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AN ACT

RELATING TO HAZARDOUS MATERIALS; AMENDING THE DEFINITION OF "HAZARDOUS WASTE"; AUTHORIZING THE ENVIRONMENTAL IMPROVEMENT BOARD TO ADOPT RULES FOR PER- AND POLYFLUOROALKYL SUBSTANCES THAT ARE DESIGNATED HAZARDOUS WASTE.

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

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

(2) pipeline facility, including gathering lines, that is regulated under Chapter 601 of Title 49 of the United States Code or that is an intrastate pipeline facility

1 regulated under state laws as provided in Chapter 601 of
2 Title 49 of the United States Code and that is determined by
3 the United States secretary of transportation to be connected
4 to a pipeline, or to be operated or intended to be capable of
5 operating at pipeline pressure or as an integral part of a
6 pipeline;

7 (3) surface impoundment, pit, pond or
8 lagoon;

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

11 (5) flow-through process tank;

12 (6) liquid trap, tank or associated
13 gathering lines or other storage methods or devices related
14 to oil, gas or mining exploration, production,
15 transportation, refining, processing or storage, or to oil
16 field service industry operations;

17 (7) tank used for storing heating oil for
18 consumptive use on the premises where stored;

19 (8) pipes connected to any tank that is
20 described in Paragraphs (1) through (7) of this subsection;
21 or

22 (9) tanks or related pipelines and
23 facilities owned or used by a refinery, natural gas
24 processing plant or pipeline company in the regular course of
25 its refining, processing or pipeline business;

1 B. "board" means the environmental improvement
2 board;

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

7 D. "director" or "secretary" means the secretary
8 of environment;

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

15 F. "division" or "department" means the department
16 of environment;

17 G. "federal agency" means any department, agency
18 or other instrumentality of the federal government and any
19 independent agency or establishment of that government,
20 including any government corporation and the government
21 publishing office;

22 H. "generator" means any person producing
23 hazardous waste;

24 I. "hazardous agricultural waste" means hazardous
25 waste generated as part of the licensed activity by any

1 person licensed pursuant to the Pesticide Control Act or
2 hazardous waste designated as hazardous agricultural waste by
3 the board, but does not include animal excrement in
4 connection with farm, ranch or feedlot operations;

5 J. "hazardous substance incident" means any
6 emergency incident involving a chemical or chemicals,
7 including transportation wrecks, accidental spills or leaks,
8 fires or explosions, which incident creates the reasonable
9 probability of injury to human health or property;

10 K. "hazardous waste":

11 (1) means any solid waste or combination of
12 solid wastes that, because of quantity, concentration or
13 physical, chemical or infectious characteristics, may:

14 (a) cause or significantly contribute
15 to an increase in mortality or an increase in serious
16 irreversible or incapacitating reversible illness; or

17 (b) pose a substantial present or
18 potential hazard to human health or the environment when
19 improperly treated, stored, transported, disposed of or
20 otherwise managed;

21 (2) includes:

22 (a) discarded aqueous film-forming foam
23 containing intentionally added per- or polyfluoroalkyl
24 substances; and

25 (b) all solid waste or combination of

1 solid wastes listed and designated as hazardous waste by the
2 federal environmental protection agency pursuant to the
3 federal Resource Conservation and Recovery Act of 1976;
4 provided that any solid waste or combination of solid wastes
5 designated as hazardous by the federal environmental
6 protection agency pursuant to the federal Resource
7 Conservation and Recovery Act of 1976 on July 1, 2025 and
8 subsequently removed by the federal environmental protection
9 agency shall be considered hazardous waste; and

10 (3) does not include the following
11 substances, until the board determines that the substance is
12 subject to Subtitle C of the federal Resource Conservation
13 and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.:

14 (a) drilling fluids, produced waters
15 and other wastes associated with the exploration, development
16 or production of crude oil, natural gas or geothermal energy;

17 (b) fly ash waste;

18 (c) bottom ash waste;

19 (d) slag waste;

20 (e) flue gas emission control waste
21 generated primarily from the combustion of coal or other
22 fossil fuels;

23 (f) solid waste from the extraction,
24 beneficiation or processing of ores and minerals, including
25 phosphate rock and overburden from the mining of uranium ore;

1 (g) cement kiln dust waste; or

2 (h) solid wastes generated by the
3 growing and harvesting of agricultural crops or the raising
4 of animals, including animal manures, when those solid wastes
5 are returned to the soils as fertilizer;

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

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

15 N. "regulated substance" means:

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

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

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

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

20 R. "tank installer" means any individual who
21 installs or repairs a storage tank;

22 S. "tank tester" means any individual who tests
23 storage tanks;

24 T. "transporter" means a person engaged in the
25 movement of hazardous waste, not including movement at the

1 site of generation, disposal, treatment or storage;

2 U. "treatment" means any method, technique or
3 process, including neutralization, designed to change the
4 physical, chemical or biological character or composition of
5 a hazardous waste so as to neutralize the waste or so as to
6 render the waste nonhazardous, safer for transport, amenable
7 to recovery, amenable to storage or reduced in volume.

