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SENATE BILL 333

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

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO THE ENVIRONMENT; PROVIDING THAT THE PROVISIONS OF THE HAZARDOUS WASTE ACT AND THE GROUND WATER PROTECTION ACT APPLY TO CERTAIN ABOVE GROUND STORAGE TANKS; CLARIFYING THE REGULATORY AUTHORITY OVER CERTAIN FLAMMABLE LIQUIDS.

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

Section 1. Section 59A-52-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 962) is amended to read:

"59A-52-16. FLAMMABLE LIQUIDS ~~[REGULATIONS]~~ RULES--
NATIONWIDE STANDARDS--SAVINGS CLAUSE--DEFINITION.--

A. ~~[The state fire board shall formulate, adopt and promulgate and amend or revise rules and regulations]~~ The commission shall adopt rules for the safe vehicular transportation, storage, handling and use of flammable and combustible liquids; provided that the commission shall not

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1 adopt any rule conflicting with the jurisdiction of the
2 department of environment over the regulation of storage tanks
3 pursuant to the Hazardous Waste Act or the Ground Water
4 Protection Act.

5 B. The rules [~~and regulations~~] shall be in keeping
6 with the latest generally recognized safety standards for
7 flammable and combustible liquids. Rules [~~and regulations~~] in
8 substantial conformity with the published standards of the
9 national fire protection association for vehicular
10 transportation, storage, handling and use of flammable and
11 combustible liquids shall be deemed to be in substantial
12 conformity with the generally accepted and recognized
13 standards of safety concerning the same subject matter.

14 C. The rules [~~and regulations~~] shall include
15 reasonable provisions under which facilities in service prior
16 to the effective date of the rules [~~and regulations~~] and not
17 in strict conformity therewith may be continued in service.
18 Nonconforming facilities in service prior to the adoption of
19 [~~regulations which~~] the rules that are found by the state fire
20 marshal to constitute a distinct hazard to life or property
21 may not be excepted from [~~regulations~~] the rules or permitted
22 to continue in service. For guidance in enforcement, the
23 rules [~~and regulations~~] may delineate those types of
24 nonconformities that should be considered distinctly hazardous
25 and those nonconformities [~~which~~] that should be evaluated in

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1 the light of local conditions. If the need for compliance
2 with any rule [~~or regulation~~] is conditioned on local factors,
3 the rules [~~and regulations~~] shall provide that reasonable
4 notice be given to the proprietor of the facility affected of
5 intention to evaluate the need for compliance and of the time
6 and place at which he may appear and offer evidence thereon.

7 D. As used in [~~this article~~] Chapter 59A, Article
8 52 NMSA 1978, the term "flammable liquid" shall mean any
9 liquid having a flash point below one hundred [~~(+100)~~] degrees
10 Fahrenheit, and "combustible liquid" shall mean any liquid
11 having a flash point at or above one hundred [~~(+100)~~] degrees
12 Fahrenheit and below two hundred [~~(+200)~~] degrees Fahrenheit. "

13 Section 2. Section 74-4-3 NMSA 1978 (being Laws 1977,
14 Chapter 313, Section 3, as amended) is amended to read:

15 "74-4-3. DEFINITIONS. --As used in the Hazardous Waste
16 Act:

17 A. "above ground storage tank" means a single tank
18 or combination of tanks, including underground pipes connected
19 thereto, that are used to contain petroleum, including crude
20 oil or any fraction thereof that is liquid at standard
21 conditions of temperature and pressure of sixty degrees
22 Fahrenheit and fourteen and seven-tenths pounds per square
23 inch absolute, and the volume of which is more than ninety
24 percent above the surface of the ground. "Above ground
25 storage tank" does not include any:

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

4 (2) pipeline facility, including gathering
5 lines regulated under the federal Natural Gas Pipeline Safety
6 Act of 1968 or the federal Hazardous Liquid Pipeline Safety
7 Act of 1979, or that is an intrastate pipeline facility
8 regulated under state laws comparable to either act;

9 (3) surface impoundment, pit, pond or lagoon;

10 (4) storm water or wastewater collection
11 system;

12 (5) flow-through process tank;

13 (6) liquid trap, tank or associated gathering
14 lines directly related to oil or gas production and gathering
15 operations;

16 (7) tank associated with an emergency
17 generator system;

18 (8) tank exempted by rule of the board after
19 finding that the type of tank is adequately regulated under
20 another federal or state law; or

21 (9) pipes connected to any tank that is
22 described in Paragraphs (1) through (8) of this subsection;

23 [A.] B. "board" means the environmental
24 improvement board;

25 C. "corrective action" means an action taken in

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1 accordance with rules of the board to investigate, minimize,
2 eliminate or clean up a release to protect the public health,
3 safety and welfare or the environment;

4 [B-] D. "director" or "secretary" means the
5 secretary of environment;

6 [C-] E. "disposal" means the discharge, deposit,
7 injection, dumping, spilling, leaking or placing of any solid
8 waste or hazardous waste into or on any land or water so that
9 such solid waste or hazardous waste or constituent thereof may
10 enter the environment or be emitted into the air or discharged
11 into any waters, including ground waters;

12 [D-] F. "division" or "department" means the
13 department of environment;

14 [E-] G. "federal agency" means any department,
15 agency or other instrumentality of the federal government and
16 any independent agency or establishment of that government,
17 including any government corporation and the government
18 printing office;

19 [F-] H. "generator" means any person producing
20 hazardous waste;

21 [G-] I. "hazardous agricultural waste" means
22 hazardous waste generated as part of his licensed activity by
23 any person licensed pursuant to the Pesticide Control Act or
24 any hazardous waste designated as hazardous agricultural waste
25 by the board, but does not include animal excrement in

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1 connection with farm, ranch or feedlot operations;

2 ~~[H.]~~ J. "hazardous substance incident" means any
3 emergency incident involving a chemical or chemicals,
4 including but not limited to transportation wrecks, accidental
5 spills or leaks, fires or explosions, which incident creates
6 the reasonable probability of injury to human health or
7 property;

8 ~~[I.]~~ K. "hazardous waste" means any solid waste or
9 combination of solid wastes ~~[which]~~ that because of their
10 quantity, concentration or physical, chemical or infectious
11 characteristics may:

12 (1) cause or significantly contribute to an
13 increase in mortality or an increase in serious irreversible
14 or incapacitating reversible illness; or

15 (2) pose a substantial present or potential
16 hazard to human health or the environment when improperly
17 treated, stored, transported, disposed of or otherwise
18 managed. "Hazardous waste" does not include any of the
19 following, until the board determines that they are subject to
20 Subtitle C of the federal Resource Conservation and Recovery
21 Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling
22 fluids, produced waters and other wastes associated with the
23 exploration, development or production of crude oil or natural
24 gas or geothermal energy; ~~[any]~~ fly ash waste; bottom ash
25 waste; slag waste; flue gas emission control waste generated

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1 primarily from the combustion of coal or other fossil fuels;
2 solid waste from the extraction, beneficiation or processing
3 of ores and minerals, including phosphate rock and overburden
4 from the mining of uranium ore; or cement kiln dust waste;

5 [J-] L. "manifest" means the form used for
6 identifying the quantity, composition, origin, routing and
7 destination of hazardous waste during transportation from
8 point of generation to point of disposal, treatment or
9 storage;

10 [K-] M "person" means any individual, trust,
11 firm, joint stock company, federal agency, corporation,
12 including a government corporation, partnership, association,
13 state, municipality, commission, political subdivision of a
14 state or any interstate body;

15 [L-] N. "regulated substance" means:

16 (1) any substance defined in Section 101(14)
17 of the federal Comprehensive Environmental Response,
18 Compensation and Liability Act of 1980, but not including any
19 substance regulated as a hazardous waste under Subtitle C of
20 the federal Resource Conservation and Recovery Act of 1976, as
21 amended; and

