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AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL ACT AND THE HAZARDOUS WASTE ACT TO ALLOW FOR THE PROMULGATION OF RULES MORE STRINGENT THAN FEDERAL LAW; REQUIRING A DETERMINATION, AFTER NOTICE AND A HEARING, THAT A MORE STRINGENT RULE WILL BE MORE PROTECTIVE OF THE PUBLIC HEALTH AND ENVIRONMENT; REORGANIZING A RULEMAKING PROVISION RELATED TO OZONE INTO THE POWERS AND DUTIES SECTION OF THE AIR QUALITY CONTROL ACT; REPEALING SECTION 74-2-5.3 NMSA 1978 (BEING LAWS 2009, CHAPTER 98, SECTION 1).

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

SECTION 1. Section 74-2-4 NMSA 1978 (being Laws 1967, Chapter 277, Section 4, as amended) is amended to read:

"74-2-4. LOCAL AUTHORITY.--

A. A county or municipality meeting the qualifications set forth in Paragraph (1) or (2) of Subsection J of Section 74-2-2 NMSA 1978 may assume jurisdiction as a local authority by adopting an ordinance providing for the local administration and enforcement of the Air Quality Control Act. The ordinance shall:

(1) create a local board to perform, within the boundaries of the local authority, those functions delegated to the environmental improvement board under the Air Quality Control Act, except any functions reserved

1 exclusively for the environmental improvement board;

2 (2) create a local agency to administer and
3 enforce the provisions of the Air Quality Control Act within
4 the boundaries of the local authority that shall, within the
5 boundaries of the local authority, perform all of the duties
6 required of the department and exert all of the powers
7 granted to the department, except for those duties and powers
8 reserved exclusively for the department; and

9 (3) provide for the appointment of a
10 director who shall perform for the local authority the same
11 duties as required of the secretary under the Air Quality
12 Control Act, except the duties and powers reserved
13 exclusively for the secretary.

14 B. At least a majority of the members of a local
15 board shall be individuals who represent the public interest
16 and do not derive any significant portion of their income
17 from persons subject to or who appear before the local board
18 on issues related to the federal act or the Air Quality
19 Control Act.

20 C. Prior to adopting any ordinance regulating air
21 pollution, public hearings and consultations shall be held as
22 directed by the local authority adopting the ordinance. The
23 provisions of any ordinance shall be consistent with the
24 substantive provisions of the Air Quality Control Act and
25 shall provide for standards and regulations not lower than

1 those required by regulations adopted by the environmental
2 improvement board.

3 D. Notwithstanding the provisions of Subsection A
4 of this section, the environmental improvement board and the
5 secretary shall retain jurisdiction and control for the
6 administration and enforcement of the Air Quality Control Act
7 as determined in that act with respect to any act or failure
8 to act, governmental or proprietary, of any local authority
9 that causes or contributes to air pollution, including
10 proceeding against a local authority as provided in Section
11 74-2-12 NMSA 1978. "Failure to act", as used in this
12 section, includes failure to act against any person violating
13 the applicable ordinance or regulation adopted pursuant
14 thereto.

15 E. Any local authority that is located within a
16 transportation-related pollutant nonattainment area or
17 maintenance area may provide for a vehicle emission
18 inspection and maintenance program for vehicles registered at
19 an address within the jurisdiction of the local authority and
20 under twenty-six thousand pounds gross vehicle weight rating
21 powered by an internal combustion engine, which program shall
22 be at least as stringent as that required under the federal
23 act or under federal air quality standards. Any two or more
24 local authorities may adopt identical rules and regulations
25 necessary to implement the vehicle emission inspection and

1 maintenance program, including examining the alternatives of
2 public or private operation of the program.

3 F. Any local authority that has implemented a
4 vehicle emission inspection and maintenance program may
5 extend the enforcement of that program by entering into joint
6 powers agreements with any municipality or county within the
7 designated airshed or with the department.

8 G. No tax shall be imposed to fund any vehicle
9 emission inspection and maintenance program until the local
10 authority has submitted the question of imposition of a tax
11 to the registered voters of the local authority and those
12 registered voters have approved the imposition of the tax.

13 H. A local authority having a vehicle emission
14 inspection and maintenance program shall conduct the vehicle
15 emission inspection and maintenance program through a
16 decentralized privately owned and operated system unless air
17 quality emissions result in automatic implementation of
18 another type of program under the terms of a contingency plan
19 required and approved by the United States environmental
20 protection agency. The local authority shall set the
21 emission inspection fee by ordinance.

