

1 SENATE BILL 180

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Elizabeth "Liz" Stefanics

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10 AN ACT

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 74-4-4.2 NMSA 1978 (being Laws 1981
17 (1st S.S.), Chapter 8, Section 6, as amended) is amended to
18 read:

19 "74-4-4.2. PERMITS--ISSUANCE--DENIAL--MODIFICATION--
20 SUSPENSION--REVOCATION.--

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

25 (1) estimates of the composition, quantity and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 F. If an applicant or permittee whose permit is
23 being considered for denial or revocation, respectively, on any
24 basis provided by Subsection D of this section has submitted an
25 action plan that has been approved in writing by the secretary,

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1 and plan approval includes a period of operation under a
2 conditional permit that will allow the applicant or permittee a
3 reasonable opportunity to demonstrate its rehabilitation, the
4 secretary may issue a conditional permit for a reasonable
5 period of time. In approving an action plan intended to
6 demonstrate rehabilitation, the secretary may consider:

7 (1) implementation by the applicant or
8 permittee of formal policies;

9 (2) training programs and management control
10 to minimize and prevent the occurrence of future violations;

11 (3) installation by the applicant or permittee
12 of internal environmental auditing programs;

13 (4) the applicant's release or the permittee's
14 release subsequent to serving a period of incarceration or
15 paying a fine, or both, after conviction of any crime listed in
16 Subsection D of this section; and

17 (5) any other factors the secretary deems
18 relevant.

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

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

25 (2) a permit may be modified at the request of

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1 the permittee for just cause as demonstrated by the permittee.

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

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

19 J. The board shall provide a schedule of fees for
20 businesses generating or managing hazardous waste or used oil,
21 conducting permitted hazardous waste management activities or
22 seeking a permit for the management of hazardous waste,
23 including but not limited to:

24 (1) a hazardous waste business fee applicable
25 to any business engaged in a regulated hazardous waste or used

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1 oil activity, which shall be an annual flat fee based on the
2 type of activity;

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

13 (3) a hazardous waste permit application fee,
14 not exceeding the estimated cost of investigating the
15 application and issuing the permit, to be paid at the time the
16 secretary notifies the applicant by certified mail that the
17 application has been deemed administratively complete and a
18 technical review is scheduled; and

19 (4) an annual hazardous waste permit
20 management fee based on and not exceeding the estimated cost
21 of conducting regulatory oversight of permitted activities.

22 K. The department and a business generating
23 hazardous waste, conducting permitted hazardous waste
24 management activities or seeking a permit for the management of
25 hazardous waste may enter into a voluntary fee agreement in

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1 addition to and that includes all of the fees required by
2 Subsection J of this section."

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

6 "74-4-10. ENFORCEMENT--COMPLIANCE ORDERS--CIVIL
7 PENALTIES.--

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

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

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

22 B. Any order issued pursuant to Subsection A of
23 this section may include a suspension or revocation of any
24 permit issued by the secretary. Any penalty assessed in the
25 order shall not exceed [~~ten thousand dollars (\$10,000)~~]

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1 seventy-five thousand dollars (\$75,000) per day of
2 noncompliance for each violation. In assessing the penalty,
3 the secretary shall take into account the seriousness of the
4 violation and any good-faith efforts to comply with the
5 applicable requirements. For violations related to storage
6 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)~~] seventy-five thousand
12 dollars (\$75,000) for each day of continued noncompliance with
13 the order; and

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

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

23 E. Whenever on the basis of any information the
24 secretary determines that there is or has been a release of
25 hazardous waste into the environment from a facility authorized

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1 to operate under Section 74-4-9 NMSA 1978, the secretary may
2 issue an order requiring corrective action, including
3 corrective action beyond a facility's boundaries or other
4 response measure as ~~[he]~~ the secretary deems necessary to
5 protect human health or the environment or may commence an
6 action in district court in the district in which the facility
7 is located for appropriate relief, including a temporary or
8 permanent injunction.

9 F. Any order issued under Subsection E of this
10 section may include a suspension or revocation of authorization
11 to operate under Section 74-4-9 NMSA 1978 and shall state with
12 reasonable specificity the nature of the required corrective
13 action or other response measure and shall specify a time for
14 compliance. If any person named in an order fails to comply
15 with the order, the secretary may assess, and the person shall
16 be liable to the state for, a civil penalty in an amount not to
17 exceed ~~[ten thousand dollars (\$10,000)]~~ seventy-five thousand
18 dollars (\$75,000) for each day of noncompliance with the order.

19 G. Any order issued pursuant to this section, any
20 other enforcement proceeding initiated pursuant to this section
21 or any claim for personal or property injury arising from any
22 conduct for which evidence of financial responsibility must be
23 provided may be issued to or taken against the insurer or
24 guarantor of an owner or operator of a treatment, storage or
25 disposal facility or 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 court
5 cannot with reasonable diligence be obtained over an owner or
6 operator likely to be solvent at the time of judgment.

