

AN ACT

RELATING TO THE ENVIRONMENT; PROVIDING THAT THE PROVISIONS OF THE HAZARDOUS WASTE ACT AND THE GROUND WATER PROTECTION ACT APPLY TO CERTAIN ABOVE GROUND STORAGE TANKS; CLARIFYING THE REGULATORY AUTHORITY OVER CERTAIN FLAMMABLE LIQUIDS.

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

Section 1. Section 59A-52-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 962) is amended to read:

"59A-52-16. FLAMMABLE LIQUIDS RULES--NATIONWIDE STANDARDS--SAVINGS CLAUSE--DEFINITION. --

A. The commission shall adopt rules for the safe vehicular transportation, storage, handling and use of flammable and combustible liquids; provided that the commission shall not adopt any rule conflicting with the jurisdiction of the department of environment over the regulation of storage tanks pursuant to the Hazardous Waste Act or the Ground Water Protection Act.

B. The rules shall be in keeping with the latest generally recognized safety standards for flammable and combustible liquids. Rules in substantial conformity with the published standards of the national fire protection association for vehicular transportation, storage, handling and use of flammable and combustible liquids shall be deemed to be in substantial conformity with the generally accepted and recognized standards of safety concerning the same

subject matter.

C. The rules shall include reasonable provisions under which facilities in service prior to the effective date of the rules and not in strict conformity therewith may be continued in service. Nonconforming facilities in service prior to the adoption of the rules that are found by the state fire marshal to constitute a distinct hazard to life or property may not be excepted from the rules or permitted to continue in service. For guidance in enforcement, the rules may delineate those types of nonconformities that should be considered distinctly hazardous and those nonconformities that should be evaluated in the light of local conditions. If the need for compliance with any rule is conditioned on local factors, the rules shall provide that reasonable notice be given to the proprietor of the facility affected of intention to evaluate the need for compliance and of the time and place at which he may appear and offer evidence thereon.

D. As used in Chapter 59A, Article 52 NMSA 1978, the term "flammable liquid" shall mean any liquid having a flash point below one hundred degrees Fahrenheit, and "combustible liquid" shall mean any liquid having a flash point at or above one hundred degrees Fahrenheit and below two hundred degrees Fahrenheit. "

Section 2. 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 or heating oil for noncommercial purposes;

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

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

(4) storm water or wastewater collection system;

(5) flow-through process tank;

(6) liquid trap, tank or associated

gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or the oil field service industry operations;

(7) tank associated with an emergency generator system;

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

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

B. "board" means the environmental improvement board;

C. "corrective action" means 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;

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

E. "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air

or discharged into any waters, including ground waters;

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

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

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

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

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

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

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

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. "Hazardous waste" does not include any of the following, until the board determines that they are subject to Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy; fly ash waste; bottom ash waste; slag waste; flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore; or cement kiln dust waste;

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

M "person" means any individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state,

municipality, commission, political subdivision of a state or any interstate body;

N. "regulated substance" means:

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

(2) 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;

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

amended (68 Stat. 923);

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

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

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

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

T. "treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous; and

U. "underground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is

ten percent or more beneath the surface of the ground.

"Underground storage tank" does not include any:

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

(2) septic tank;

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

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

(5) storm water or wastewater collection system;

(6) flow-through process tank;

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

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

(9) tank associated with an emergency

generator system;

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

(11) pipes connected to any tank that is described in Paragraphs (1) through (10) of this subsection. "

Section 3. Section 74-4-4 NMSA 1978 (being Laws 1977, Chapter 313, Section 4, as amended) is amended to read:

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

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

(1) for the identification and listing of hazardous wastes, taking into account toxicity, persistence and degradability, potential for accumulation in tissue and other related factors, including flammability, corrosiveness and other hazardous characteristics; provided that, except as authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board shall not identify or list any solid waste or combination of solid wastes as a hazardous waste that has not been listed and designated as a hazardous waste by the

federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

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

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

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

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

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

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

(f) implementation of programs to reduce the volume or quantity and toxicity of the hazardous

waste generated;