22 I. A local authority having a vehicle emission
23 inspection and maintenance program is authorized to adopt
24 rules, regulations and guidelines governing the establishment
25 of private vehicle emission inspection and maintenance

1 stations. No private vehicle emission inspection and
2 maintenance station shall test vehicles unless the station
3 possesses a valid permit issued by the local agency. Permit
4 fees shall be determined by ordinance of the local authority
5 and shall not exceed two hundred dollars (\$200) per year per
6 station. Additionally, a local authority may charge a permit
7 fee of up to thirty-five dollars (\$35.00) per year for each
8 vehicle emissions mechanic and for each vehicle emissions
9 inspector. The imposition of permit fees does not require a
10 vote of the registered voters of the local authority.

11 J. Before a local authority adopts an ordinance
12 that is more stringent than the federal act or applicable
13 federal regulations, or that applies to sources not subject
14 to regulation pursuant to the federal act or regulations, the
15 local authority shall make a determination, based on
16 substantial evidence and after notice and public hearing,
17 that the proposed ordinance will be more protective of public
18 health and the environment."

19 SECTION 2. Section 74-2-5 NMSA 1978 (being Laws 1967,
20 Chapter 277, Section 5, as amended) is amended to read:

21 "74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT
22 BOARD--LOCAL BOARD.--

23 A. The environmental improvement board or the
24 local board shall prevent or abate air pollution.

25 B. The environmental improvement board or the

1 local board shall:

2 (1) adopt, promulgate, publish, amend and
3 repeal rules and standards consistent with the Air Quality
4 Control Act to attain and maintain national ambient air
5 quality standards and prevent or abate air pollution,
6 including:

7 (a) rules prescribing air standards
8 within the geographic area of the environmental improvement
9 board's jurisdiction or the local board's jurisdiction or any
10 part thereof; and

11 (b) standards of performance that limit
12 carbon dioxide emissions to no more than one thousand one
13 hundred pounds per megawatt-hour on and after January 1, 2023
14 for a new or existing source that is an electric generating
15 facility with an original installed capacity exceeding three
16 hundred megawatts and that uses coal as a fuel source; and

17 (2) adopt a plan for the regulation,
18 control, prevention or abatement of air pollution,
19 recognizing the differences, needs, requirements and
20 conditions within the geographic area of the environmental
21 improvement board's jurisdiction or the local board's
22 jurisdiction or any part thereof.

23 C. If the environmental improvement board or the
24 local board determines that emissions from sources within the
25 environmental improvement board's jurisdiction or the local

1 board's jurisdiction cause or contribute to ozone
2 concentrations in excess of ninety-five percent of the
3 primary national ambient air quality standard for ozone
4 promulgated pursuant to the federal act, the environmental
5 improvement board or the local board shall adopt a plan,
6 including rules, to control emissions of oxides of nitrogen
7 and volatile organic compounds to provide for attainment and
8 maintenance of the standard. Rules adopted pursuant to this
9 subsection shall be limited to sources of emissions within
10 the area of the state where the ozone concentrations exceed
11 ninety-five percent of the primary national ambient air
12 quality standard.

13 D. Rules adopted by the environmental improvement
14 board or the local board may:

15 (1) include rules to protect visibility in
16 mandatory class I areas to prevent significant deterioration
17 of air quality and to achieve national ambient air quality
18 standards in nonattainment areas; provided that the rules
19 shall be at least as stringent as required by the federal act
20 and federal regulations pertaining to visibility protection
21 in mandatory class I areas, pertaining to prevention of
22 significant deterioration and pertaining to nonattainment
23 areas;

24 (2) prescribe standards of performance for
25 sources and emission standards for hazardous air pollutants

1 that shall be at least as stringent as required by federal
2 standards of performance;

3 (3) include rules governing emissions from
4 solid waste incinerators that shall be at least as stringent
5 as any applicable federal emission limitations;

6 (4) include rules requiring the installation
7 of control technology for mercury emissions that removes the
8 greater of what is achievable with best available control
9 technology or ninety percent of the mercury from the input
10 fuel for all coal-fired power plants, except for coal-fired
11 power plants constructed and generating electric power and
12 energy before July 1, 2007;

13 (5) require notice to the department or the
14 local agency of the intent to introduce or permit the
15 introduction of an air contaminant into the air within the
16 geographical area of the environmental improvement board's
17 jurisdiction or the local board's jurisdiction; and

18 (6) require any person emitting any air
19 contaminant to:

20 (a) install, use and maintain emission
21 monitoring devices;

22 (b) sample emissions in accordance with
23 methods and at locations and intervals as may be prescribed
24 by the environmental improvement board or the local board;

25 (c) establish and maintain records of

1 the nature and amount of emissions;

2 (d) submit reports regarding the nature
3 and amounts of emissions and the performance of emission
4 control devices; and

5 (e) provide any other reasonable
6 information relating to the emission of air contaminants.

7 E. Any rule adopted pursuant to this section shall
8 be at least as stringent as federal law, if any, relating to
9 control of motor vehicle emissions.

