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HOUSE BILL 341

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Pauline K. Gubbels

AN ACT

RELATING TO HAZARDOUS MATERIALS; AMENDING THE HAZARDOUS WASTE
ACT TO PROVIDE FOR 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 by Laws 2001, Chapter 323,
Section 1 and by Laws 2001, Chapter 325, Section 2) is amended
to read:

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

A. "above ground storage tank" means a single tank
or combination of tanks, including underground pipes connected
thereto, that are used to contain petroleum, including crude
oil or any fraction thereof that is liquid at standard
conditions of temperature and pressure of sixty degrees

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1 Fahrenheit and fourteen and seven-tenths pounds per square
2 inch absolute, and the volume of which is more than ninety
3 percent above the surface of the ground. "Above ground
4 storage tank" does not include any:

5 (1) farm, ranch or residential tank used for
6 storing motor fuel or heating oil for noncommercial purposes;

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

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

13 (4) storm water or wastewater collection
14 system;

15 (5) flow-through process tank;

16 (6) liquid trap, tank or associated gathering
17 lines or other storage methods or devices related to oil, gas
18 or mining exploration, production, transportation, refining,
19 processing or storage, or to the oil field service industry
20 operations;

21 (7) tank associated with an emergency
22 generator system;

23 (8) pipes connected to any tank that is
24 described in Paragraphs (1) through [~~(8)~~] (7) of this
25 subsection; or

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1 (9) tanks or related pipelines and facilities
2 owned or used by a refinery, natural gas processing plant or
3 pipeline company in the regular course of their refining,
4 processing or pipeline business;

5 B. "board" means the environmental improvement
6 board;

7 C. "corrective action" means an action taken in
8 accordance with rules of the board to investigate, minimize,
9 eliminate or clean up a release to protect the public health,
10 safety and welfare or the environment;

11 D. "director" or "secretary" means the secretary
12 of environment;

13 E. "disposal" means the discharge, deposit,
14 injection, dumping, spilling, leaking or placing of any solid
15 waste or hazardous waste into or on any land or water so that
16 such solid waste or hazardous waste or constituent thereof may
17 enter the environment or be emitted into the air or discharged
18 into any waters, including ground waters;

19 F. "division" or "department" means the department
20 of environment;

21 G. "federal agency" means any department, agency
22 or other instrumentality of the federal government and any
23 independent agency or establishment of that government,
24 including any government corporation and the government
25 printing office;

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1 H. "generator" means any person producing
2 hazardous waste;

3 I. "hazardous agricultural waste" means hazardous
4 waste generated as part of his licensed activity by any person
5 licensed pursuant to the Pesticide Control Act or any
6 hazardous waste designated as hazardous agricultural waste by
7 the board, but does not include animal excrement in connection
8 with farm, ranch or feedlot operations;

9 J. "hazardous substance incident" means any
10 emergency incident involving a chemical or chemicals,
11 including but not limited to transportation wrecks, accidental
12 spills or leaks, fires or explosions, which incident creates
13 the reasonable probability of injury to human health or
14 property;

15 K. "hazardous waste" means any solid waste or
16 combination of solid wastes that because of their quantity,
17 concentration or physical, chemical or infectious
18 characteristics may:

19 (1) cause or significantly contribute to an
20 increase in mortality or an increase in serious irreversible
21 or incapacitating reversible illness; or

22 (2) pose a substantial present or potential
23 hazard to human health or the environment when improperly
24 treated, stored, transported, disposed of or otherwise
25 managed. "Hazardous waste" does not include any of the

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1 following, until the board determines that they are subject to
2 Subtitle C of the federal Resource Conservation and Recovery
3 Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling
4 fluids, produced waters and other wastes associated with the
5 exploration, development or production of crude oil or natural
6 gas or geothermal energy; fly ash waste; bottom ash waste;
7 slag waste; flue gas emission control waste generated
8 primarily from the combustion of coal or other fossil fuels;
9 solid waste from the extraction, beneficiation or processing
10 of ores and minerals, including phosphate rock and overburden
11 from the mining of uranium ore; or cement kiln dust waste;