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

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

(3) establishing standards applicable to transporters of hazardous waste identified or listed under this subsection or of fuel produced from any such hazardous waste or of fuel from such waste and any other material, as may be necessary to protect human health and the environment, including but not limited to requirements for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the taking of corrective action beyond a facility's boundaries where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to

obtain the necessary permission to undertake such action. Rules adopted and promulgated under this subparagraph shall take effect immediately and shall apply to all facilities operating under permits issued under Paragraph (6) of this subsection and to all landfills, surface impoundments and waste pile units, including any new units, replacements of existing units or lateral expansions of existing units, that receive hazardous waste after July 26, 1982. No private entity shall be precluded by reason of criteria established under Subparagraph (f) of this paragraph from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where the entity can provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste;

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

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

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

(8) defining major and minor modifications;
and

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

B. The board shall adopt rules:

(1) concerning hazardous substance incidents; and

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

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

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

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

than composting.

E. In the event the board wishes to adopt rules that are identical with regulations adopted by an agency of the federal government, the board, after notice and hearing, may adopt such rules by reference to the federal regulations without setting forth the provisions of the federal regulations. "

Section 4. Section 74-4-4.3 NMSA 1978 (being Laws 1981 (S.S.), Chapter 8, Section 7, as amended) is amended to read:

"74-4-4.3. ENTRY--AVAILABILITY OF RECORDS.--

A. For purposes of developing or assisting in the development of any rules, conducting any study, taking any corrective action or enforcing the provisions of the Hazardous Waste Act, upon request of the secretary or his authorized representative:

(1) any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall furnish information relating to such hazardous wastes and permit the secretary or his authorized representatives:

(a) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are or have been generated, stored, treated, disposed of or transported from or where a storage tank is located; and

(b) to inspect and obtain samples from any person of any hazardous wastes and samples of any containers or labeling for the wastes; and

(2) any person who owns or operates a storage tank, or any tank subject to study under Section 9009 of the Resource Conservation and Recovery Act of 1976 that is used for storing regulated substances, shall furnish information relating to such tanks, including their associated equipment and their contents, conduct monitoring or testing, permit the secretary or his authorized representative at all reasonable times to have access to and to copy all records relating to such tanks and permit the secretary or his authorized representative to have access for corrective action. For the purposes of developing or assisting in the development of any rule, conducting any study, taking corrective action or enforcing the provisions of the Hazardous Waste Act, the secretary or his authorized representative is authorized to:

(a) enter at reasonable times any establishment or other place where a storage tank is located;

(b) inspect or obtain samples from any person of any regulated substance in such tank;

(c) conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water or ground water; and

(d) take corrective action.

B. Any person owning property to which access is necessary in order to investigate or clean up a facility where hazardous waste is generated, stored, treated or disposed of, or where storage tanks are located, shall:

(1) permit the secretary or his authorized representative to obtain samples of soil or ground water, or both, at reasonable times; and

(2) provide access to such property for structures or equipment necessary to monitoring or cleanup of hazardous wastes or leaking from storage tanks; provided that:

(a) such structures or equipment do not unreasonably interfere with the owner's use of the property; or

(b) the owner is adequately compensated for activities that unreasonably interfere with his use or enjoyment of such property.

C. Each inspection shall be commenced and completed with reasonable promptness. If the secretary or his representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be

furnished promptly to the owner, operator or agent in charge.

D. Any records, reports or information obtained by the department under this section shall be available to the public, except that upon a showing satisfactory to the department that records, reports or information, or a particular part thereof, to which the secretary or his authorized representatives have access under this section, if made public, would divulge information entitled to protection under Section 1905 of Title 18 of the United States Code, such information or particular portion thereof shall be considered confidential, except that such record, report, document or information may be disclosed to officers, employees or authorized representatives of the United States concerned with carrying out the Resource Conservation and Recovery Act of 1976, or when relevant in any proceedings under the Hazardous Waste Act.

E. Any person not subject to the provisions of Section 1905 of Title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than five thousand dollars (\$5,000) or to imprisonment not to exceed one year or both.

F. In submitting data under the Hazardous Waste Act, a person required to provide such data may:

(1) designate the data the person believes is entitled to protection under this subsection; and

(2) submit such designated data separately from other data submitted under the Hazardous Waste Act. A designation under this paragraph shall be made in writing and in such manner as the secretary may prescribe."