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

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1 ~~[M-]~~ O. "solid waste" means any garbage, refuse,
2 sludge from a waste treatment plant, water supply treatment
3 plant or air pollution control facility and other discarded
4 material, including solid, liquid, semisolid or contained
5 gaseous material resulting from industrial, commercial, mining
6 and agricultural operations, and from community activities,
7 but does not include solid or dissolved materials in domestic
8 sewage or solid or dissolved materials in irrigation return
9 flows or industrial discharges ~~[which]~~ that are point sources
10 subject to permits under Section 402 of the federal Water
11 Pollution Control Act, as amended (86 Stat. 880), or source,
12 special nuclear or byproduct material as defined by the
13 federal Atomic Energy Act of 1954, as amended (68 Stat. 923);

14 ~~[N-]~~ P. "storage" means the containment of
15 hazardous waste, either on a temporary basis or for a period
16 of years, in such a manner as not to constitute disposal of
17 such hazardous waste;

18 Q. "storage tank" means an above ground storage
19 tank or an underground storage tank;

20 ~~[O-]~~ R. "tank installer" means any individual who
21 installs or repairs ~~[an underground]~~ a storage tank;

22 ~~[P-]~~ S. "transporter" means a person engaged in
23 the movement of hazardous waste, not including movement at the
24 site of generation, disposal, treatment or storage;

25 ~~[Q-]~~ T. "treatment" means any method, technique or

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1 process, including neutralization, designed to change the
2 physical, chemical or biological character or composition of
3 any hazardous waste so as to neutralize such waste or so as to
4 render such waste nonhazardous, safer for transport, amenable
5 to recovery, amenable to storage or reduced in volume. [~~Such~~
6 ~~term~~] "Treatment" includes any activity or processing designed
7 to change the physical form or chemical composition of
8 hazardous waste so as to render it nonhazardous; and

9 [~~R-~~] U. "underground storage tank" means a single
10 tank or combination of tanks, including underground pipes
11 connected thereto, that are used to contain an accumulation of
12 regulated substances and the volume of which, including the
13 volume of the underground pipes connected thereto, is ten
14 percent or more beneath the surface of the ground. [~~The term~~]
15 "Underground storage tank" does not include any:

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

19 (2) septic tank;

20 (3) pipeline facility, including gathering
21 lines that are regulated under the federal Natural Gas
22 Pipeline Safety Act of 1968 [~~49 U.S.C. App. 1671, et seq.~~] or
23 the federal Hazardous Liquid Pipeline Safety Act of 1979, [~~49~~
24 ~~U.S.C. App. 2001, et seq.~~] or that is an intrastate pipeline
25 facility regulated under state laws comparable to either act;

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1 (4) surface impoundment, pit, pond or lagoon;
2 (5) storm water or wastewater collection
3 system;

4 (6) flow-through process tank;

5 (7) liquid trap, tank or associated gathering
6 lines directly related to oil or gas production and gathering
7 operations;

8 (8) storage tank situated in an underground
9 area, such as a basement, cellar, mineworking drift, shaft or
10 tunnel, if the storage tank is situated upon or above the
11 surface of the undesignated floor; [ø]

12 (9) tank associated with an emergency
13 generator system;

14 (10) tank exempted by rule of the board after
15 finding that the type of tank is adequately regulated under
16 another federal or state law; or

17 [~~(9)~~] (11) pipes connected to any tank that
18 is described in Paragraphs (1) through [~~(8)~~] (10) of this
19 subsection. "

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

22 "74-4-4. DUTIES AND POWERS OF THE BOARD. --

23 A. The board shall adopt [~~regulations~~] rules for
24 the management of hazardous waste as may be necessary to
25 protect public health and the environment, that are equivalent

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1 to and no more stringent than federal regulations adopted by
2 the federal environmental protection agency pursuant to the
3 federal Resource Conservation and Recovery Act of 1976, as
4 amended:

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

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

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

23 (b) record-keeping practices that
24 accurately identify the quantities of hazardous waste
25 generated, the constituents of the waste that are significant

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1 in quantity or in potential harm to human health or the
2 environment and the disposition of the waste;

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

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

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

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

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

25 (h) the use of a manifest system and

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1 any other reasonable means necessary to assure that all
2 hazardous waste generated is designated for treatment, storage
3 or disposal in, and arrives at, treatment, storage or disposal
4 facilities, other than facilities on the premises where the
5 waste is generated, for which a permit has been issued
6 pursuant to the Hazardous Waste Act and that the generator of
7 hazardous waste has a program in place to reduce the volume or
8 quality and toxicity of waste to the degree determined by the
9 generator to be economically practicable and that the proposed
10 method of treatment, storage or disposal is that practicable
11 method currently available to the generator that minimizes the
12 present and future threat to human health and the environment;

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

19 (a) record-keeping concerning the
20 hazardous waste transported and its source and delivery
21 points;

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

24 (c) compliance with the manifest system
25 referred to in Subparagraph (h) of Paragraph (2) of this

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1 subsection; and

2 (d) transportation of all the hazardous
3 waste only to the hazardous waste treatment, storage or
4 disposal facilities that the shipper designates on the
5 manifest form to be a facility holding a permit issued
6 pursuant to the Hazardous Waste Act or the federal Resource
7 Conservation and Recovery Act of 1976, as amended [~~42 U.S.C.~~
8 ~~6901 et seq.~~];

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

12 (a) furnishing the information stating
13 the location and general description of the facility; and

14 (b) furnishing the information
15 describing the production or energy recovery activity carried
16 out at the facility;

17 (5) establishing performance standards as may
18 be necessary to protect human health and the environment
19 applicable to owners and operators of facilities for the
20 treatment, storage or disposal of hazardous waste identified
21 or listed under this section, distinguishing, where
22 appropriate, between new facilities and facilities in
23 existence on the date of promulgation, including but not
24 limited to requirements for:

25 (a) maintaining the records of all

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1 hazardous waste identified or listed under this subsection
2 that is treated, stored or disposed of, as the case may be,
3 and the manner in which such waste was treated, stored or
4 disposed of;

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

8 (c) treatment, storage or disposal of
9 all such waste and any liquid that is not a hazardous waste,
10 except with respect to underground injection control into deep
11 injection wells, received by the facility pursuant to such
12 operating methods, techniques and practices as may be
13 satisfactory to the secretary;

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

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

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

24 (g) compliance with the requirements of
25 Paragraph (6) of this subsection respecting permits for

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1 treatment, storage or disposal;

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

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

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1 operation consistent with the degree and duration of risks
2 associated with the treatment, storage or disposal of
3 specified hazardous waste;

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

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

17 (8) defining major and minor modifications;
18 and

19 (9) establishing procedures for the
20 inspection of facilities for the treatment, storage and
21 disposal of hazardous waste that govern the minimum frequency
22 and manner of the inspections, the manner in which records of
23 the inspections shall be maintained and the manner in which
24 reports of the inspections shall be filed; provided, however,
25 that inspections of permitted facilities shall occur no less

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1 often than every two years.

2 B. The board shall adopt [~~regulations~~] rules:

3 (1) concerning hazardous substance incidents;

4 and

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

7 C. The board shall adopt [~~regulations~~] rules
8 concerning [~~underground~~] storage tanks as ~~may~~ be necessary to
9 protect public health and the environment and that, in the
10 case of underground storage tanks, are equivalent to and no
11 more stringent than federal regulations adopted by the federal
12 environmental protection agency pursuant to the federal
13 Resource Conservation and Recovery Act of 1976, as amended.
14 [~~and that~~] Rules adopted pursuant to this subsection shall
15 include:

16 (1) standards for the installation, operation
17 and maintenance of [~~underground~~] storage tanks;

18 (2) requirements for financial
19 responsibility;

20 (3) standards for inventory control;

21 (4) standards for the detection of leaks from
22 and the integrity testing and monitoring of [~~underground~~]
23 storage tanks;

24 (5) standards for the closure and dismantling
25 of [~~underground~~] storage tanks;

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1 (6) requirements for record-keeping; and

2 (7) requirements for the reporting,

3 containment and remediation of all leaks from any

4 [~~underground~~] storage tanks.

