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HOUSE BILL 781

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Antonio Lujan

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE HAZARDOUS WASTE ACT
TO PROVIDE FOR RULES AT LEAST AS STRINGENT AS THE FEDERAL
REGULATIONS.

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

Section 1. 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~~] at least as stringent [~~than~~] as federal regulations
adopted by the federal environmental protection agency pursuant
to the federal Resource Conservation and Recovery Act of 1976,
as amended:

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1 (1) for the identification and listing of
2 hazardous wastes, taking into account toxicity, persistence and
3 degradability, potential for accumulation in tissue and other
4 related factors, including flammability, corrosiveness and
5 other hazardous characteristics; provided that, except as
6 authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board
7 shall not identify or list any solid waste or combination of
8 solid wastes as a hazardous waste that has not been listed and
9 designated as a hazardous waste by the federal environmental
10 protection agency pursuant to the federal Resource Conservation
11 and Recovery Act of 1976, as amended;

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

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

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

24 (c) labeling practices for any
25 containers used for the storage, transport or disposal of the

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1 hazardous waste that will identify accurately the waste;

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

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

7 (f) implementation of programs to reduce
8 the volume or quantity and toxicity of the hazardous waste
9 generated;

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

20 (h) the use of a manifest system and any
21 other reasonable means necessary to assure that all hazardous
22 waste generated is designated for treatment, storage or
23 disposal in, and arrives at, treatment, storage or disposal
24 facilities, other than facilities on the premises where the
25 waste is generated, for which a permit has been issued pursuant

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1 to the Hazardous Waste Act; ~~and~~ that the generator of
2 hazardous waste has a program in place to reduce the volume or
3 quality and toxicity of waste to the degree determined by the
4 generator to be economically practicable and that the proposed
5 method of treatment, storage or disposal is that practicable
6 method currently available to the generator that minimizes the
7 present and future threat to human health and the environment;

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

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

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

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

21 (d) transportation of all the hazardous
22 waste only to the hazardous waste treatment, storage or
23 disposal ~~facilities~~ facility that the shipper designates on
24 the manifest form to be a facility holding a permit issued
25 pursuant to the Hazardous Waste Act or the federal Resource

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1 Conservation and Recovery Act of 1976, as amended;

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

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

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

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

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

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

25 (c) treatment, storage or disposal of

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1 all such waste and any liquid that is not a hazardous waste,
2 except with respect to underground injection control into deep
3 injection wells, received by the facility pursuant to such
4 operating methods, techniques and practices as may be
5 satisfactory to the secretary;

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

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

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

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

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

24 (i) the taking of corrective action
25 beyond a facility's boundaries where necessary to protect human

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

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

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

8 (8) defining major and minor modifications;
9 and

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

18 B. The board shall adopt rules:

19 (1) concerning hazardous substance incidents;
20 and

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

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

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1 are equivalent to and ~~[no more]~~ at least as stringent ~~[than]~~ as
2 federal regulations adopted by the federal environmental
3 protection agency pursuant to the federal Resource Conservation
4 and Recovery Act of 1976, as amended. Rules adopted pursuant
5 to this subsection shall include:

6 (1) standards for the installation, operation
7 and maintenance of storage tanks;

8 (2) requirements for financial responsibility;

9 (3) standards for inventory control;

10 (4) standards for the detection of leaks from
11 and the integrity-testing and monitoring of storage tanks;

12 (5) standards for the closure and dismantling
13 of storage tanks;

14 (6) requirements for record keeping; and

15 (7) requirements for the reporting,
16 containment and remediation of all leaks from any storage
17 tanks.

18 D. Notwithstanding the provisions of Subsection A
19 of this section, the board may adopt rules for the management
20 of hazardous waste and hazardous waste transformation that are
21 more stringent than federal regulations adopted by the federal
22 environmental protection agency pursuant to the federal
23 Resource Conservation and Recovery Act of 1976, as amended, if
24 the board determines, after notice and public hearing, that
25 such federal regulations are not sufficient to protect public

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1 health and the environment. As used in this subsection,
2 "transformation" means incineration, pyrolysis, distillation,
3 gasification or biological conversion other than composting.

4 E. The board shall adopt rules concerning the
5 management of used oil that are equivalent to and no more
6 stringent than federal regulations adopted by the federal
7 environmental protection agency pursuant to the federal
8 Resource Conservation and Recovery Act of 1976, as amended.

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