

SENATE BILL 180

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Elizabeth "Liz" Stefanics

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO HAZARDOUS WASTE; SUBJECTING BUSINESSES GENERATING OR MANAGING USED OIL TO FEES; INCREASING PENALTIES; PROVIDING FOR ANNUAL CHANGES IN PENALTIES.

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

SECTION 1. Section 74-4-4.2 NMSA 1978 (being Laws 1981 (1st S.S.), Chapter 8, Section 6, as amended) is amended to read:

"74-4-4.2. PERMITS--ISSUANCE--DENIAL--MODIFICATION--SUSPENSION--REVOCATION.--

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A. An application for a permit pursuant to the Hazardous Waste Act shall contain information required pursuant to Section 74-4-4.7 NMSA 1978 or to regulations promulgated by the board and shall include:

(1) estimates of the composition, quantity and concentration of any hazardous waste identified or listed under Subsection A of Section 74-4-4 NMSA 1978 or combinations of any hazardous waste and other solid waste proposed to be disposed of, treated, transported or stored and the time, frequency or rate at which the waste is proposed to be disposed of, treated, transported or stored; and

(2) an identification and description of, and other pertinent information about, the site where hazardous waste or the products of treatment of hazardous waste will be disposed of, treated, transported to or stored.

B. Hazardous waste permits shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this section.

C. The department shall provide timely review on all permit applications. Upon a determination by the secretary that the applicant has met the requirements adopted pursuant to Section 74-4-4 NMSA 1978, the secretary may issue a permit or a permit subject to any conditions necessary to protect human health and the environment for the facility.

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D. The secretary may deny any permit application or modify, suspend or revoke any permit issued pursuant to the Hazardous Waste Act if the applicant or permittee has:

(1) knowingly and willfully misrepresented a material fact in the application for a permit;

(2) refused to disclose the information required under the provisions of Section 74-4-4.7 NMSA 1978;

(3) been convicted in any court, within ten years immediately preceding the date of submission of the permit application, of:

(a) a felony or other crime involving moral turpitude; or

(b) a crime defined by state or federal statutes as involving or being in restraint of trade, price-fixing, bribery or fraud;

(4) exhibited a history of willful disregard for environmental laws of any state or the United States;

(5) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States; or

(6) violated any provision of the Hazardous Waste Act, any regulation adopted and promulgated pursuant to that act or any condition of a permit issued under that act.

E. In making a finding under Subsection D of this section, the secretary may consider aggravating and mitigating

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factors.

F. If an applicant or permittee whose permit is being considered for denial or revocation, respectively, on any basis provided by Subsection D of this section has submitted an action plan that has been approved in writing by the secretary, and plan approval includes a period of operation under a conditional permit that will allow the applicant or permittee a reasonable opportunity to demonstrate its rehabilitation, the secretary may issue a conditional permit for a reasonable period of time. In approving an action plan intended to demonstrate rehabilitation, the secretary may consider:

- (1) implementation by the applicant or permittee of formal policies;
- (2) training programs and management control to minimize and prevent the occurrence of future violations;
- (3) installation by the applicant or permittee of internal environmental auditing programs;
- (4) the applicant's release or the permittee's release subsequent to serving a period of incarceration or paying a fine, or both, after conviction of any crime listed in Subsection D of this section; and
- (5) any other factors the secretary deems relevant.

G. Notwithstanding the provisions of Subsection D of this section:

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(1) a research, development and demonstration permit may be terminated upon the determination by the secretary that termination is necessary to protect human health or the environment; and

(2) a permit may be modified at the request of the permittee for just cause as demonstrated by the permittee.

H. No ruling shall be made on permit issuance, major modification, suspension or revocation without an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing; provided, however, that the secretary may, pursuant to Section 74-4-10 NMSA 1978, order the immediate termination of a research development and demonstration permit whenever the secretary determines that termination is necessary to protect human health or the environment and may order the immediate suspension or revocation of a permit for a facility that has been ordered to take corrective action or other response measures for releases of hazardous waste into the environment.

I. The secretary shall hold a public hearing on a minor permit modification if the secretary determines that there is significant public interest in the minor modification.

