

CHAPTER 47

CHAPTER 47, LAWS 2002

AN ACT

RELATING TO HAZARDOUS MATERIALS; AMENDING THE HAZARDOUS WASTE ACT TO PROVIDE FOR REGULATION OF THE MANAGEMENT OF USED OIL.

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 by Laws 2001, Chapter 323, Section 1 and by Laws 2001, Chapter 325, Section 2) 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 to 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 (7) 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; and

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

Section 2. Section 74-4-4 NMSA 1978 (being Laws 1977, Chapter 313, Section 4, as amended by Laws 2001, Chapter 323, Section 2 and by Laws 2001, Chapter 325, Section 3) 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 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 that facility 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 incineration, pyrolysis, distillation, gasification or biological conversion other than composting.

E. The board shall adopt rules concerning the management of used oil 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.

F. 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 3. REPEAL.--Laws 2001, chapter 323, Sections 1 and 2 are repealed.

HOUSE BILL 341