5 D. Notwithstanding the provisions of Subsection A

6 of this section, the board may adopt [~~regulations~~] rules for

7 the management of hazardous waste and hazardous waste

8 transformation that are more stringent than federal

9 regulations adopted by the federal environmental protection

10 agency pursuant to the federal Resource Conservation and

11 Recovery Act of 1976, as amended, if the board determines,

12 after notice and public hearing, that such federal regulations

13 are not sufficient to protect public health and the

14 environment. As used in this subsection, "transformation"

15 means an incinerator, pyrolysis, distillation, gasification or

16 biological conversion other than composting.

17 E. In the event the board wishes to adopt

18 [~~regulations~~] rules that are identical with regulations

19 adopted by an agency of the federal government, the board,

20 after notice and hearing, may adopt such [~~regulations~~] rules

21 by reference to the federal regulations without setting forth

22 the provisions of the federal regulations. "

23 Section 4. Section 74-4-4.3 NMSA 1978 (being Laws 1981

24 (S.S.), Chapter 8, Section 7, as amended) is amended to read:

25 "74-4-4.3. ENTRY--AVAILABILITY OF RECORDS.--

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1 A. For purposes of developing or assisting in the
2 development of any [~~regulations~~] rules, conducting any study,
3 taking any corrective action or enforcing the provisions of
4 the Hazardous Waste Act, upon request of the [~~director~~]
5 secretary or his authorized representative:

6 (1) any person who generates, stores, treats,
7 transports, disposes of or otherwise handles or has handled
8 hazardous wastes shall furnish information relating to such
9 hazardous wastes and permit the [~~director~~] secretary or his
10 authorized representatives:

11 (a) to enter at reasonable times any
12 establishment or other place maintained by any person where
13 hazardous wastes are or have been generated, stored, treated,
14 disposed of or transported from or where [~~an underground~~] a
15 storage tank is located; and

16 (b) to inspect and obtain samples from
17 any person of any hazardous wastes and samples of any
18 containers or labeling for the wastes; and

19 (2) any person who owns or operates [~~an~~
20 ~~underground~~] a storage tank, or any tank subject to study
21 under Section 9009 of the Resource Conservation and Recovery
22 Act of 1976 that is used for storing regulated substances,
23 shall furnish information relating to such tanks, including
24 their associated equipment and their contents, conduct
25 monitoring or testing, permit the [~~director~~] secretary or his

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1 authorized representative at all reasonable times to have
2 access to and to copy all records relating to such tanks and
3 permit the [~~director~~] secretary or his authorized
4 representative to have access for corrective action. For the
5 purposes of developing or assisting in the development of any
6 [~~regulation~~] rule, conducting any study, taking corrective
7 action or enforcing the provisions of the Hazardous Waste Act,
8 the [~~director~~] secretary or his authorized representative is
9 authorized to:

10 (a) [~~to~~] enter at reasonable times any
11 establishment or other place where [~~an underground~~] a storage
12 tank is located;

13 (b) [~~to~~] inspect or obtain samples from
14 any person of any regulated substance in such tank;

15 (c) [~~to~~] conduct monitoring or testing
16 of the tanks, associated equipment, contents or surrounding
17 soils, air, surface water or ground water; and

18 (d) [~~to~~] take corrective action.

19 B. Any person owning property to which access is
20 necessary in order to investigate or clean up a facility where
21 hazardous waste is generated, stored, treated or disposed of,
22 or where [~~underground~~] storage tanks are located, shall:

23 (1) permit the [~~director~~] secretary or his
24 authorized representative to obtain samples of soil or ground
25 water, or both, at reasonable times; and

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1 (2) provide access to such property for
2 structures or equipment necessary to monitoring or cleanup of
3 hazardous wastes or leaking from [~~underground~~] storage tanks;
4 provided that:

5 (a) such structures or equipment do not
6 unreasonably interfere with the owner's use of the property;
7 or

8 (b) the owner is adequately compensated
9 for activities [~~which~~] that unreasonably interfere with his
10 use or enjoyment of such property.

11 C. Each inspection shall be commenced and
12 completed with reasonable promptness. If the [~~director~~]
13 secretary or his representative obtains any samples, prior to
14 leaving the premises he shall give to the owner, operator or
15 agent in charge a receipt describing the sample obtained and,
16 if requested, a portion of each sample equal in volume or
17 weight to the portion retained. If any analysis is made of
18 the samples, a copy of the results of the analysis shall be
19 furnished promptly to the owner, operator or agent in charge.

20 D. Any records, reports or information obtained by
21 the [~~division~~] department under this section shall be
22 available to the public, except that upon a showing
23 satisfactory to the [~~division~~] department that records,
24 reports or information, or a particular part thereof, to which
25 the [~~director~~] secretary or his authorized representatives

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1 have access under this section, if made public, would divulge
2 information entitled to protection under Section 1905 of Title
3 18 of the United States Code, such information or particular
4 portion thereof shall be considered confidential, except that
5 such record, report, document or information may be disclosed
6 to officers, employees or authorized representatives of the
7 United States concerned with carrying out the Resource
8 Conservation and Recovery Act of 1976, or when relevant in any
9 proceedings under the Hazardous Waste Act.

10 E. Any person not subject to the provisions of
11 Section 1905 of Title 18 of the United States Code who
12 knowingly and willfully divulges or discloses any information
13 entitled to protection under this subsection shall, upon
14 conviction, be subject to a fine of not more than five
15 thousand dollars (\$5,000) or to imprisonment not to exceed one
16 year or both.

17 F. In submitting data under the Hazardous Waste
18 Act, a person required to provide such data may:

19 (1) designate the data the person believes is
20 entitled to protection under this subsection; and

21 (2) submit such designated data separately
22 from other data submitted under the Hazardous Waste Act. A
23 designation under this paragraph shall be made in writing and
24 in such manner as the [~~director~~] secretary may prescribe. "

25 Section 5. Section 74-4-4.4 NMSA 1978 (being Laws 1987,

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1 Chapter 179, Section 6, as amended) is amended to read:

2 "74-4-4.4. [~~UNDERGROUND~~] STORAGE TANKS--REGISTRATION--
3 INSTALLER CERTIFICATION--FEES.--

4 A. By [~~regulation~~] rule, the board shall require
5 an owner of [~~an underground~~] a storage tank to register the
6 tank with the [~~division~~] department and impose reasonable
7 conditions for registration, including the submission of
8 plans, specifications and other relevant information relating
9 to the tank. For purposes of this subsection only, the term
10 "owner" means: in the case of [~~an underground~~] a storage tank
11 in use on November 8, 1984 or brought into use after that
12 date, any person who owns [~~an underground~~] the storage tank
13 [~~used for storage, use, or dispensing of regulated~~
14 ~~substances~~]; and in the case of [~~an underground~~] a storage
15 tank in use before November 8, 1984 but no longer in use on
16 that date, any person who owned [~~such~~] the tank immediately
17 before the discontinuation of its use. The owner of a tank
18 taken out of operation on or before January 1, 1974 shall not
19 be required to notify under this subsection. The owner of a
20 tank taken out of operation after January 1, 1974 and removed
21 from the ground prior to November 8, 1984 shall not be
22 required to notify under this subsection. Evidence of current
23 registration pursuant to this subsection shall be available
24 for inspection at the site of the [~~underground~~] storage tank.