12 L. "manifest" means the form used for identifying
13 the quantity, composition, origin, routing and destination of
14 hazardous waste during transportation from point of generation
15 to point of disposal, treatment or storage;

16 M. "person" means any individual, trust, firm,
17 joint stock company, federal agency, corporation, including a
18 government corporation, partnership, association, state,
19 municipality, commission, political subdivision of a state or
20 any interstate body;

21 N. "regulated substance" means:

22 (1) any substance defined in Section 101(14)
23 of the federal Comprehensive Environmental Response,
24 Compensation, and Liability Act of 1980, but not including any
25 substance regulated as a hazardous waste under Subtitle C of

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1 the federal Resource Conservation and Recovery Act of 1976, as
2 amended; and

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

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

20 P. "storage" means the containment of hazardous
21 waste, either on a temporary basis or for a period of years,
22 in such a manner as not to constitute disposal of such
23 hazardous waste;

24 Q. "storage tank" means an above ground storage
25 tank or an underground storage tank;

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1 R. "tank installer" means any individual who
2 installs or repairs a storage tank;

3 S. "transporter" means a person engaged in the
4 movement of hazardous waste, not including movement at the
5 site of generation, disposal, treatment or storage;

6 T. "treatment" means any method, technique or
7 process, including neutralization, designed to change the
8 physical, chemical or biological character or composition of
9 any hazardous waste so as to neutralize such waste or so as to
10 render such waste nonhazardous, safer for transport, amenable
11 to recovery, amenable to storage or reduced in volume.

12 "Treatment" includes any activity or processing designed to
13 change the physical form or chemical composition of hazardous
14 waste so as to render it nonhazardous; [~~and~~]

15 U. "underground storage tank" means a single tank
16 or combination of tanks, including underground pipes connected
17 thereto, that are used to contain an accumulation of regulated
18 substances and the volume of which, including the volume of
19 the underground pipes connected thereto, is ten percent or
20 more beneath the surface of the ground. "Underground storage
21 tank" does not include any:

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

25 (2) septic tank;

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

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

7 (5) storm water or wastewater collection
8 system;

9 (6) flow-through process tank;

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

13 (8) storage tank situated in an underground
14 area, such as a basement, cellar, mineworking drift, shaft or
15 tunnel, if the storage tank is situated upon or above the
16 surface of the undesignated floor;

17 (9) tank associated with an emergency
18 generator system;

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

22 (11) pipes connected to any tank that is
23 described in Paragraphs (1) through (10) of this subsection;
24 and

25 V. "used oil" means any oil that has been refined

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1 from crude oil, or any synthetic oil, that has been used and
2 as a result of such use is contaminated by physical or
3 chemical impurities. "

4 Section 2. Section 74-4-4 NMSA 1978 (being Laws 1977,
5 Chapter 313, Section 4, as amended by Laws 2001, Chapter 323,
6 Section 2 and by Laws 2001, Chapter 325, Section 3) is amended
7 to read:

8 "74-4-4. DUTIES AND POWERS OF THE BOARD. --

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

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

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

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

8 (b) record keeping practices that
9 accurately identify the quantities of hazardous waste
10 generated, the constituents of the waste that are significant
11 in quantity or in potential harm to human health or the
12 environment and the disposition of the waste;

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

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

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

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

24 (g) submission of reports to the
25 secretary at such times as the secretary deems necessary,

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1 setting out the quantities of hazardous waste identified or
2 listed pursuant to the Hazardous Waste Act that the generator
3 has generated during a particular time period and the
4 disposition of all hazardous waste reported, the efforts
5 undertaken during a particular time period to reduce the
6 volume and toxicity of waste generated and the changes in
7 volume and toxicity of waste actually achieved during a
8 particular time period in comparison with previous time
9 periods; and

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

23 (3) establishing standards applicable to
24 transporters of hazardous waste identified or listed under
25 this subsection or of fuel produced from any such hazardous

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1 waste or of fuel from such waste and any other material, as
2 may be necessary to protect human health and the environment,
3 including but not limited to requirements for:

