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**HOUSE BILL 305**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**John A. Heaton**

**AN ACT**

**RELATING TO THE ENVIRONMENT; PROVIDING FOR A WASTE ISOLATION  
PILOT PLANT SECTION IN THE DEPARTMENT OF ENVIRONMENT; CREATING  
A FUND; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;  
MAKING AN APPROPRIATION.**

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

**Section 1. Section 9-7A-9 NMSA 1978 (being Laws 1991,  
Chapter 25, Section 9) is amended to read:**

**"9-7A-9. BUREAUS--CHIEFS.--The secretary shall establish  
within each division such "bureaus" as he deems necessary, and  
establish a waste isolation pilot plant section within a  
hazardous and radioactive bureau, to carry out the provisions  
of the Department of Environment Act. He shall employ a  
"chief" to be the administrative head of each bureau. The  
chief and all subsidiary employees of the department shall be**

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1 covered by the Personnel Act unless otherwise provided by  
2 law. "

3 Section 2. Section 74-4-4.2 NMSA 1978 (being Laws 1981  
4 (1st S.S.), Chapter 8, Section 6, as amended) is amended to  
5 read:

6 "74-4-4.2. PERMITS--ISSUANCE--DENIAL--MODIFICATION--  
7 SUSPENSION--REVOCATION.--

8 A. Each application for a permit pursuant to the  
9 Hazardous Waste Act shall contain information as may be  
10 required pursuant to Section 74-4-4.7 NMSA 1978 or pursuant to  
11 regulations promulgated by the board, including information  
12 with respect to:

13 (1) estimates with respect to the  
14 composition, quantity and concentration of any hazardous waste  
15 identified or listed under Subsection A of Section 74-4-4 NMSA  
16 1978 or combinations of any hazardous waste and other solid  
17 waste proposed to be disposed of, treated, transported or  
18 stored and the time, frequency or rate at which the waste is  
19 proposed to be disposed of, treated, transported or stored;  
20 and

21 (2) the site where hazardous waste or the  
22 products of treatment of hazardous waste will be disposed of,  
23 treated, transported to or stored.

24 B. Hazardous waste permits issued after April 8,  
25 1987 shall require corrective action for all releases of

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1 hazardous waste or constituents from any solid waste  
2 management unit at a treatment, storage or disposal facility  
3 seeking a permit under this section.

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) implementation by the applicant or  
24 permittee of formal policies;

25 (2) training programs and management control

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1 to minimize and prevent the occurrence of future violations;

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

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

8 (5) any other factors the secretary deems  
9 relevant.

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

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

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

19 H. No ruling shall be made on permit issuance,  
20 major modification, suspension or revocation without an  
21 opportunity for a public hearing at which all interested  
22 persons shall be given a reasonable chance to submit data,  
23 views or arguments orally or in writing and to examine  
24 witnesses testifying at the hearing; provided, however, that  
25 the secretary may, pursuant to Section 74-4-10 NMSA 1978,

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1 order the immediate termination of a research development and  
2 demonstration permit whenever the secretary determines that  
3 termination is necessary to protect human health or the  
4 environment and may order the immediate suspension or  
5 revocation of a permit for a facility that has been ordered to  
6 take corrective action or other response measures for releases  
7 of hazardous waste into the environment.

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

12 J. The board shall provide a schedule of fees for  
13 businesses generating hazardous waste or seeking a permit for  
14 the management of hazardous waste, to be deposited to the  
15 credit of the hazardous waste fund, except those fees  
16 collected pursuant to Subsection K of this section, including  
17 but not limited to:

18 (1) a hazardous waste business fee applicable  
19 to any business engaged in a regulated hazardous waste  
20 activity, which shall be an annual flat fee based on the type  
21 of activity;

22 (2) a hazardous waste generation fee  
23 applicable to any business generating hazardous waste, which  
24 shall be based on the quantity of hazardous waste generated  
25 annually; however, when any material listed in Paragraph (2)

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1 of Subsection I of Section 74-4-3 NMSA 1978 is determined by  
2 the board to be subject to regulation under Subtitle C of the  
3 federal Resource Conservation and Recovery Act of 1976, the  
4 board may set a generation fee under this paragraph for that  
5 waste based on its volume, toxicity, mobility and economic  
6 impact on the regulated entity; and

7 (3) a hazardous waste permit application fee,  
8 not exceeding the estimated cost of investigating the  
9 application and issuing the permit, to be paid at the time the  
10 secretary notifies the applicant by certified mail that the  
11 application has been deemed administratively complete and a  
12 technical review is scheduled.

13 K. The waste isolation pilot plant section shall  
14 process and administer all hazardous waste permits pertaining  
15 to the waste isolation pilot plant, including:

16 (1) reviewing and processing permit  
17 applications or modifications;

18 (2) analyzing volatile organic compound  
19 emissions and ground water data and mine ventilation rate  
20 monitoring data;

21 (3) reviewing and issuing reports on  
22 generator site audits;

23 (4) preparing reports, records and responses  
24 to legislative inquiries; and

25 (5) receiving all fees from the waste

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1 isolation pilot plant pursuant to this section to be credited  
2 to the waste isolation pilot plant fund, which fees shall be  
3 limited to costs of processing and administering conditions of  
4 hazardous waste permits of the waste isolation pilot plant. "

5 Section 3. A new section of the Hazardous Waste Act is  
6 enacted to read:

7 "[NEW MATERIAL] WASTE ISOLATION PILOT PLANT FUND. -- The  
8 "waste isolation pilot plant fund" is created in the state  
9 treasury. The fund shall consist of money derived from fees  
10 collected from the waste isolation pilot plant and money  
11 appropriated to the fund. Balances in the fund at the end of  
12 any fiscal year shall not revert to the general fund. Money  
13 in the fund shall be appropriated to the waste isolation pilot  
14 plant section in the hazardous and radioactive bureau of the  
15 department of environment to administer the waste isolation  
16 plant hazardous waste permitting program, including:

17 A. reviewing and processing permit applications or  
18 modifications;

19 B. analyzing volatile organic compound emissions  
20 and ground water data and mine ventilation rate monitoring  
21 data;

22 C. reviewing and issuing reports on waste  
23 isolation pilot plant-related generator site audits; and

24 D. preparing reports, records and responses to  
25 legislative inquiries.

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E. The manager of the waste isolation pilot plant section shall provide an annual accounting of money in the fund and quarterly reports, including performance measures pursuant to the Accountability in Government Act. "