8 "Treatment" includes any activity or processing designed to
9 change the physical form or chemical composition of hazardous
10 waste so as to render it nonhazardous;

11 V. "underground storage tank" means a single tank
12 or a combination of tanks, including underground pipes
13 connected thereto, that is used to contain an accumulation of
14 regulated substances and the volume of which, including the
15 volume of the underground pipes connected thereto, is ten
16 percent or more beneath the surface of the ground.

17 "Underground storage tank" does not include any:

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

21 (2) septic tank;

22 (3) pipeline facility, including gathering
23 lines, that is regulated under Chapter 601 of Title 49 of the
24 United States Code or that is an intrastate pipeline facility
25 regulated under state laws as provided in Chapter 601 of

1 Title 49 of the United States Code and that is determined by
2 the United States secretary of transportation to be connected
3 to a pipeline, or to be operated or intended to be capable of
4 operating at pipeline pressure or as an integral part of a
5 pipeline;

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

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

10 (6) flow-through process tank;

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

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

18 (9) tank used for storing heating oil for
19 consumptive use on the premises where stored;

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

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

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

5 **SECTION 2.** Section 74-4-4 NMSA 1978 (being Laws 1977,
6 Chapter 313, Section 4, as amended) is amended to read:

7 "74-4-4. DUTIES AND POWERS OF THE BOARD.--

8 A. The board shall adopt rules for the management
9 of hazardous waste, as may be necessary to protect public
10 health and the environment, that are equivalent to and at
11 least as stringent as federal regulations adopted by the
12 federal environmental protection agency pursuant to the
13 federal Resource Conservation and Recovery Act of 1976, as
14 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
24 federal environmental protection agency pursuant to the
25 federal Resource Conservation and Recovery Act of 1976, as

1 amended;

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

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

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

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

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

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

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

1 (g) submission of reports to the
2 secretary at such times as the secretary deems necessary,
3 setting out the quantities of hazardous waste identified or
4 listed pursuant to the Hazardous Waste Act that the generator
5 has generated during a particular time period and the
6 disposition of all hazardous waste reported, the efforts
7 undertaken during a particular time period to reduce the
8 volume and toxicity of waste generated and the changes in
9 volume and toxicity of waste actually achieved during a
10 particular time period in comparison with previous time
11 periods; and

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

1 (3) establishing standards applicable to
2 transporters of hazardous waste identified or listed under
3 this subsection or of fuel produced from any such hazardous
4 waste or of fuel from such waste and any other material, as
5 may be necessary to protect human health and the environment,
6 including requirements for:

7 (a) recordkeeping concerning the
8 hazardous waste transported and its source and delivery
9 points;

10 (b) transportation of the hazardous
11 waste only if properly labeled;

12 (c) compliance with the manifest system
13 referred to in Subparagraph (h) of Paragraph (2) of this
14 subsection; and

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

21 (4) establishing standards applicable to
22 distributors or marketers of any fuel produced from hazardous
23 waste, or any fuel that contains hazardous waste, for:

24 (a) furnishing the information stating
25 the location and general description of the facility; and

1 (b) furnishing the information
2 describing the production or energy recovery activity carried
3 out at the facility;

4 (5) establishing performance standards as
5 may be necessary to protect human health and the environment
6 applicable to owners and operators of facilities for the
7 treatment, storage or disposal of hazardous waste identified
8 or listed under this section, distinguishing, where
9 appropriate, between new facilities and facilities in
10 existence on the date of promulgation, including requirements
11 for:

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

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

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

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

3 (e) contingency plans for effective
4 action to minimize unanticipated damage from any treatment,
5 storage or disposal of any hazardous waste;

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

12 (g) compliance with the requirements of
13 Paragraph (6) of this subsection respecting permits for
14 treatment, storage or disposal;

15 (h) the taking of corrective action for
16 all releases of hazardous waste from a solid waste management
17 unit at a treatment, storage or disposal facility, regardless
18 of the time at which waste was placed in the unit; and

19 (i) the taking of corrective action
20 beyond a facility's boundaries where necessary to protect
21 human health and the environment unless the owner or operator
22 of that facility demonstrates to the satisfaction of the
23 secretary that, despite the owner's or operator's best
24 efforts, the owner or operator was unable to obtain the
25 necessary permission to undertake such action. Rules adopted

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

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

22 (7) establishing procedures for the
23 issuance, suspension, revocation and modification of permits
24 issued under Paragraph (6) of this subsection, which rules
25 shall provide for public notice, public comment and an

1 opportunity for a hearing prior to the issuance, suspension,
2 revocation or major modification of any permit unless
3 otherwise provided in the Hazardous Waste Act;

4 (8) defining major and minor modifications;
5 and

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

14 B. The board shall adopt rules:

15 (1) concerning hazardous substance
16 incidents; and

17 (2) requiring notification to the department
18 of any hazardous substance incidents.