25 B. By [~~regulation~~] rule, the board shall require

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1 any person who, beginning thirty days after the United States
2 environmental protection agency administrator prescribes the
3 form of notice pursuant to Section 9002(a)(5) of the Resource
4 Conservation and Recovery Act of 1976 and for eighteen months
5 thereafter, deposits a regulated substance into [~~an~~
6 ~~underground~~] a storage tank to give notice of the registration
7 requirements of Subsection A of this section to the owner and
8 operator of the tank.

9 C. By [~~regulation~~] rule, the board may require
10 tank installers to obtain certification from the [~~division~~]
11 department and develop procedures for certification [~~which~~
12 that will ensure that [~~underground~~] storage tanks are
13 installed and repaired in a manner [~~which~~] that will not
14 encourage or facilitate leaking. If the board requires
15 certification, it [~~shall be~~] is unlawful for a person to
16 install or repair [~~an underground~~] a storage tank unless he is
17 a certified tank installer. In accordance with the Uniform
18 Licensing Act, the [~~division~~] department may suspend or revoke
19 the certification for a tank installer upon grounds that he:

- 20 (1) exercised fraud, misrepresentation or
21 deception in obtaining his certification;
22 (2) exhibited gross incompetence in the
23 installation or repair of [~~an underground~~] a storage tank; or
24 (3) was derelict in the performance of a duty
25 as a certified tank installer.

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1 D. By ~~[regulation]~~ rule, the board shall provide a
2 schedule of fees sufficient to defray the reasonable and
3 necessary costs of:

4 (1) reviewing and acting upon applications
5 for the registration of ~~[underground]~~ storage tanks;

6 (2) reviewing and acting upon applications
7 for the certification of tank installers; and

8 (3) implementing and enforcing any provision
9 of the Hazardous Waste Act applicable to ~~[underground]~~ storage
10 tanks and tank installers, including standards for the
11 installation, operation and maintenance of ~~[underground]~~
12 storage tanks and for the certification of tank installers. "

13 Section 6. Section 74-4-4.8 NMSA 1978 (being Laws 1993,
14 Chapter 298, Section 2) is amended to read:

15 "74-4-4.8. ~~[UNDERGROUND]~~ STORAGE TANK FUND CREATED--
16 APPROPRIATION. --

17 A. There is created in the state treasury the
18 "[~~underground~~] storage tank fund", which shall be administered
19 by the department. All balances in the fund are appropriated
20 to the department for the sole purpose of meeting necessary
21 expenses in the administration and operation of the
22 [~~underground~~] storage tank program.

23 B. All fees collected pursuant to Subsection D of
24 Section 74-4-4.4 NMSA 1978 shall be transmitted to the state
25 treasurer for credit to the [~~underground~~] storage tank fund.

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1 C. Balances remaining in the [~~underground~~] storage
2 tank fund at the end of [~~the~~] a fiscal year shall not revert
3 to the general fund."

4 Section 7. Section 74-4-10 NMSA 1978 (being Laws 1981
5 (1st S.S.), Chapter 8, Section 9, as amended) is amended to
6 read:

7 "74-4-10. ENFORCEMENT--COMPLIANCE ORDERS--CIVIL
8 PENALTIES.--

9 A. Whenever on the basis of any information the
10 secretary determines that any person has violated, is
11 violating or threatens to violate any requirement of the
12 Hazardous Waste Act, any [~~regulation~~] rule adopted and
13 promulgated pursuant to that act or any condition of a permit
14 issued pursuant to that act, the secretary may:

15 (1) issue a compliance order stating with
16 reasonable specificity the nature of the violation or
17 threatened violation and requiring compliance immediately or
18 within a specified time period or assessing a civil penalty
19 for any past or current violation, or both; or

20 (2) commence a civil action in district court
21 for appropriate relief, including a temporary or permanent
22 injunction.

23 B. Any order issued pursuant to Subsection A of
24 this section may include a suspension or revocation of any
25 permit issued by the secretary. Any penalty assessed in the

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1 order shall not exceed ten thousand dollars (\$10,000) per day
2 of noncompliance for each violation. In assessing the
3 penalty, the secretary shall take into account the seriousness
4 of the violation and any good-faith efforts to comply with the
5 applicable requirements. For violations related to
6 [~~underground~~] storage tanks, "per violation" means per tank.

7 C. If a violator fails to take corrective actions
8 within the time specified in a compliance order, the secretary
9 may:

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

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

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

22 E. Whenever on the basis of any information the
23 secretary determines that there is or has been a release of
24 hazardous waste into the environment from a facility
25 authorized to operate under Section 74-4-9 NMSA 1978, the

underscored material = new
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1 secretary may issue an order requiring corrective action,
2 including corrective action beyond a facility's boundaries or
3 other response measure as he deems necessary to protect human
4 health or the environment or may commence an action in
5 district court in the district in which the facility is
6 located for appropriate relief, including a temporary or
7 permanent injunction.

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

18 G. Any order issued pursuant to this section, any
19 other enforcement proceeding initiated pursuant to this
20 section or any claim for personal or property injury arising
21 from any conduct for which evidence of financial
22 responsibility must be provided may be issued to or taken
23 against the insurer or guarantor of an owner or operator of a
24 treatment, storage or disposal facility or [underground]
25 storage tank if:

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1 (1) the owner or operator is in bankruptcy,
2 reorganization or arrangement pursuant to the federal
3 Bankruptcy Code; or

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

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

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

23 J. Penalties collected pursuant to an
24 administrative order shall be deposited in the state treasury
25 to be credited to the hazardous waste emergency fund. "

underscored material = new
[bracketed material] = delete

1 Section 8. Section 74-4-11 NMSA 1978 (being Laws 1977,
2 Chapter 313, Section 11, as amended) is amended to read:

3 "74-4-11. PENALTY--CRIMINAL. --

4 A. No person:

5 (1) shall knowingly transport or cause to be
6 transported any hazardous waste identified or listed pursuant
7 to the Hazardous Waste Act to a facility that does not have a
8 permit under that act or the federal Resource Conservation and
9 Recovery Act;

10 (2) shall knowingly treat, store or dispose
11 of any hazardous waste identified or listed pursuant to the
12 Hazardous Waste Act:

13 (a) without having obtained a hazardous
14 waste permit pursuant to that act or the federal Resource
15 Conservation and Recovery Act;

16 (b) in knowing violation of any
17 material condition or requirement of a hazardous waste permit;
18 or

19 (c) in knowing violation of any
20 material condition or requirement of any applicable interim
21 status [~~regulations~~] rules or standards;

22 (3) shall knowingly omit material information
23 or make any false statement or representation in any
24 application, label, manifest, record, report, permit or other
25 document filed, maintained or used for purposes of compliance

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[bracketed material] = delete

1 with the Hazardous Waste Act;

2 (4) who knowingly generates, stores, treats,
3 transports, disposes of, exports or otherwise handles any
4 hazardous waste shall knowingly destroy, alter, conceal or
5 fail to file any record, application, manifest, report or
6 other document required to be maintained or filed for purposes
7 of compliance with [~~regulations~~] rules adopted and promulgated
8 pursuant to the Hazardous Waste Act;

9 (5) shall knowingly transport without a
10 manifest or cause to be transported without a manifest any
11 hazardous waste required by [~~regulations~~] rules adopted and
12 promulgated pursuant to the Hazardous Waste Act to be
13 accompanied by a manifest; or

14 (6) shall knowingly export hazardous waste
15 identified or listed pursuant to the Hazardous Waste Act:

16 (a) without the consent of the
17 receiving country; or

18 (b) where there exists an international
19 agreement between the United States and the government of the
20 receiving country establishing notice, export and enforcement
21 procedures for the transportation, treatment, storage and
22 disposal of hazardous wastes, in a manner that is not in
23 conformance with such agreement.