J. The board shall provide a schedule of fees for businesses generating or managing hazardous waste or used oil,

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conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste, including but not limited to:

SCONC → ~~(1) a hazardous waste business fee applicable to any business engaged in a regulated hazardous waste or used oil activity, which shall be an annual flat fee based on the type of activity;~~ ← SCONC

SCONC → ~~(2)~~ ← SCONC SCONC → (1) ← SCONC a hazardous waste generation fee applicable to any business generating hazardous waste SCONC → or used oil ← SCONC, which shall be based on the quantity of hazardous waste SCONC → or any amount of used oil ← SCONC generated annually; however, when any material listed in Paragraph (2) of Subsection K of Section 74-4-3 NMSA 1978 is determined by the board to be subject to regulation under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, the board may set a generation fee under this paragraph for that waste based on its volume, toxicity, mobility and economic impact on the regulated entity;

SCONC → ~~(3)~~ ← SCONC SCONC → (2) ← SCONC a hazardous waste permit application fee, not exceeding the estimated cost of investigating the application and issuing the permit, to be paid at the time the secretary notifies the applicant by certified mail that the application has been deemed administratively complete and a technical review is scheduled; and

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SCONC→(4)←SCONC SCONC→(3)←SCONC an annual hazardous waste permit management fee based on and not exceeding the estimated cost of conducting regulatory oversight of permitted activities.

K. The department and a business generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste may enter into a voluntary fee agreement in addition to and that includes all of the fees required by Subsection J of this section."

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

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

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

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for

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any past or current violation, or both; or

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

B. Any order issued pursuant to Subsection A of this section may include a suspension or revocation of any permit issued by the secretary. Any penalty assessed in the order shall not exceed [~~ten thousand dollars (\$10,000)~~] seventy-five thousand dollars (\$75,000) per day of noncompliance for each violation. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements. For violations related to storage tanks, "per violation" means per tank.

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

(1) assess a civil penalty of not more than [~~twenty-five thousand dollars (\$25,000)~~] seventy-five thousand dollars (\$75,000) for each day of continued noncompliance with the order; and

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

D. Whenever on the basis of any information the secretary determines that the immediate termination of a

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research, development and demonstration permit is necessary to protect human health or the environment, the secretary may order an immediate termination of all research, development and demonstration operations permitted pursuant to the Hazardous Waste Act at the facility.

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

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

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dollars (\$75,000) for each day of noncompliance with the order.

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

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

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

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

I. In connection with any proceeding under this

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section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may promulgate rules for discovery procedures.

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

SECTION 3. Section 74-4-10.1 NMSA 1978 (being Laws 1989, Chapter 322, Section 13) is amended to read:

"74-4-10.1. HAZARDOUS WASTE MONITORING, ANALYSIS AND TESTING--CIVIL PENALTY.--

A. If the [~~director~~] secretary determines, upon receipt of any information, that [~~(1)~~] the presence of any hazardous waste at a facility or site at which hazardous waste is or has been stored, treated or disposed of or [~~(2)~~] the release of any such waste from [~~such~~] the facility or site may present a substantial hazard to human health or the environment, [~~he~~] the secretary may issue an order requiring the owner or operator of [~~such~~] the facility to conduct such monitoring, testing, analysis and reporting with respect to [~~such~~] the facility or site as the [~~director~~] secretary deems reasonable to ascertain the nature and extent of [~~such~~] the hazard.

B. In the case of any facility or site not in operation at the time a determination is made under Subsection

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A of this section with respect to the facility or site, if the [director] secretary finds that the owner of [such] the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at [such] the facility or site and of its potential for release, the [director] secretary may issue an order requiring the most recent previous owner or operator of [such] the facility or site who could reasonably be expected to have actual knowledge to carry out the provisions referred to in Subsection A of this section.

C. Any order under Subsection A or B of this section shall require the person to whom [such] the order is issued to submit to the [director] secretary, within thirty days from the issuance of [such] the order, a proposal for carrying out the required monitoring, testing, analysis and reporting. The [director] secretary may, after providing [such] the person with an opportunity to confer with the [director] secretary respecting [such] the proposal, require such person to carry out [such] the monitoring, testing, analysis and reporting in accordance with such proposal and such modifications in [such] the proposal as the [director] secretary deems reasonable to ascertain the nature and extent of the hazard.

