

SENATE FINANCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL 8

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

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

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

6 (1) create a local board to perform, within  
7 the boundaries of the local authority, those functions  
8 delegated to the environmental improvement board under the Air  
9 Quality Control Act, except any functions reserved exclusively  
10 for the environmental improvement board;

11 (2) create a local agency to administer and  
12 enforce the provisions of the Air Quality Control Act within  
13 the boundaries of the local authority that shall, within the  
14 boundaries of the local authority, perform all of the duties  
15 required of the department and exert all of the powers granted  
16 to the department, except for those duties and powers reserved  
17 exclusively for the department; and

18 (3) provide for the appointment of a director  
19 who shall perform for the local authority the same duties as  
20 required of the secretary under the Air Quality Control Act,  
21 except the duties and powers reserved exclusively for the  
22 secretary.

23 B. At least a majority of the members of a local  
24 board shall be individuals who represent the public interest  
25 and do not derive any significant portion of their income from

.220113.2

1 persons subject to or who appear before the local board on  
2 issues related to the federal act or the Air Quality Control  
3 Act.

4 C. Prior to adopting any ordinance regulating air  
5 pollution, public hearings and consultations shall be held as  
6 directed by the local authority adopting the ordinance. The  
7 provisions of any ordinance shall be consistent with the  
8 substantive provisions of the Air Quality Control Act and shall  
9 provide for standards and regulations not lower than those  
10 required by regulations adopted by the environmental  
11 improvement board.

12 D. Notwithstanding the provisions of Subsection A  
13 of this section, the environmental improvement board and the  
14 secretary shall retain jurisdiction and control for the  
15 administration and enforcement of the Air Quality Control Act  
16 as determined in that act with respect to any act or failure to  
17 act, governmental or proprietary, of any local authority that  
18 causes or contributes to air pollution, including proceeding  
19 against a local authority as provided in Section 74-2-12 NMSA  
20 1978. "Failure to act", as used in this section, includes  
21 failure to act against any person violating the applicable  
22 ordinance or regulation adopted pursuant thereto.

23 E. Any local authority that is located within a  
24 transportation-related pollutant nonattainment area or  
25 maintenance area may provide for a vehicle emission inspection

.220113.2

1 and maintenance program for vehicles registered at an address  
2 within the jurisdiction of the local authority and under  
3 twenty-six thousand pounds gross vehicle weight rating powered  
4 by [~~a spark-ignited~~] an internal combustion engine, which  
5 program shall be [~~no more~~] at least as stringent [~~than~~] as that  
6 required under the federal act or under federal air quality  
7 standards. Any two or more local authorities may adopt  
8 identical rules and regulations necessary to implement the  
9 vehicle emission inspection and maintenance program, including  
10 examining the alternatives of public or private operation of  
11 the program.

12 F. Any local authority that has implemented a  
13 vehicle emission inspection and maintenance program may extend  
14 the enforcement of that program by entering into joint powers  
15 agreements with any municipality or county within the  
16 designated airshed or with the department.

17 G. No tax shall be imposed to fund any vehicle  
18 emission inspection and maintenance program until the local  
19 authority has submitted the question of imposition of a tax to  
20 the registered voters of the local authority and those  
21 registered voters have approved the imposition of the tax.

22 H. A local authority having a vehicle emission  
23 inspection and maintenance program shall conduct the vehicle  
24 emission inspection and maintenance program through a  
25 decentralized privately owned and operated system unless air

1 quality emissions result in automatic implementation of another  
2 type of program under the terms of a contingency plan required  
3 and approved by the United States environmental protection  
4 agency. The local authority shall set the emission inspection  
5 fee by ordinance.

6 I. A local authority having a vehicle emission  
7 inspection and maintenance program is authorized to adopt  
8 rules, regulations and guidelines governing the establishment  
9 of private vehicle emission inspection and maintenance  
10 stations. No private vehicle emission inspection and  
11 maintenance station shall test vehicles unless the station  
12 possesses a valid permit issued by the local agency. Permit  
13 fees shall be determined by ordinance of the local authority  
14 and shall not exceed two hundred dollars (\$200) per year per  
15 station. Additionally, a local authority may charge a permit  
16 fee of up to thirty-five dollars (\$35.00) per year for each  
17 vehicle emissions mechanic and for each vehicle emissions  
18 inspector. The imposition of permit fees does not require a  
19 vote of the registered voters of the local authority.

20 J. Before a local authority adopts an ordinance  
21 that is more stringent than the federal act or applicable  
22 federal regulations, or that applies to sources not subject to  
23 regulation pursuant to the federal act or regulations, the  
24 local authority shall make a determination, based on  
25 substantial evidence and after notice and public hearing, that

.220113.2

1 the proposed ordinance will be more protective of public health  
2 and the environment."