Section 5. Section 74-4-4.4 NMSA 1978 (being Laws 1987, Chapter 179, Section 6, as amended) is amended to read:

"74-4-4.4. STORAGE TANKS--REGISTRATION--INSTALLER CERTIFICATION--FEES.--

A. By rule, the board shall require an owner of a storage tank to register the tank with the department and impose reasonable conditions for registration, including the submission of plans, specifications and other relevant information relating to the tank. For purposes of this subsection only, the term "owner" means: in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns the storage tank; and in the case of a storage tank in use before November 8, 1984 but no longer in use on that date, any person who owned the tank immediately before the discontinuation of its use. The owner of a tank taken out of operation on or before January 1, 1974 shall not be required to notify under this subsection. The owner of a tank taken out of operation after January 1, 1974 and removed from the ground prior to

November 8, 1984 shall not be required to notify under this subsection. Evidence of current registration pursuant to this subsection shall be available for inspection at the site of the storage tank.

B. By rule, the board shall require any person who, beginning thirty days after the United States environmental protection agency administrator prescribes the form of notice pursuant to Section 9002(a)(5) of the Resource Conservation and Recovery Act of 1976 and for eighteen months thereafter, deposits a regulated substance into a storage tank to give notice of the registration requirements of Subsection A of this section to the owner and operator of the tank.

C. By rule, the board may require tank installers to obtain certification from the department and develop procedures for certification that will ensure that storage tanks are installed and repaired in a manner that will not encourage or facilitate leaking. If the board requires certification, it is unlawful for a person to install or repair a storage tank unless he is a certified tank installer. In accordance with the Uniform Licensing Act, the department may suspend or revoke the certification for a tank installer upon grounds that he:

(1) exercised fraud, misrepresentation or deception in obtaining his certification;

(2) exhibited gross incompetence in the

installation or repair of a storage tank; or

(3) was derelict in the performance of a duty as a certified tank installer.

D. By rule, the board shall provide a schedule of fees sufficient to defray the reasonable and necessary costs of:

(1) reviewing and acting upon applications for the registration of storage tanks;

(2) reviewing and acting upon applications for the certification of tank installers; and

(3) implementing and enforcing any provision of the Hazardous Waste Act applicable to storage tanks and tank installers, including standards for the installation, operation and maintenance of storage tanks and for the certification of tank installers."

Section 6. Section 74-4-4.8 NMSA 1978 (being Laws 1993, Chapter 298, Section 2) is amended to read:

"74-4-4.8. STORAGE TANK FUND CREATED-- APPROPRIATION. --

A. There is created in the state treasury the "storage tank fund", which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the storage tank program

B. All fees collected pursuant to Subsection D of Section 74-4-4.4 NMSA 1978 shall be transmitted to the state

treasurer for credit to the storage tank fund.

C. Balances remaining in the storage tank fund at the end of a fiscal year shall not revert to the general fund. "

Section 7. 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 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) 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) 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 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 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) 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 recommendation based on the
record to the secretary, who shall make the final decision.

I. In connection with any proceeding under this
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. "

Chapter 313, Section 11, as amended) is amended to read:

"74-4-11. PENALTY-- CRIMINAL. --

A. No person:

(1) shall knowingly transport or cause to be transported any hazardous waste identified or listed pursuant to the Hazardous Waste Act to a facility that does not have a permit under that act or the federal Resource Conservation and Recovery Act;

(2) shall knowingly treat, store or dispose of any hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without having obtained a hazardous waste permit pursuant to that act or the federal Resource Conservation and Recovery Act;

(b) in knowing violation of any material condition or requirement of a hazardous waste permit; or

(c) in knowing violation of any material condition or requirement of any applicable interim status rules or standards;

(3) shall knowingly omit material information or make any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the Hazardous Waste Act;

(4) who knowingly generates, stores,

treats, transports, disposes of, exports or otherwise handles any hazardous waste shall knowingly destroy, alter, conceal or fail to file any record, application, manifest, report or other document required to be maintained or filed for purposes of compliance with rules adopted and promulgated pursuant to the Hazardous Waste Act;

(5) shall knowingly transport without a manifest or cause to be transported without a manifest any hazardous waste required by rules adopted and promulgated pursuant to the Hazardous Waste Act to be accompanied by a manifest; or

(6) shall knowingly export hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without the consent of the receiving country; or

(b) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export and enforcement procedures for the transportation, treatment, storage and disposal of hazardous wastes, in a manner that is not in conformance with such agreement.