24 B. Any person who violates any of the provisions
25 of Paragraphs (1) through (6) of Subsection A of this section

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1 is guilty of a fourth degree felony and upon conviction shall
2 be punished by a fine of not more than ten thousand dollars
3 (\$10,000) per violation per day or by imprisonment for a
4 definite term of not more than eighteen months or both. For a
5 second or subsequent violation of the provisions of Paragraphs
6 (1) through (6) of Subsection A of this section, the person is
7 guilty of a third degree felony and shall be punished by a
8 fine of not more than twenty-five thousand dollars (\$25,000)
9 per violation per day or by imprisonment for not more than
10 three years or both.

11 C. Any person who knowingly violates any
12 [~~regulation~~] rule adopted and promulgated pursuant to
13 Subsection C of Section 74-4-4 or 74-4-4.4 NMSA 1978 is guilty
14 of a misdemeanor and upon conviction shall be punished by a
15 fine of not more than five thousand dollars (\$5,000) per
16 violation per day or by imprisonment for a definite term of
17 one year or both. For violations related to [~~underground~~]
18 storage tanks, "per violation" means per tank.

19 D. Any person who knowingly transports, treats,
20 stores, disposes of or exports any hazardous waste in
21 violation of Subsection A of this section and who knows at the
22 time of the violation that he creates a substantial danger of
23 a substantial adverse environmental impact is guilty of a
24 third degree felony if the violation causes a substantial
25 adverse environmental impact.

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1 E. As used in this section, a "substantial adverse
2 environmental impact" exists when an act or omission of a
3 person causes harm or damage:

4 (1) to human beings; or

5 (2) to flora, wildlife, fish or other aquatic
6 life or water fowl; to the habitats of wildlife, fish, other
7 aquatic life, water fowl or livestock; to agricultural crops;
8 to any ground water or surface water; or to the lands or
9 waters of this state where such harm or damage amounts to more
10 than ten thousand dollars (\$10,000).

11 F. Any person who knowingly transports, treats,
12 stores, disposes of or exports any hazardous waste in
13 violation of Subsection A of this section and who knows at the
14 time of the violation that he creates a substantial danger of
15 death or serious bodily injury to another person is guilty of
16 a second degree felony and shall be sentenced to a term of
17 imprisonment not to exceed nine years or a fine not to exceed
18 one hundred thousand dollars (\$100,000), or both. Any person,
19 other than an individual, that knowingly transports, treats,
20 stores, disposes of or exports any hazardous waste in
21 violation of Subsection A of this section and knows at that
22 time that it places an individual in imminent danger of death
23 or serious bodily injury is guilty of a second degree felony
24 and shall be fined in an amount not to exceed two hundred
25 fifty thousand dollars (\$250,000). "

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1 Section 9. Section 74-4-12 NMSA 1978 (being Laws 1977,
2 Chapter 313, Section 12, as amended) is amended to read:

3 "74-4-12. PENALTY--CIVIL. --Any person who violates any
4 provision of the Hazardous Waste Act, any [~~regulation~~] rule
5 made pursuant to that act or any compliance order issued by
6 the director pursuant to Section 74-4-10 NMSA 1978 may be
7 assessed a civil penalty not to exceed ten thousand dollars
8 (\$10,000) for each day during any portion of which a violation
9 occurs. For violations related to [~~underground~~] storage
10 tanks, "per violation" means per tank. "

11 Section 10. Section 74-4-13 NMSA 1978 (being Laws 1983,
12 Chapter 302, Section 3, as amended) is amended to read:

13 "74-4-13. IMMINENT HAZARDS--AUTHORITY OF DIRECTOR--
14 PENALTIES. --

15 A. Notwithstanding any other provision of the
16 Hazardous Waste Act, whenever the [~~director~~] secretary is in
17 receipt of evidence that the past or current handling,
18 storage, treatment, transportation or disposal of [~~any~~] solid
19 waste or hazardous waste or the condition or maintenance of
20 [~~any underground~~] a storage tank may present an imminent and
21 substantial endangerment to health or the environment, he may
22 bring suit in the appropriate district court to immediately
23 restrain any person, including any past or present generator,
24 past or present transporter or past or present owner or
25 operator of a treatment, storage or disposal facility, who has

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1 contributed or is contributing to such activity, to take such
2 other action as may be necessary or both. A transporter shall
3 not be deemed to have contributed or to be contributing to
4 such handling, storage, treatment or disposal taking place
5 after such solid waste or hazardous waste has left the
6 possession or control of such transporter if the
7 transportation of such waste was under a sole contractual
8 arrangement arising from a published tariff and acceptance for
9 carriage by common carrier by rail and such transporter has
10 exercised due care in the past or present handling, storage,
11 treatment, transportation and disposal of such waste. The
12 [~~director~~] secretary may also take other action, including but
13 not limited to issuing such orders as may be necessary to
14 protect health and the environment.

15 B. Any person who willfully violates or fails or
16 refuses to comply with any order of the [~~director~~] secretary
17 under Subsection A of this section may in an action brought in
18 the appropriate district court to enforce such order be fined
19 not more than five thousand dollars (\$5,000) for each day in
20 which the violation occurs or the failure to comply continues.

21 C. Upon receipt of information that there is
22 hazardous waste at any site which has presented an imminent
23 and substantial endangerment to human health or the
24 environment, the [~~director~~] secretary shall provide immediate
25 notice to the appropriate local government agencies. In

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1 addition, the director shall require notice of such
2 endangerment to be promptly posted at the site where the waste
3 is located. "

4 Section 11. Section 74-4A-11 NMSA 1978 (being Laws 1979,
5 Chapter 380, Section 10, as amended) is amended to read:

6 "74-4A-11. COMMITTEE DUTIES. --At the beginning of each
7 interim, the committee shall hold one organizational meeting
8 to develop a work plan and budget for the period prior to
9 January 1 preceding the next regular session of the
10 legislature. The work plan and budget shall be submitted to
11 the New Mexico legislative council for approval. Upon
12 approval of the work plan and budget by the legislative
13 council, the committee shall examine all matters relevant to
14 the purposes of the Radioactive and Hazardous Materials Act
15 and shall submit recommended legislation, together with a
16 report on the activities and expenditures of the committee, to
17 the legislature. In making recommendations, the committee
18 shall review and monitor the following areas:

19 A. the generation, treatment, storage,
20 transportation or disposal of radioactive or hazardous
21 materials and wastes;

22 B. the control and handling of mixed waste
23 transported to the waste isolation pilot plant site for
24 disposal;

25 C. the progress and effectiveness of remediation

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1 actions at sites contaminated by radioactive or hazardous
2 materials;

3 D. the compliance with the environmental
4 protection agency, the council on environmental quality and
5 the office of surface mining regulations and standards
6 pursuant to federal environmental statutes;

7 E. the provision of activities and investigations
8 and the dissemination of information by the environmental
9 evaluation group; however, nothing in the Radioactive and
10 Hazardous Materials Act shall be construed to limit the
11 independent technical review and evaluation by that group of
12 the impact on health and safety of the waste isolation pilot
13 plant;

14 F. the disposition of uranium mine and mill
15 tailings;

16 G. the means through which disposition of low-
17 level wastes may be accomplished, such as participation in a
18 regional compact with other states;

19 H. the state emergency response capability;

20 I. the Ground Water Protection Act, in cooperation
21 with other legislative committees, regarding the use or
22 management of [underground] storage tanks and releases;

23 J. the Hazardous Chemicals Information Act, in
24 cooperation with other legislative committees; and

25 K. such matters assigned by the legislature and

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1 consultations and negotiations with the federal government and
2 other state governments or their representatives and
3 agreements and revisions thereto. "

4 Section 12. Section 74-6B-2 NMSA 1978 (being Laws 1990,
5 Chapter 124, Section 2, as amended) is amended to read:

6 "74-6B-2. FINDINGS--PURPOSE OF ACT.--

7 A. The legislature recognizes the threat to the
8 public health and safety and the environment resulting from
9 pollution of ground water resources as a result of leaking
10 [~~underground~~] storage tanks. The legislature also recognizes
11 that some owners and operators of facilities containing
12 [~~underground~~] storage tanks cannot take corrective action
13 without placing their businesses in serious financial
14 jeopardy.