19 C. The board shall adopt rules concerning storage
20 tanks as may be necessary to protect public health and the
21 environment and that, in the case of underground storage
22 tanks, are equivalent to and at least as stringent as federal
23 regulations adopted by the federal environmental protection
24 agency pursuant to the federal Resource Conservation and
25 Recovery Act of 1976, as amended.

1 D. The board shall adopt rules concerning storage
2 tanks that implement the federal Energy Policy Act of 2005,
3 Pub. L. 109-58, as amended, and that are equivalent to and at
4 least as stringent as the Energy Policy Act and its grant
5 guidelines and regulations.

6 E. Rules adopted pursuant to this section shall
7 include:

8 (1) standards for the installation,
9 operation, maintenance, repair and replacement of storage
10 tanks;

11 (2) requirements for financial
12 responsibility;

13 (3) standards for inventory control;

14 (4) standards for the detection of leaks
15 from and the integrity-testing and monitoring of storage
16 tanks;

17 (5) standards for the closure and
18 dismantling of storage tanks;

19 (6) requirements for recordkeeping;

20 (7) requirements for the reporting,
21 containment and remediation of all leaks from any storage
22 tanks; and

23 (8) criteria and procedures for classifying
24 a storage tank facility as ineligible, and reclassifying a
25 storage tank facility as eligible, for the delivery, deposit,

1 acceptance or sale of petroleum products.

2 F. The criteria and procedures adopted by the
3 board pursuant to this section shall require the department
4 to classify a storage tank facility as ineligible for
5 delivery, deposit, acceptance or sale of petroleum products
6 if the storage tank facility has not installed required
7 equipment for spill prevention, overfill protection, leak
8 detection or corrosion protection, including required
9 corrosion protection equipment for a buried metal flexible
10 connector.

11 G. The criteria and procedures adopted by the
12 board pursuant to this section may allow the department to
13 classify a storage tank facility as ineligible for delivery,
14 deposit, acceptance or sale of petroleum products when the
15 owner or operator has failed to comply with a written warning
16 within a reasonable period of time and the warning concerns:

17 (1) improper operation or maintenance of
18 required equipment for spill prevention, overfill protection,
19 leak detection or corrosion protection;

20 (2) failure to maintain required financial
21 responsibility for corrective action; or

22 (3) operation of the storage tank facility
23 in a manner that creates an imminent threat to the public
24 health and the environment.

25 H. Rules adopted by the board pursuant to this

1 section shall defer classifying a storage tank facility as
2 ineligible for delivery, deposit, acceptance or sale of
3 petroleum products if the ineligible classification would
4 jeopardize the availability of, or access to, motor fuel in
5 any rural and remote areas.

6 I. Rules adopted by the board pursuant to this
7 section shall allow the department to authorize delivery or
8 deposit of petroleum products to:

9 (1) an emergency generator tank that is
10 otherwise ineligible for delivery or deposit if a commercial
11 power failure or other declared state of emergency exists and
12 the emergency generator tank provides power supply, stores
13 petroleum and is used solely in connection with an emergency
14 system, legally required standby system or optional standby
15 system; or

16 (2) a storage tank facility that is
17 otherwise ineligible for delivery or deposit if the delivery
18 or deposit is necessary to test or calibrate a tank.

19 J. The board shall adopt rules concerning the
20 management of used oil that are equivalent to and at least as
21 stringent as federal regulations adopted by the federal
22 environmental protection agency pursuant to the federal
23 Resource Conservation and Recovery Act of 1976, as amended.

24 K. In the event the board wishes to adopt rules
25 that are identical with regulations adopted by an agency of

1 the federal government, the board, after notice and hearing,
2 may adopt such rules by reference to the federal regulations
3 without setting forth the provisions of the federal
4 regulations.

5 L. Before the board adopts a rule for the
6 management of hazardous waste, concerning storage tanks or
7 concerning used oil, that is more stringent than the federal
8 regulations, the board shall make a determination, based on
9 substantial evidence and after notice and public hearing,
10 that the proposed rule will be more protective of public
11 health and the environment.

12 M. The board may adopt rules pertaining to aqueous
13 film-forming foam containing intentionally added per- or
14 polyfluoroalkyl substances pursuant to the Hazardous Waste
15 Act."

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