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

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

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

25 SECTION 3. Section 74-4-10.1 NMSA 1978 (being Laws 1989,

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1 Chapter 322, Section 13) is amended to read:

2 "74-4-10.1. HAZARDOUS WASTE MONITORING, ANALYSIS AND
3 TESTING--CIVIL PENALTY.--

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

16 B. In the case of any facility or site not in
17 operation at the time a determination is made under Subsection
18 A of this section with respect to the facility or site, if the
19 [~~director~~] secretary finds that the owner of [~~such~~] the
20 facility or site could not reasonably be expected to have
21 actual knowledge of the presence of hazardous waste at [~~such~~]
22 the facility or site and of its potential for release, the
23 [~~director~~] secretary may issue an order requiring the most
24 recent previous owner or operator of [~~such~~] the facility or
25 site who could reasonably be expected to have actual knowledge

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1 to carry out the provisions referred to in Subsection A of this
2 section.

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

16 D. [~~(1)~~] If the [~~director~~] secretary determines
17 that [~~no~~] an owner or operator referred to in Subsection A or B
18 of this section is not able to conduct monitoring, testing,
19 analysis or reporting satisfactory to the [~~director~~] secretary,
20 if the [~~director~~] secretary deems any such action carried out
21 by an owner or operator to be unsatisfactory or if the
22 [~~director~~] secretary cannot initially determine that there is
23 an owner or operator referred to in Subsection A or B of this
24 section who is able to conduct [~~such~~] monitoring, testing,
25 analysis or reporting, the [~~division~~] department may:

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

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

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

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

19 [~~(3)~~] F. For purposes of carrying out [~~this~~]
20 subsection] the provisions of Subsections D and E of this
21 section, the [~~director~~] secretary or any authority or other
22 person authorized under [~~Paragraph (1) of this~~] Subsection D of
23 this section may exercise the authorities set forth in Section
24 74-4-4.3 NMSA 1978.

25 [~~E.~~] G. The [~~director~~] secretary may commence a

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1 civil action against any person who fails or refuses to comply
2 with an order issued under this section. [~~Such~~] The action
3 shall be brought in the district court of the county in which
4 the defendant is located, resides or is doing business. [~~Such~~]
5 The court shall have jurisdiction to require compliance with
6 [~~such~~] the order and to assess a civil penalty not to exceed
7 [~~five thousand dollars (\$5,000)~~] fifteen thousand dollars
8 (\$15,000) for each day during which [~~such~~] the failure or
9 refusal occurs."

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

12 "74-4-12. PENALTY--CIVIL.--Any person who violates any
13 provision of the Hazardous Waste Act, any rule made pursuant to
14 that act or any compliance order issued by the [~~director~~]
15 secretary pursuant to Section 74-4-10 NMSA 1978 may be assessed
16 a civil penalty not to exceed [~~ten thousand dollars (\$10,000)~~]
17 seventy-five thousand dollars (\$75,000) for each day during any
18 portion of which a violation occurs. For violations related to
19 storage tanks, "per violation" means per tank."

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

22 "74-4-13. IMMINENT HAZARDS--AUTHORITY OF [~~DIRECTOR~~]
23 SECRETARY--PENALTIES.--

24 A. Notwithstanding any other provision of the
25 Hazardous Waste Act, whenever the secretary is in receipt of

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1 evidence that the past or current handling, storage, treatment,
2 transportation or disposal of solid waste or hazardous waste or
3 the condition or maintenance of a storage tank may present an
4 imminent and substantial endangerment to health or the
5 environment, ~~he~~ the secretary may bring suit in the
6 appropriate district court to immediately restrain any person,
7 including any past or present generator, past or present
8 transporter or past or present owner or operator of a
9 treatment, storage or disposal facility, who has contributed or
10 is contributing to such activity, to take such other action as
11 may be necessary or both. A transporter shall not be deemed to
12 have contributed or to be contributing to such handling,
13 storage, treatment or disposal taking place after such solid
14 waste or hazardous waste has left the possession or control of
15 such transporter if the transportation of such waste was under
16 a sole contractual arrangement arising from a published tariff
17 and acceptance for carriage by common carrier by rail and such
18 transporter has exercised due care in the past or present
19 handling, storage, treatment, transportation and disposal of
20 such waste. The secretary may also take other action,
21 including but not limited to issuing such orders as may be
22 necessary to protect health and the environment.

23 B. Any person who willfully violates or fails or
24 refuses to comply with any order of the secretary under
25 Subsection A of this section may in an action brought in the

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1 appropriate district court to enforce such order be fined not
2 more than [~~five thousand dollars (\$5,000)~~] fifteen thousand
3 dollars (\$15,000) for each day in which the violation occurs or
4 the failure to comply continues.

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

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

14 "[NEW MATERIAL] INFLATION ADJUSTMENTS.--No later than
15 April 1 of each year, the secretary shall adjust as necessary
16 the maximum penalty amounts established in Sections 74-4-10,
17 74-4-10.1, 74-4-12 and 74-4-13 NMSA 1978 to account for
18 inflation. The amount shall be modified by the percentage of
19 the preceding calendar year's change of the consumer price
20 index for all urban consumers, United States city average for
21 all items, published by the United States department of labor.
22 The amount of the change, if any, shall be rounded to the
23 nearest dollar, but shall not exceed one hundred fifty percent
24 of the current penalty amount."

25 SECTION 7. APPLICABILITY.--The provisions of this act

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1 apply to violations that occur on or after July 1, 2020.

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

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