15 B. The legislature finds that, because New Mexico
16 is large in area and sparsely populated in some regions, it is
17 in the public interest to take corrective action at
18 contaminated sites so that fuel will continue to be readily
19 available.

20 C. The purpose of the Ground Water Protection Act
21 is to provide substantive provisions and funding mechanisms to
22 the extent that funds are available to enable the state to
23 take corrective action at sites contaminated by leakage from
24 [~~underground~~] storage tanks. "

25 Section 13. Section 74-6B-3 NMSA 1978 (being Laws 1990,

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1 Chapter 124, Section 3, as amended) is amended to read:

2 "74-6B-3. DEFINITIONS. --As used in the Ground Water
3 Protection Act:

4 A. "above ground storage tank" means a single tank
5 or combination of tanks, including underground pipes connected
6 thereto, that are used to contain petroleum, including crude
7 oil or any fraction thereof that is liquid at standard
8 conditions of temperature and pressure of sixty degrees
9 Fahrenheit and fourteen and seven-tenths pounds per square
10 inch absolute, and the volume of which is more than ninety
11 percent above the surface of the ground. The term does not
12 include any:

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

16 (2) pipeline facility, including gathering
17 lines that are regulated under the federal Natural Gas
18 Pipeline Safety Act of 1968 or the federal Hazardous Liquid
19 Pipeline Safety Act of 1979, or that is an intrastate pipeline
20 facility regulated under state laws comparable to either act;

21 (3) surface impoundment, pit, pond or lagoon;

22 (4) storm water or wastewater collection
23 system;

24 (5) flow-through process tank;

25 (6) liquid trap, tank or associated gathering

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1 lines directly related to oil or gas production and gathering
2 operations;

3 (7) tank associated with an emergency
4 generator system;

5 (8) tank exempted by rule of the board after
6 finding that the type of tank is adequately regulated under
7 another federal or state law; or

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

10 ~~[A.]~~ B. "board" means the environmental
11 improvement board;

12 ~~[B.]~~ C. "corrective action" means an action taken
13 in accordance with rules of the board to investigate,
14 minimize, eliminate or clean up a release to protect the
15 public health, safety and welfare or the environment;

16 ~~[C.]~~ D. "department" means the department of
17 environment;

18 ~~[D.]~~ E. "operator" means any person in control of
19 or having responsibility for the daily operation of [~~the~~
20 ~~underground~~] a storage tank;

21 ~~[E.]~~ F. "owner" means:

22 (1) in the case of [~~an underground~~] a storage
23 tank in use or brought into use on or after November 8, 1984,
24 [~~any~~] a person who owns [~~an underground~~] the storage tank
25 [~~used for the storage, use or dispensing of regulated~~

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1 ~~substances~~]; and

2 (2) in the case of [~~an underground~~] a storage
3 tank in use before November 8, 1984 but no longer in use after
4 that date, [~~any~~] a person who owned [~~such a~~] the tank
5 immediately before the discontinuation of its use;

6 [~~F.~~] G. "person" means an individual or any legal
7 entity, including all governmental entities;

8 [~~G.~~] H. "regulated substance" means:

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

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

19 [~~H.~~] I. "release" means [~~any~~] a spilling, leaking,
20 emitting, discharging, escaping, leaching or disposing from
21 [~~an underground~~] a storage tank into ground water, surface
22 water or subsurface soils in amounts exceeding twenty-five
23 gallons;

24 [~~F.~~] J. "secretary" means the secretary of
25 environment;

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[bracketed material] = delete

1 ~~[J-]~~ K. "site" means a place where there is or was
2 at a previous time one or more ~~[underground]~~ storage tanks and
3 may include areas contiguous to the actual location or
4 previous location of the tanks; ~~[and]~~

5 L. "storage tank" means an above ground storage
6 tank or an underground storage tank; and

7 ~~[K-]~~ M "underground storage tank" means a single
8 tank or combination of tanks, including underground pipes
9 connected thereto, that are used to contain an accumulation of
10 regulated substances and the volume of which, including the
11 volume of the underground pipes connected thereto, is ten
12 percent or more beneath the surface of the ground. The term
13 does not include any:

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

17 (2) septic tank;

18 (3) pipeline facility, including gathering
19 lines ~~[which are]~~ regulated under the federal Natural Gas
20 Pipeline Safety Act of 1968 ~~[49 U.S.C. App. 1671, et seq.]~~ or
21 the federal Hazardous Liquid Pipeline Safety Act of 1979 ~~[49~~
22 ~~U.S.C. App. 2001, et seq.]~~, or ~~[which]~~ that is an intrastate
23 pipeline facility regulated under state laws comparable to
24 either act;

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

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- 1 (5) storm water or wastewater collection
2 system;
- 3 (6) flow-through process tank;
- 4 (7) liquid trap, tank or associated gathering
5 lines directly related to oil or gas production and gathering
6 operations;
- 7 (8) storage tank situated in an underground
8 area, such as a basement, cellar, mineworking drift, shaft or
9 tunnel, if the storage tank is situated upon or above the
10 surface of the undesignated floor; [~~or~~]
- 11 (9) tank associated with an emergency
12 generator system;
- 13 (10) tank exempted by rule of the board after
14 finding that the type of tank is adequately regulated under
15 another federal or state law; or
- 16 [~~(9)~~] (11) pipes connected to any tank that
17 is described in Paragraphs (1) through [~~(8)~~] (10) of this
18 subsection. "

19 Section 14. Section 74-6B-4 NMSA 1978 (being Laws 1990,
20 Chapter 124, Section 4, as amended) is amended to read:

21 "74-6B-4. [~~UNDERGROUND~~] STORAGE TANK
22 COMMITTEE-- CREATION-- TERMS-- POWERS AND DUTIES. --

23 A. An advisory committee to be known as the
24 "[~~underground~~] storage tank committee" is created. It shall
25 consist of seven members:

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1 (1) the secretary or his designee; and
2 (2) six members to be appointed by and to
3 serve at the pleasure of the governor and to be chosen from
4 the following groups, with no more than one member from each
5 group:

6 (a) fire protection districts;
7 (b) elected local government officials;
8 (c) wholesalers of motor fuels;
9 (d) independent retailers of motor
10 fuels;

11 (e) individuals knowledgeable about
12 corrective actions in connection with leaking [~~underground~~]
13 storage tanks; and

14 (f) private citizens or interest
15 groups.

16 B. Except for the initial terms of the members,
17 the term of the appointed members shall be three years. For
18 the purpose of staggering subsequent appointments, the initial
19 terms of the six appointed members shall be: two for one
20 year; two for two years; and two for three years. Members
21 shall serve until their successors are appointed. Vacancies
22 occurring in the membership of an appointed member shall be
23 filled by the governor for the remainder of the unexpired
24 term.

25 C. The committee [~~shall and is authorized to~~] may:

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1 (1) recommend proposed ~~[regulations]~~ rules to
2 the board or the secretary;

3 (2) establish procedures, practices and
4 policies governing the committee's activities;

5 (3) review ~~[all proposed corrective action~~
6 ~~plans]~~ corrective actions of the department and submit
7 comments ~~[on the plans]~~ to the secretary; and

8 (4) review ~~[all proposed]~~ payments from the
9 corrective action fund and submit its comments on the
10 ~~[proposed]~~ payments to the secretary, except payments made
11 pursuant to Section 74-6B-13 NMSA 1978.