B. Any person who violates any of the provisions of Paragraphs (1) through (6) of Subsection A of this section is guilty of a fourth degree felony and upon conviction shall be punished by a fine of not more than ten thousand dollars (\$10,000) per violation per day or by

imprisonment for a definite term of not more than eighteen months or both. For a second or subsequent violation of the provisions of Paragraphs (1) through (6) of Subsection A of this section, the person is guilty of a third degree felony and shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) per violation per day or by imprisonment for not more than three years or both.

C. Any person who knowingly violates any rule adopted and promulgated pursuant to Subsection C of Section 74-4-4 or 74-4-4.4 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000) per violation per day or by imprisonment for a definite term of one year or both. For violations related to storage tanks, "per violation" means per tank.

D. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste in violation of Subsection A of this section and who knows at the time of the violation that he creates a substantial danger of a substantial adverse environmental impact is guilty of a third degree felony if the violation causes a substantial adverse environmental impact.

E. As used in this section, a "substantial adverse environmental impact" exists when an act or omission of a person causes harm or damage:

(1) to human beings; or

(2) to flora, wildlife, fish or other aquatic life or water fowl; to the habitats of wildlife, fish, other aquatic life, water fowl or livestock; to agricultural crops; to any ground water or surface water; or to the lands or waters of this state where such harm or damage amounts to more than ten thousand dollars (\$10,000).

F. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste in violation of Subsection A of this section and who knows at the time of the violation that he creates a substantial danger of death or serious bodily injury to another person is guilty of a second degree felony and shall be sentenced to a term of imprisonment not to exceed nine years or a fine not to exceed one hundred thousand dollars (\$100,000), or both. Any person, other than an individual, that knowingly transports, treats, stores, disposes of or exports any hazardous waste in violation of Subsection A of this section and knows at that time that it places an individual in imminent danger of death or serious bodily injury is guilty of a second degree felony and shall be fined in an amount not to exceed two hundred fifty thousand dollars (\$250,000). "

Section 9. 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 pursuant to Section 74-4-10 NMSA 1978 may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs. For violations related to storage tanks, "per violation" means per tank. "

Section 10. 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--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 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 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) 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 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 shall require notice of such endangerment to be promptly posted at the site where the waste is located. "

Section 11. Section 74-4A-11 NMSA 1978 (being Laws 1979, Chapter 380, Section 10, as amended) is amended to

read:

"74-4A-11. COMMITTEE DUTIES.--At the beginning of each interim, the committee shall hold one organizational meeting to develop a work plan and budget for the period prior to January 1 preceding the next regular session of the legislature. The work plan and budget shall be submitted to the New Mexico legislative council for approval. Upon approval of the work plan and budget by the legislative council, the committee shall examine all matters relevant to the purposes of the Radioactive and Hazardous Materials Act and shall submit recommended legislation, together with a report on the activities and expenditures of the committee, to the legislature. In making recommendations, the committee shall review and monitor the following areas:

A. the generation, treatment, storage, transportation or disposal of radioactive or hazardous materials and wastes;

B. the control and handling of mixed waste transported to the waste isolation pilot plant site for disposal;

C. the progress and effectiveness of remediation actions at sites contaminated by radioactive or hazardous materials;

D. the compliance with the environmental protection agency, the council on environmental quality and the office of surface mining regulations and standards

pursuant to federal environmental statutes;

E. the provision of activities and investigations and the dissemination of information by the environmental evaluation group; however, nothing in the Radioactive and Hazardous Materials Act shall be construed to limit the independent technical review and evaluation by that group of the impact on health and safety of the waste isolation pilot plant;

F. the disposition of uranium mine and mill tailings;

G. the means through which disposition of low-level wastes may be accomplished, such as participation in a regional compact with other states;

H. the state emergency response capability;

I. the Ground Water Protection Act, in cooperation with other legislative committees, regarding the use or management of storage tanks and releases;

J. the Hazardous Chemicals Information Act, in cooperation with other legislative committees; and

K. such matters assigned by the legislature and consultations and negotiations with the federal government and other state governments or their representatives and agreements and revisions thereto."

