to the federal
8 Resource Conservation and Recovery Act of 1976, as amended.

9 [E-] F. In the event the board wishes to adopt
10 regulations that are identical with regulations adopted by an
11 agency of the federal government, the board, after notice and
12 hearing, may adopt such regulations by reference to the
13 federal regulations without setting forth the provisions of
14 the federal regulations. "