12 D. Members of the committee shall receive
13 reimbursement for expenses incurred in the performance of
14 their duties pursuant to the Per Diem and Mileage Act and
15 shall receive no other compensation, perquisite or allowance.
16 Expenditures for this purpose shall be made ~~[and are~~
17 ~~authorized to be made]~~ from the ~~[underground]~~ storage tank
18 fund. "

19 Section 15. Section 74-6B-6 NMSA 1978 (being Laws 1990,
20 Chapter 124, Section 6) is amended to read:

21 "74-6B-6. CIVIL LIABILITY FOR DAMAGE TO PROPERTY FROM
22 LEAKING ~~[UNDERGROUND]~~ STORAGE TANK. -- Nothing in the Ground
23 Water Protection Act prohibits any existing or future claim
24 for relief a person may have as a result of damages sustained
25 because of a release from ~~[an underground]~~ a storage tank. "

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1 Section 16. Section 74-6B-7 NMSA 1978 (being Laws 1990,
2 Chapter 124, Section 7, as amended) is amended to read:

3 "74-6B-7. CORRECTIVE ACTION FUND CREATED-- AUTHORIZATION
4 FOR EXPENDITURES. --

5 A. There is created the "corrective action
6 fund". ~~[This]~~ The fund is intended to provide for financial
7 assurance coverage ~~[required by federal law]~~ and shall be
8 used by the department to the extent that revenues are
9 available to take corrective action in response to a
10 release, to pay for the costs of a minimum site assessment
11 in excess of ten thousand dollars (\$10,000), to pay the
12 department's reasonable administrative costs, including
13 attorney fees; to pay the state's share of federal leaking
14 underground storage tank trust fund cleanup costs as
15 required by the federal Resource Conservation and Recovery
16 Act and to make payments to or on behalf of owners and
17 operators for corrective action taken in accordance with
18 Section 74-6B-13 NMSA 1978. The owner or operator of a site
19 shall not use the corrective action fund as evidence of
20 financial assurance to satisfy claims of third parties.

21 B. The board, after recommendations from the
22 ~~[underground]~~ storage tank committee, shall adopt
23 ~~[regulations]~~ rules for establishing priorities for
24 corrective action at sites contaminated by ~~[underground]~~
25 storage tanks. The priorities for corrective action shall

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1 be based on public health, safety and welfare and
2 environmental concerns. In adopting [~~regulations~~] rules
3 pursuant to this subsection, the board shall follow the
4 procedures of Section 74-4-5 NMSA 1978. The provisions of
5 that section relating to all other matters in connection
6 with the adoption of [~~regulations~~] rules shall apply. The
7 department shall establish priority lists of sites in
8 accordance with the [~~regulations~~] rules adopted by the
9 board.

10 C. The department shall make expenditures from
11 the corrective action fund in accordance with [~~regulations~~]
12 rules adopted by the board or the secretary for corrective
13 action [~~at sites contaminated by underground storage tanks;~~
14 ~~provided that the secretary shall adopt regulations by~~
15 ~~October 1, 1995 that require payments made pursuant to the~~
16 ~~Ground Water Protection Act to be based on a competitive bid~~
17 ~~procedure based on technical merit and cost-effectiveness.~~
18 ~~Payments may be made only for corrective action conducted by~~
19 ~~firms qualified by the department to perform such work~~
20 ~~pursuant to regulations adopted by the board.~~ No
21 expenditures from the corrective action fund shall be paid
22 to or on behalf of tank owners or operators for corrective
23 action, other than a minimum site assessment or sampling,
24 where the corrective action was conducted by firms or
25 entities that are subsidiaries, parents or otherwise

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1 ~~affiliate firms or entities of the owner or operators.~~
2 ~~These expenditures shall be made by the department to~~
3 ~~perform corrective action, to pay for the costs of a minimum~~
4 ~~site assessment in excess of ten thousand dollars (\$10,000)~~
5 ~~and to make payments to or on behalf of owners and operators~~
6 ~~in accordance with Section 74-6B-13 NMSA 1978. The~~
7 ~~department shall take corrective action at sites in the~~
8 ~~order of priority appearing on the priority lists, except~~
9 ~~when an emergency threat to public health, safety and~~
10 ~~welfare or to the environment exists. When available~~
11 ~~revenues are limited and the fund can no longer be approved~~
12 ~~as a financial responsibility mechanism, priorities for~~
13 ~~expenditures from the corrective action fund shall also be~~
14 ~~based on financial need as determined by regulations adopted~~
15 ~~by the department no later than October 1, 1995] taken by~~
16 ~~the state, owners or operators at sites contaminated by~~
17 storage tanks; provided that:

18 (1) payments may be made only for
19 corrective action taken by persons qualified by the
20 department to perform the work pursuant to rules adopted by
21 the board;

22 (2) no expenditures from the fund shall be
23 paid to or on behalf of an owner or operator for corrective
24 action, other than a minimum site assessment or sampling, if
25 the corrective action is conducted by a person that is a

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1 subsidiary, parent or otherwise affiliated with the owner or
2 operator;

3 (3) expenditures shall be made by the
4 department to perform corrective action, to pay for the
5 costs of minimum site assessment in excess of ten thousand
6 dollars (\$10,000) or to make payments to or on behalf of an
7 owner or operator in accordance with Section 74-6B-13 NMSA
8 1978;

9 (4) any corrective action taken shall be
10 taken at sites in the order of priority appearing on the
11 priority lists, unless an emergency threat to public health,
12 safety and welfare or to the environment exists;

13 (5) when available revenues are limited and
14 the fund can no longer be approved as a financial
15 responsibility mechanism, priorities for expenditures from
16 the fund shall also be based on financial need as determined
17 by rules adopted by the board; and

18 (6) corrective action involving remediation
19 shall follow a competitive bidding procedure based on
20 technical merit and cost effectiveness.

21 D. No expenditure from the corrective action
22 fund shall be authorized for corrective action at sites
23 owned or operated by the United States or any agency or
24 instrumentality thereof.

25 E. Nothing in this section authorizes payments

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1 for the repair or replacement of [~~any underground~~] a storage
2 tank or equipment.

3 F. Nothing in this section authorizes payments
4 or commitments for payments in excess of the funds
5 available.

6 G. The board, by rule, may provide for a
7 specific amount to be reserved in the fund for emergencies.
8 The amount reserved may be expended by the department only
9 for corrective action necessary when an emergency threat to
10 public health, safety and welfare or to the environment
11 exists.

12 [~~G.~~] H. Within sixty days after receipt of
13 notification that the corrective action fund has become
14 incapable of paying for assured corrective actions, the
15 owner or operator shall obtain alternative financial
16 assurance acceptable to the department. "

17 Section 17. Section 74-6B-8 NMSA 1978 (being Laws
18 1990, Chapter 124, Section 8, as amended) is amended to
19 read:

20 "74-6B-8. LIABILITY-- COST RECOVERY. --

21 A. An owner or operator of [~~an underground~~] a
22 storage tank from which a release has occurred shall be
23 strictly liable for the owner's, operator's and department's
24 cost of taking corrective action at the site.