Section 12. Section 74-6B-2 NMSA 1978 (being Laws 1990, Chapter 124, Section 2, as amended) is amended to read:

"74-6B-2. FINDINGS--PURPOSE OF ACT.--

A. The legislature recognizes the threat to the public health and safety and the environment resulting from pollution of ground water resources as a result of leaking storage tanks. The legislature also recognizes that some owners and operators of facilities containing storage tanks cannot take corrective action without placing their businesses in serious financial jeopardy.

B. The legislature finds that, because New Mexico is large in area and sparsely populated in some regions, it is in the public interest to take corrective action at contaminated sites so that fuel will continue to be readily available.

C. The purpose of the Ground Water Protection Act is to provide substantive provisions and funding mechanisms to the extent that funds are available to enable the state to take corrective action at sites contaminated by leakage from storage tanks."

Section 13. Section 74-6B-3 NMSA 1978 (being Laws 1990, Chapter 124, Section 3, as amended) is amended to read:

"74-6B-3. DEFINITIONS.--As used in the Ground Water Protection 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. The term does not include any:

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

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

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

(4) storm water or wastewater collection system;

(5) flow-through process tank;

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

(7) tank associated with an emergency

generator system;

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

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

B. "board" means the environmental improvement board;

C. "corrective action" means 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;

D. "department" means the department of environment;

E. "operator" means any person in control of or having responsibility for the daily operation of a storage tank;

F. "owner" means:

(1) in the case of a storage tank in use or brought into use on or after November 8, 1984, a person who owns the storage tank; and

(2) in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, a person who owned the tank immediately before the

discontinuation of its use;

G. "person" means an individual or any legal entity, including all governmental entities;

H. "regulated substance" means:

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

(2) petroleum, including crude oil or a 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;

I. "release" means a spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into ground water, surface water or subsurface soils in amounts exceeding twenty-five gallons;

J. "secretary" means the secretary of environment;

K. "site" means a place where there is or was at a previous time one or more storage tanks and may include areas contiguous to the actual location or previous location of the tanks;

L. "storage tank" means an above ground storage tank or an underground storage tank; and

M. "underground storage tank" means a single tank

or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The term does not include any:

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

(2) septic tank;

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

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

(5) storm water or wastewater collection system;

(6) flow-through process tank;

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

(8) storage tank situated in an underground

area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(9) tank associated with an emergency generator system;

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

(11) pipes connected to any tank that is described in Paragraphs (1) through (10) of this subsection. "

Section 14. Section 74-6B-4 NMSA 1978 (being Laws 1990, Chapter 124, Section 4, as amended) is amended to read:

"74-6B-4. STORAGE TANK COMMITTEE--CREATION--TERMS--POWERS AND DUTIES.--

A. An advisory committee to be known as the "storage tank committee" is created. It shall consist of seven members:

(1) the secretary or his designee; and

(2) six members to be appointed by and to serve at the pleasure of the governor and to be chosen from the following groups, with no more than one member from each group:

(a) fire protection districts;

(b) elected local government

officials;

(c) wholesalers of motor fuels;

(d) independent retailers of motor fuels;

(e) individuals knowledgeable about corrective actions in connection with leaking storage tanks; and

(f) private citizens or interest groups.

B. Except for the initial terms of the members, the term of the appointed members shall be three years. For the purpose of staggering subsequent appointments, the initial terms of the six appointed members shall be: two for one year; two for two years; and two for three years. Members shall serve until their successors are appointed. Vacancies occurring in the membership of an appointed member shall be filled by the governor for the remainder of the unexpired term.

C. The committee may:

(1) recommend proposed rules to the board or the secretary;

(2) establish procedures, practices and policies governing the committee's activities;

(3) review corrective actions of the department and submit comments to the secretary; and

(4) review payments from the corrective

action fund and submit its comments on the payments to the secretary, except payments made pursuant to Section 74-6B-13 NMSA 1978.