10 F. In making its rules, the environmental
11 improvement board or the local board shall give weight it
12 deems appropriate to all facts and circumstances, including:

13 (1) character and degree of injury to or
14 interference with health, welfare, visibility and property;

15 (2) the public interest, including the
16 social and economic value of the sources and subjects of air
17 contaminants; and

18 (3) technical practicability and economic
19 reasonableness of reducing or eliminating air contaminants
20 from the sources involved and previous experience with
21 equipment and methods available to control the air
22 contaminants involved.

23 G. Before the environmental improvement board or
24 local board adopts a rule that is more stringent than the
25 federal act or federal regulations, or that applies to

1 sources not subject to regulation pursuant to the federal act
2 or regulations, the environmental improvement board or local
3 board shall make a determination, based on substantial
4 evidence and after notice and public hearing, that the
5 proposed rule will be more protective of public health and
6 the environment."

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

9 "74-4-4. DUTIES AND POWERS OF THE BOARD.--

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

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

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

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

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

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

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

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

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

25 (f) implementation of programs to

1 reduce the volume or quantity and toxicity of the hazardous
2 waste generated;

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

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

1 the generator that minimizes the present and future threat to
2 human health and the environment;

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

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

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

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

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

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

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

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

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

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

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

22 (c) treatment, storage or disposal of
23 all such waste and any liquid that is not a hazardous waste,
24 except with respect to underground injection control into
25 deep injection wells, received by the facility pursuant to

1 such operating methods, techniques and practices as may be
2 satisfactory to the secretary;

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

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

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

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

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

22 (i) the taking of corrective action
23 beyond a facility's boundaries where necessary to protect
24 human health and the environment unless the owner or operator
25 of that facility demonstrates to the satisfaction of the

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

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

25 (7) establishing procedures for the

1 issuance, suspension, revocation and modification of permits
2 issued under Paragraph (6) of this subsection, which rules
3 shall provide for public notice, public comment and an
4 opportunity for a hearing prior to the issuance, suspension,
5 revocation or major modification of any permit unless
6 otherwise provided in the Hazardous Waste Act;

7 (8) defining major and minor modifications;

8 and

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

17 B. The board shall adopt rules:

18 (1) concerning hazardous substance
19 incidents; and

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

22 C. The board shall adopt rules concerning storage
23 tanks as may be necessary to protect public health and the
24 environment and that, in the case of underground storage
25 tanks, are equivalent to and at least as stringent as federal

1 regulations adopted by the federal environmental protection
2 agency pursuant to the federal Resource Conservation and
3 Recovery Act of 1976, as amended.

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

9 E. Rules adopted pursuant to this section shall
10 include:

11 (1) standards for the installation,
12 operation, maintenance, repair and replacement of storage
13 tanks;

14 (2) requirements for financial
15 responsibility;

16 (3) standards for inventory control;

17 (4) standards for the detection of leaks
18 from and the integrity-testing and monitoring of storage
19 tanks;

20 (5) standards for the closure and
21 dismantling of storage tanks;

22 (6) requirements for recordkeeping;

23 (7) requirements for the reporting,
24 containment and remediation of all leaks from any storage
25 tanks; and

1 (8) criteria and procedures for classifying
2 a storage tank facility as ineligible, and reclassifying a
3 storage tank facility as eligible, for the delivery, deposit,
4 acceptance or sale of petroleum products.

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

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

20 (1) improper operation or maintenance of
21 required equipment for spill prevention, overfill protection,
22 leak detection or corrosion protection;

23 (2) failure to maintain required financial
24 responsibility for corrective action; or

25 (3) operation of the storage tank facility

1 in a manner that creates an imminent threat to the public
2 health and the environment.

3 H. Rules adopted by the board pursuant to this
4 section shall defer classifying a storage tank facility as
5 ineligible for delivery, deposit, acceptance or sale of
6 petroleum products if the ineligible classification would
7 jeopardize the availability of, or access to, motor fuel in
8 any rural and remote areas.

9 I. Rules adopted by the board pursuant to this
10 section shall allow the department to authorize delivery or
11 deposit of petroleum products to:

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

19 (2) a storage tank facility that is
20 otherwise ineligible for delivery or deposit if the delivery
21 or deposit is necessary to test or calibrate a tank.

22 J. The board shall adopt rules concerning the
23 management of used oil that are equivalent to and at least as
24 stringent as federal regulations adopted by the federal
25 environmental protection agency pursuant to the federal

1 Resource Conservation and Recovery Act of 1976, as amended.

2 K. In the event the board wishes to adopt rules
3 that are identical with regulations adopted by an agency of
4 the federal government, the board, after notice and hearing,
5 may adopt such rules by reference to the federal regulations
6 without setting forth the provisions of the federal
7 regulations.

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

15 SECTION 4. REPEAL.--Section 74-2-5.3 NMSA 1978 (being
16 Laws 2009, Chapter 98, Section 1) is repealed.

17 SECTION 5. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2021. _____

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