D. [~~1~~] If the [director] secretary determines that [~~no~~] an owner or operator referred to in Subsection A or B

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of this section is not able to conduct monitoring, testing, analysis or reporting satisfactory to the [~~director~~] secretary, if the [~~director~~] secretary deems any such action carried out by an owner or operator to be unsatisfactory or if the [~~director~~] secretary cannot initially determine that there is an owner or operator referred to in Subsection A or B of this section who is able to conduct [~~such~~] monitoring, testing, analysis or reporting, the [~~division~~] department may:

[~~(a)~~] (1) conduct monitoring, testing or analysis, or any combination thereof, [~~which he~~] that the secretary deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned; or

[~~(b)~~] (2) authorize a local authority or other person to carry out [~~any such~~] the action; and

[~~(c)~~] (3) in either event [~~the director may~~] require, by order, the owner or operator referred to in Subsection A or B of this section to reimburse the [~~division~~] department or other authority or person for the costs of [~~such~~] the activity. Any reimbursement to the [~~division~~] department pursuant to this [~~subparagraph~~] paragraph shall be deposited to the credit of the hazardous waste fund.

[~~(2)~~] E. No order may be issued under [~~this~~] Subsection D of this section requiring reimbursement of the costs of any action carried out by the [~~division which~~] department that confirms the results of an order issued under

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Subsection A or B of this section.

~~[(3)]~~ F. For purposes of carrying out ~~[this subsection]~~ the provisions of Subsections D and E of this section, the ~~[director]~~ secretary or any authority or other person authorized under ~~[Paragraph (1) of this]~~ Subsection D of this section may exercise the authorities set forth in Section 74-4-4.3 NMSA 1978.

~~[E.]~~ G. The ~~[director]~~ secretary may commence a civil action against any person who fails or refuses to comply with an order issued under this section. ~~[Such]~~ The action shall be brought in the district court of the county in which the defendant is located, resides or is doing business. ~~[Such]~~ The court shall have jurisdiction to require compliance with ~~[such]~~ the order and to assess a civil penalty not to exceed ~~[five thousand dollars (\$5,000)]~~ fifteen thousand dollars (\$15,000) for each day during which ~~[such]~~ the failure or refusal occurs."

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

"74-4-12. PENALTY--CIVIL.--Any person who violates any provision of the Hazardous Waste Act, any rule made pursuant to that act or any compliance order issued by the ~~[director]~~ secretary pursuant to Section 74-4-10 NMSA 1978 may be assessed a civil penalty not to exceed ~~[ten thousand dollars (\$10,000)]~~ seventy-five thousand dollars (\$75,000) for each day during any

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portion of which a violation occurs. For violations related to storage tanks, "per violation" means per tank."

SECTION 5. Section 74-4-13 NMSA 1978 (being Laws 1983, Chapter 302, Section 3, as amended) is amended to read:

"74-4-13. IMMINENT HAZARDS--AUTHORITY OF [DIRECTOR]
SECRETARY--PENALTIES.--

A. Notwithstanding any other provision of the Hazardous Waste Act, whenever the secretary is in receipt of evidence that the past or current handling, storage, treatment, transportation or disposal of solid waste or hazardous waste or the condition or maintenance of a storage tank may present an imminent and substantial endangerment to health or the environment, [he] the secretary may bring suit in the appropriate district court to immediately restrain any person, including any past or present generator, past or present transporter or past or present owner or operator of a treatment, storage or disposal facility, who has contributed or is contributing to such activity, to take such other action as may be necessary or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such

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transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The secretary may also take other action, including but not limited to issuing such orders as may be necessary to protect health and the environment.

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

C. Upon receipt of information that there is hazardous waste at any site [~~which~~] that has presented an imminent and substantial endangerment to human health or the environment, the secretary shall provide immediate notice to the appropriate local government agencies. In addition, the [~~director~~] secretary shall require notice of such endangerment to be promptly posted at the site where the waste is located."

SECTION 6. A new section of the Hazardous Waste Act is enacted to read:

"[NEW MATERIAL] INFLATION ADJUSTMENTS.--No later than April 1 of each year, the secretary shall adjust as necessary the maximum penalty amounts established in Sections 74-4-10, 74-4-10.1, 74-4-12 and 74-4-13 NMSA 1978 to account for

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inflation. The amount shall be modified by the percentage of the preceding calendar year's change of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor. The amount of the change, if any, shall be rounded to the nearest dollar, but shall not exceed one hundred fifty percent of the current penalty amount."

SECTION 7. APPLICABILITY.--The provisions of this act apply to violations that occur on or after July 1, 2020.

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2020.