D. Members of the committee shall receive reimbursement for expenses incurred in the performance of their duties pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. Expenditures for this purpose shall be made from the storage tank fund. "

Section 15. Section 74-6B-6 NMSA 1978 (being Laws 1990, Chapter 124, Section 6) is amended to read:

"74-6B-6. CIVIL LIABILITY FOR DAMAGE TO PROPERTY FROM LEAKING STORAGE TANK. --Nothing in the Ground Water Protection Act prohibits any existing or future claim for relief a person may have as a result of damages sustained because of a release from a storage tank. "

Section 16. Section 74-6B-7 NMSA 1978 (being Laws 1990, Chapter 124, Section 7, as amended) is amended to read:

"74-6B-7. CORRECTIVE ACTION FUND
CREATED-- AUTHORIZATION
FOR EXPENDITURES. --

A. There is created the "corrective action fund". The fund is intended to provide for financial assurance coverage and shall be used by the department to the extent that revenues are available to take corrective

action in response to a release, to pay for the costs of a minimum site assessment in excess of ten thousand dollars (\$10,000), to pay the state's share of federal leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act and to make payments to or on behalf of owners and operators for corrective action taken in accordance with Section 74-6B-13 NMSA 1978. The owner or operator of a site shall not use the corrective action fund as evidence of financial assurance to satisfy claims of third parties.

B. The board, after recommendations from the storage tank committee, shall adopt rules for establishing priorities for corrective action at sites contaminated by storage tanks. The priorities for corrective action shall be based on public health, safety and welfare and environmental concerns. In adopting rules pursuant to this subsection, the board shall follow the procedures of Section 74-4-5 NMSA 1978. The provisions of that section relating to all other matters in connection with the adoption of rules shall apply. The department shall establish priority lists of sites in accordance with the rules adopted by the board.

C. The department shall make expenditures from the corrective action fund in accordance with rules adopted by the board or the secretary for corrective action taken by the state, owners or operators at sites contaminated by

storage tanks; provided that:

(1) payments may be made only for corrective action taken by persons qualified by the department to perform the work pursuant to rules adopted by the board;

(2) no expenditures from the fund shall be paid to or on behalf of an owner or operator for corrective action, other than a minimum site assessment or sampling, if the corrective action is conducted by a person that is a subsidiary, parent or otherwise affiliated with the owner or operator;

(3) expenditures shall be made by the department to perform corrective action, to pay for the costs of minimum site assessment in excess of ten thousand dollars (\$10,000) or to make payments to or on behalf of an owner or operator in accordance with Section 74-6B-13 NMSA 1978;

(4) any corrective action taken shall be taken at sites in the order of priority appearing on the priority lists, unless an emergency threat to public health, safety and welfare or to the environment exists;

(5) when available revenues are limited and the fund can no longer be approved as a financial responsibility mechanism, priorities for expenditures from the fund shall also be based on financial need as determined by rules adopted by the board; and

(6) corrective action involving remediation shall follow a competitive bidding procedure based on technical merit and cost effectiveness.

D. No expenditure from the corrective action fund shall be authorized for corrective action at sites owned or operated by the United States or any agency or instrumentality thereof.

E. Nothing in this section authorizes payments for the repair or replacement of a storage tank or equipment.

F. Nothing in this section authorizes payments or commitments for payments in excess of the funds available.

G. The board, by rule, may provide for a specific amount to be reserved in the fund for emergencies. The amount reserved may be expended by the department only for corrective action necessary when an emergency threat to public health, safety and welfare or to the environment exists.

H. Within sixty days after receipt of notification that the corrective action fund has become incapable of paying for assured corrective actions, the owner or operator shall obtain alternative financial assurance acceptable to the department. "

Section 17. Section 74-6B-8 NMSA 1978 (being Laws 1990, Chapter 124, Section 8, as amended) is amended to

read:

"74- 6B- 8. LIABILITY-- COST RECOVERY. --

A. An owner or operator of a storage tank from which a release has occurred shall be strictly liable for the owner's, operator's and department's cost of taking corrective action at the site.