4 (a) record keeping concerning the
5 hazardous waste transported and its source and delivery
6 points;

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

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

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

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

21 (a) furnishing the information stating
22 the location and general description of the facility; and

23 (b) furnishing the information
24 describing the production or energy recovery activity carried
25 out at the facility;

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

9 (a) maintaining the records of all
10 hazardous waste identified or listed under this subsection
11 that is treated, stored or disposed of, as the case may be,
12 and the manner in which such waste was treated, stored or
13 disposed of;

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

17 (c) treatment, storage or disposal of
18 all such waste and any liquid that is not a hazardous waste,
19 except with respect to underground injection control into deep
20 injection wells, received by the facility pursuant to such
21 operating methods, techniques and practices as may be
22 satisfactory to the secretary;

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

25 (e) contingency plans for effective

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1 action to minimize unanticipated damage from any treatment,
2 storage or disposal of any hazardous waste;

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

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

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

16 (i) the taking of corrective action
17 beyond a facility's boundaries where necessary to protect
18 human health and the environment unless the owner or operator
19 of ~~[the]~~ that facility ~~[concerned]~~ demonstrates to the
20 satisfaction of the secretary that, despite the owner's or
21 operator's best efforts, the owner or operator was unable to
22 obtain the necessary permission to undertake such action.
23 Rules adopted and promulgated under this subparagraph shall
24 take effect immediately and shall apply to all facilities
25 operating under permits issued under Paragraph (6) of this

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1 subsection and to all landfills, surface impoundments and
2 waste pile units, including any new units, replacements of
3 existing units or lateral expansions of existing units, that
4 receive hazardous waste after July 26, 1982. No private
5 entity shall be precluded by reason of criteria established
6 under Subparagraph (f) of this paragraph from the ownership or
7 operation of facilities providing hazardous waste treatment,
8 storage or disposal services where the entity can provide
9 assurance of financial responsibility and continuity of
10 operation consistent with the degree and duration of risks
11 associated with the treatment, storage or disposal of
12 specified hazardous waste;

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

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

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1 (8) defining major and minor modifications;
2 and

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

11 B. The board shall adopt rules:

12 (1) concerning hazardous substance incidents;
13 and

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

16 C. The board shall adopt rules concerning storage
17 tanks as may be necessary to protect public health and the
18 environment and that, in the case of underground storage
19 tanks, are equivalent to and no more stringent than federal
20 regulations adopted by the federal environmental protection
21 agency pursuant to the federal Resource Conservation and
22 Recovery Act of 1976, as amended. Rules adopted pursuant to
23 this subsection shall include:

24 (1) standards for the installation, operation
25 and maintenance of storage tanks;

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- 1 (2) requirements for financial
2 responsibility;
- 3 (3) standards for inventory control;
- 4 (4) standards for the detection of leaks from
5 and the integrity-testing and monitoring of storage tanks;
- 6 (5) standards for the closure and dismantling
7 of storage tanks;
- 8 (6) requirements for record keeping; and
- 9 (7) requirements for the reporting,
10 containment and remediation of all leaks from any storage
11 tanks.

12 D. Notwithstanding the provisions of Subsection A
13 of this section, the board may adopt rules for the management
14 of hazardous waste and hazardous waste transformation that are
15 more stringent than federal regulations adopted by the federal
16 environmental protection agency pursuant to the federal
17 Resource Conservation and Recovery Act of 1976, as amended, if
18 the board determines, after notice and public hearing, that
19 such federal regulations are not sufficient to protect public
20 health and the environment. As used in this subsection,
21 "transformation" means [~~an incinerator~~] incineration,
22 pyrolysis, distillation, gasification or biological conversion
23 other than composting.

24 E. The board shall adopt rules concerning the
25 management of used oil that are equivalent to and no more

1 stringent than federal regulations adopted by the federal
2 environmental protection agency pursuant to the federal
3 Resource Conservation and Recovery Act of 1976, as amended.

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

10 Section 3. REPEAL. -- Laws 2001, chapter 323, Sections 1
11 and 2 are repealed.

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