25 B. An owner or operator otherwise liable under

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1 Subsection A of this section shall not be liable for
2 expenditures from the state corrective action fund
3 associated with corrective action at the site if he has
4 proved to the department that he has complied with the
5 following:

6 (1) the owner or operator:

7 (a) is in substantial compliance with
8 all of the requirements and provisions of [~~regulations~~]
9 rules adopted by the board to fulfill the requirements of
10 Paragraphs (1) through (7) of Subsection C of Section 74-4-4
11 NMSA 1978;

12 (b) has paid all [~~underground~~] storage
13 tank fees required by Sections 74-4-4.4 and 74-6B-9 NMSA
14 1978;

15 (c) has conducted a minimum site
16 assessment in accordance with [~~regulations~~] rules of the
17 board and, if contamination is found, has taken action to
18 prevent continuing contamination; and

19 (d) has cooperated in good faith with
20 the department and has granted access to the department for
21 investigation, cleanup and monitoring; and

22 (2) for sites where [~~underground~~] storage
23 tanks were removed or properly abandoned prior to March 7,
24 1990, the owner or the operator:

25 (a) has paid all [~~underground~~] storage

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1 tank fees required by Section 74-4-4.4 NMSA 1978 and a two
2 hundred dollar (\$200) fee per site;

3 (b) has conducted a minimum site
4 assessment in accordance with [~~regulations~~] rules of the
5 board; and

6 (c) has cooperated in good faith with
7 the department and has granted access to the department for
8 investigation, cleanup and monitoring.

9 C. In the event that the department determines
10 that an owner or operator has not complied with the
11 requirements of Subsection B of this section, the department
12 may bring an action in district court against the owner or
13 operator to recover expenditures from the corrective action
14 fund incurred by the department in taking corrective action
15 at the site. In addition, the department may bring an
16 action in district court to recover any expenditures made of
17 federal funds from the leaking underground storage tank
18 trust fund in taking corrective action. These expenditures
19 made from the corrective action fund and from federal funds
20 include but are not limited to costs of investigating a
21 release and undertaking corrective action, administrative
22 costs and reasonable [~~attorneys'~~] attorney fees.
23 Expenditures recovered under this section, except for any
24 recovered federal funds, shall be deposited into the
25 corrective action fund.

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1 D. The department has a right of subrogation to
2 any insurance policies in existence at the time of the
3 release to the extent of any rights the owner or operator of
4 a site may have had under that policy and has a right of
5 subrogation against any third party who caused or
6 contributed to the release. [~~This~~] The right of subrogation
7 shall apply regardless of any defenses available to the
8 owner or operator under Subsection B of this section. The
9 right of subrogation shall apply to sites where corrective
10 action is taken by owners or operators under Section
11 74-6B-13 NMSA 1978 as well as to sites where corrective
12 action is taken by the state."

13 Section 18. Section 74-6B-9 NMSA 1978 (being Laws
14 1990, Chapter 124, Section 9, as amended) is amended to
15 read:

16 "74-6B-9. [~~UNDERGROUND~~] STORAGE TANK FEE--DEPOSIT IN
17 [~~UNDERGROUND~~] STORAGE TANK FUND.--On July 1 of each year,
18 there is due from and shall be paid by either the owner or
19 the operator a fee of one hundred dollars (\$100) for each
20 storage tank owned or operated. The fees shall be paid to
21 the department and deposited in the [~~underground~~] storage
22 tank fund created in [~~Section 74-4-4.6~~] Section 74-4-4.8
23 NMSA 1978. "

24 Section 19. Section 74-6B-13 NMSA 1978 (being Laws
25 1992, Chapter 64, Section 10, as amended by Laws 1997,

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1 Chapter 104, Section 3 and also by Laws 1997, Chapter 222,
2 Section 3) is amended to read:

3 "74-6B-13. PAYMENT PROGRAM --

4 A. Unless provided otherwise in this section,
5 all costs in excess of ten thousand dollars (\$10,000) that
6 are necessary to perform a minimum site assessment in
7 accordance with the ~~[regulations]~~ rules of the board shall
8 be paid from the corrective action fund. ~~[In the event that~~
9 ~~an owner or operator has performed a minimum site assessment~~
10 ~~after March 7, 1990 but prior to March 9, 1992 and has~~
11 ~~expended more than ten thousand dollars (\$10,000), the owner~~
12 ~~or operator may apply to the department for reimbursement of~~
13 ~~the costs of the minimum site assessment in excess of ten~~
14 ~~thousand dollars (\$10,000) and shall be entitled to~~
15 ~~reimbursement of those costs to the extent that money is~~
16 ~~available.~~

17 B. ~~An owner or operator who has performed or who~~
18 ~~has made arrangements to perform corrective action after~~
19 ~~March 7, 1990 and in accordance with applicable~~
20 ~~environmental laws and regulations may apply to the~~
21 ~~department for payment of the costs of corrective action,~~
22 ~~other than a minimum site assessment, and shall be entitled~~
23 ~~to payment of those costs from the corrective action fund,~~
24 ~~if he has proven to the department that he has complied with~~
25 ~~the requirements of Section 74-6B-8 NMSA 1978 and if money~~

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1 ~~is available in the fund.~~

2 ~~C.~~ B. Payment of the cost of corrective action,
3 including the cost of a minimum site assessment, shall be
4 made by the department following application and proper
5 documentation of the costs and in accordance with
6 [~~regulations~~] rules adopted by the secretary establishing
7 eligible and ineligible costs. [~~Eligible costs for payment~~
8 ~~are those reasonable and necessary costs actually incurred~~
9 ~~after March 7, 1990 in the performance of a site assessment~~
10 ~~and for corrective action that are consistent with the~~
11 ~~department's fee schedule.~~] Ineligible costs include
12 attorney fees, repair or upgrade of tanks, loss of revenue
13 and costs of monitoring a contractor.

14 ~~D.~~ C. The department shall adopt [~~regulations~~]
15 rules to provide for payments from the corrective action
16 fund, to the extent that money is available in the fund, to
17 persons who cannot afford to pay all or a portion of the
18 initial ten thousand dollar (\$10,000) cost of a minimum site
19 assessment otherwise required in this section. The
20 department shall develop a financial assistance means test,
21 including a sliding scale of financial relief as the
22 department deems appropriate, that allows some or all of the
23 minimum site assessment costs to be paid from the corrective
24 action fund. [~~This financial assistance relief shall be~~
25 ~~available to owners or operators who performed or made~~

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1 ~~arrangements to perform corrective action after March 7,~~
2 ~~1990.]~~

3 ~~[E.]~~ D. All department determinations concerning
4 the manner of payment, compliance and cost eligibility shall
5 be made in accordance with department ~~[regulations]~~ rules.

6 ~~[F.]~~ E. If the owner or operator is in
7 compliance with the requirements of Subsection B of Section
8 74-6B-8 NMSA 1978, payment of costs from the corrective
9 action fund shall occur not later than ~~[thirty]~~ sixty days
10 after the submission of the application and proper
11 documentation of costs by the owner or operator, except as
12 provided in Section 74-6B-14 NMSA 1978.

13 ~~[G. The department shall reserve not less than~~
14 ~~twenty-five percent of the unexpended, unencumbered balance~~
15 ~~of the corrective action fund on July 1 of each year for the~~
16 ~~payment of claims made on the fund.]~~

17 F. Before any payment is made for a corrective
18 action pursuant to this section to or on behalf of an owner
19 or operator, payment shall first be made to reimburse the
20 federal leaking underground storage tank trust fund for any
21 costs incurred for that corrective action.

22 G. Counties and municipalities are exempt from
23 the requirements to pay any portion of the initial ten
24 thousand dollars (\$10,000) of a minimum site assessment."

25 Section 20. REPEAL. -- Sections 74-6B-12 and 74-6B-13. 1

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1 NMSA 1978 (being Laws 1991, Chapter 260, Section 1 and Laws
2 1995, Chapter 6, Section 19, as amended) are repealed.

3 Section 21. EFFECTIVE DATE. --The effective date of the
4 provisions of this act is July 1, 2001.

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