B. An owner or operator otherwise liable under Subsection A of this section shall not be liable for expenditures from the state corrective action fund associated with corrective action at the site if he has proved to the department that he has complied with the following:

(1) the owner or operator:

(a) is in substantial compliance with all of the requirements and provisions of rules adopted by the board to fulfill the requirements of Paragraphs (1) through (7) of Subsection C of Section 74-4-4 NMSA 1978;

(b) has paid all storage tank fees required by Sections 74-4-4.4 and 74-6B-9 NMSA 1978;

(c) has conducted a minimum site assessment in accordance with rules of the board and, if contamination is found, has taken action to prevent continuing contamination; and

(d) has cooperated in good faith with the department and has granted access to the department for investigation, cleanup and monitoring; and

(2) for sites where storage tanks were removed or properly abandoned prior to March 7, 1990, the owner or the operator:

(a) has paid all storage tank fees required by Section 74-4-4.4 NMSA 1978 and a two hundred dollar (\$200) fee per site;

(b) has conducted a minimum site assessment in accordance with rules of the board; and

(c) has cooperated in good faith with the department and has granted access to the department for investigation, cleanup and monitoring.

C. In the event that the department determines that an owner or operator has not complied with the requirements of Subsection B of this section, the department may bring an action in district court against the owner or operator to recover expenditures from the corrective action fund incurred by the department in taking corrective action at the site. In addition, the department may bring an action in district court to recover any expenditures made of federal funds from the leaking underground storage tank trust fund in taking corrective action. These expenditures made from the corrective action fund and from federal funds include but are not limited to costs of investigating a release and undertaking corrective action, administrative costs and reasonable attorney fees. Expenditures recovered under this section, except for any recovered federal funds,

shall be deposited into the corrective action fund.

D. The department has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner or operator of a site may have had under that policy and has a right of subrogation against any third party who caused or contributed to the release. The right of subrogation shall apply regardless of any defenses available to the owner or operator under Subsection B of this section. The right of subrogation shall apply to sites where corrective action is taken by owners or operators under Section 74-6B-13 NMSA 1978 as well as to sites where corrective action is taken by the state."

Section 18. Section 74-6B-9 NMSA 1978 (being Laws 1990, Chapter 124, Section 9, as amended) is amended to read:

"74-6B-9. STORAGE TANK FEE--DEPOSIT IN STORAGE TANK FUND.--On July 1 of each year, there is due from and shall be paid by either the owner or the operator a fee of one hundred dollars (\$100) for each storage tank owned or operated. The fees shall be paid to the department and deposited in the storage tank fund created in Section 74-4-4.8 NMSA 1978."

Section 19. Section 74-6B-13 NMSA 1978 (being Laws 1992, Chapter 64, Section 10, as amended by Laws 1997, Chapter 104, Section 3 and also by Laws 1997, Chapter 222,

Section 3) is amended to read:

"74-6B-13. PAYMENT PROGRAM --

A. Unless provided otherwise in this section, all costs in excess of ten thousand dollars (\$10,000) that are necessary to perform a minimum site assessment in accordance with the rules of the board shall be paid from the corrective action fund.

B. Payment of the cost of corrective action, including the cost of a minimum site assessment, shall be made by the department following application and proper documentation of the costs and in accordance with rules adopted by the secretary establishing eligible and ineligible costs. Ineligible costs include attorney fees, repair or upgrade of tanks, loss of revenue and costs of monitoring a contractor.

C. The department shall adopt rules to provide for payments from the corrective action fund, to the extent that money is available in the fund, to persons who cannot afford to pay all or a portion of the initial ten thousand dollar (\$10,000) cost of a minimum site assessment otherwise required in this section. The department shall develop a financial assistance means test, including a sliding scale of financial relief as the department deems appropriate, that allows some or all of the minimum site assessment costs to be paid from the corrective action fund.

D. All department determinations concerning the

manner of payment, compliance and cost eligibility shall be made in accordance with department rules.

E. If the owner or operator is in compliance with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, payment of costs from the corrective action fund shall occur not later than sixty days after the submission of the application and proper documentation of costs by the owner or operator, except as provided in Section 74-6B-14 NMSA 1978.

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F. Before any payment is made for a corrective action pursuant to this section to or on behalf of an owner or operator, payment shall first be made to reimburse the federal leaking underground storage tank trust fund for any costs incurred for that corrective action.

G. Counties and municipalities are exempt from the requirements to pay any portion of the initial ten thousand dollars (\$10,000) of a minimum site assessment."

Section 20. REPEAL. -- Sections 74-6B-12 and 74-6B-13.1 NMSA 1978 (being Laws 1991, Chapter 260, Section 1 and Laws 1995, Chapter 6, Section 19, as amended) are repealed.

Section 21. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 2001. _____