

LFC Requester:

Austin Davidson

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 1/29/2025

Check all that apply:

Bill Number: HB140

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Christine Chandler

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: “Hazardous Waste Constituent” Definition

Analysis: Esther Jamison

Phone: 505-537-7676

Email: legisfir@nmag.gov

#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

##### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

New Mexico is authorized to implement the federal hazardous waste program provided for in the Resource Conservation and Recovery Act (RCRA). See 42 U.S.C. § 6926 (authorizing state hazardous waste programs); 40 C.F.R. § 272.1601 (recognizing New Mexico’s authorization to administer and enforce its hazardous waste program). New Mexico’s hazardous waste program is set out in the Hazardous Waste Act (HWA), N.M.S.A. §§ 74-4-1 to -14. Pertinent here, RCRA allows states to impose “more stringent” requirements for hazardous waste management than federal regulations. 42 U.S.C. § 6929.

HB 140 would amend HWA to authorize the New Mexico Environmental Improvement Board (EIB) to identify and list hazardous waste constituents, regardless of whether these constituents are identified or listed as such by the federal Environmental Protection Agency (EPA):

Section 1 would amend the definitions section of the HWA, § 74-4-3, to add a definition for “hazardous waste constituent[s].” The bill would define a “hazardous waste constituent” as “a chemical or substance that meets the definition of a hazardous waste . . . and has been identified by the [EIB] as being subject to corrective action requirements under the Hazardous Waste Act.”

Section 2 would amend § 74-4-4 to expand the EIB’s authority to adopt rules for the management, identification, and listing of hazardous waste constituents; currently, it has that authority for hazardous waste only. Significantly, section 2 would also delete language in § 74-4-4(A)(1) that constrains the EIB from identifying and listing hazardous wastes that have not been listed or designated hazardous wastes by the EPA under RCRA.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

Section 1:

It is unclear how HB 140's proposed definition of a "hazardous waste constituent" differentiates "hazardous waste constituent[s]" from "hazardous waste," as defined by the HWA in § 74-4-3(K). *See also* 42 U.S.C. § 6903(5) (defining "hazardous waste" in very similar terms as the HWA, but without the HWA's exemptions). HB 140's proposed definition establishes two criteria for a substance to be a hazardous waste constituent: (1) it must meet the statutory definition of hazardous waste; and (2) it must be identified by the EIB as subject to corrective action. But if a substance meets the definition of hazardous waste, then, in many cases, it would already be subject to corrective action without additional listing by the EIB as a hazardous constituent. The proposed definition may therefore limit corrective action authority in a way not intended or anticipated.

The proposed definition may also conflate two pathways to corrective action provided for in RCRA and the HWA: one through hazardous waste and the other through hazardous constituents, as explained more fully below.

Federal regulations define "hazardous waste," 40 C.F.R. § 261.3, but they do not explicitly define "hazardous waste constituent[s]" or "hazardous constituents." Neither does RCRA. Federal regulations list hazardous constituents that the EPA has identified in Appendix VIII to 40 C.F.R. Part 261. Though not an explicit definition, the federal regulations explain that "[s]ubstances will be listed on appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms." 40 C.F.R. § 261.11(a); *see also* EPA, *Frequently Asked Questions About Hazardous Waste Identification: RCRA Hazardous Constituent*, available at <https://www.epa.gov/hw/frequent-questions-about-hazardous-waste-identification> (last visited Jan. 29, 2025) (describing its list of hazardous constituents as "comprised of chemicals that have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms," and characterizing them as "the universe of chemicals of concern under RCRA"). New Mexico HWA regulations incorporate federal RCRA regulations by reference. *See, e.g.*, 20.4.1.100–200 NMAC (incorporating 40 C.F.R. parts 260 and 261 by reference).

HB 140's proposed definition may cause confusion because it does not actually define what a "hazardous waste constituent" is, other than by equating it with the HWA's definition of "hazardous waste" and by reference to the EIB's corrective action authority. Defining "hazardous waste constituent[s]" based on whether the EIB has identified a constituent as being subject to corrective action is somewhat circular, because the HWA defines corrective action as action that must be taken to clean up hazardous waste or hazardous constituents. *See* § 74-4-3(C) (defining "corrective action" as "an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment"); § 74-4-4.2(B) (permits must 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" (emphasis added)); *see also* 42 U.S.C. 6924(u) ("Standards promulgated under this section 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 subchapter." (emphasis added)).

In addition, incorporating the definition of "hazardous waste" into the definition of "hazardous waste constituent" may create confusion or implementation problems because the definition of "hazardous waste" requires considering the "quantity" or "concentration" of a substance as factors in determining harm to human health or the environment. § 74-4-3(K). By contrast, the

EPA's description of hazardous constituents does not factor in quantity or concentration. *See* 40 C.F.R. § 261.11(a); Appendix VIII to 40 C.F.R. Part 261.

**PERFORMANCE IMPLICATIONS**

N/A

**ADMINISTRATIVE IMPLICATIONS**

N/A

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

**TECHNICAL ISSUES**

N/A

**OTHER SUBSTANTIVE ISSUES**

N/A

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

**AMENDMENTS**

N/A