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

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

7 A. The environmental improvement board or the local  
8 board shall prevent or abate air pollution.

9 B. The environmental improvement board or the local  
10 board shall:

11 (1) adopt, promulgate, publish, amend and  
12 repeal rules and standards consistent with the Air Quality  
13 Control Act to attain and maintain national ambient air quality  
14 standards and prevent or abate air pollution, including:

15 (a) rules prescribing air standards  
16 within the geographic area of the environmental improvement  
17 board's jurisdiction or the local board's jurisdiction or any  
18 part thereof; and

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

25 (2) adopt a plan for the regulation, control,

.220113.2

1 prevention or abatement of air pollution, recognizing the  
2 differences, needs, requirements and conditions within the  
3 geographic area of the environmental improvement board's  
4 jurisdiction or the local board's jurisdiction or any part  
5 thereof.

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

20 [~~C.~~] D. Rules adopted by the environmental  
21 improvement board or the local board may:

22 (1) include rules to protect visibility in  
23 mandatory class I areas to prevent significant deterioration of  
24 air quality and to achieve national ambient air quality  
25 standards in nonattainment areas; provided that [~~such~~

.220113.2

1 ~~regulations:—(a)]~~ the rules shall be ~~[no more stringent than~~  
2 ~~but]~~ at least as stringent as required by the federal act and  
3 federal regulations pertaining to visibility protection in  
4 mandatory class I areas, pertaining to prevention of  
5 significant deterioration and pertaining to nonattainment areas  
6 ~~[and~~

7 ~~(b) shall be applicable only to sources~~  
8 ~~subject to such regulation pursuant to the federal act];~~

9 (2) prescribe standards of performance for  
10 sources and emission standards for hazardous air pollutants  
11 that ~~[except as provided in this subsection and in Subparagraph~~  
12 ~~(b) of Paragraph (1) of Subsection B of this section:—(a)]~~  
13 shall be ~~[no more stringent than but]~~ at least as stringent as  
14 required by federal standards of performance ~~[and~~

15 ~~(b) shall be applicable only to sources~~  
16 ~~subject to such federal standards of performance];~~

17 (3) include ~~[regulations]~~ rules governing  
18 emissions from solid waste incinerators that shall be at least  
19 as stringent as ~~[and may be more stringent than]~~ any applicable  
20 federal emission limitations;

21 (4) include ~~[regulations]~~ rules requiring the  
22 installation of control technology for mercury emissions that  
23 removes the greater of what is achievable with best available  
24 control technology or ninety percent of the mercury from the  
25 input fuel for all coal-fired power plants, except for coal-



1 fired power plants constructed and generating electric power  
2 and energy before July 1, 2007;

3 (5) require notice to the department or the  
4 local agency of the intent to introduce or permit the  
5 introduction of an air contaminant into the air within the  
6 geographical area of the environmental improvement board's  
7 jurisdiction or the local board's jurisdiction; and

8 (6) require any person emitting any air  
9 contaminant to:

10 (a) install, use and maintain emission  
11 monitoring devices;

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

15 (c) establish and maintain records of  
16 the nature and amount of emissions;

17 (d) submit reports regarding the nature  
18 and amounts of emissions and the performance of emission  
19 control devices; and

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

22 ~~[D.]~~ E. Any ~~[regulation]~~ rule adopted pursuant to  
23 this section shall be ~~[consistent with]~~ at least as stringent  
24 as federal law, if any, relating to control of motor vehicle  
25 emissions.

.220113.2

1           [E.] F. In making its [~~regulations~~] rules, the  
2 environmental improvement board or the local board shall give  
3 weight it deems appropriate to all facts and circumstances,  
4 including [~~but not limited to~~]:

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

7                   (2) the public interest, including the social  
8 and economic value of the sources and subjects of air  
9 contaminants; and

10                   (3) technical practicability and economic  
11 reasonableness of reducing or eliminating air contaminants from  
12 the sources involved and previous experience with equipment and  
13 methods available to control the air contaminants involved.

14           G. Before the environmental improvement board or  
15 local board adopts a rule that is more stringent than the  
16 federal act or federal regulations, or that applies to sources  
17 not subject to regulation pursuant to the federal act or  
18 regulations, the environmental improvement board or local board  
19 shall make a determination, based on substantial evidence and  
20 after notice and public hearing, that the proposed rule will be  
21 more protective of public health and the environment."

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

24           "74-4-4. DUTIES AND POWERS OF THE BOARD.--

25           A. The board shall adopt rules for the management

1 of hazardous waste, as may be necessary to protect public  
2 health and the environment, that are equivalent to and [~~no~~  
3 ~~more~~] at least as stringent [~~than~~] as federal regulations  
4 adopted by the federal environmental protection agency pursuant  
5 to the federal Resource Conservation and Recovery Act of 1976,  
6 as amended:

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

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

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

25 (b) recordkeeping practices that

.220113.2

1 accurately identify the quantities of hazardous waste  
2 generated, the constituents of the waste that are significant  
3 in quantity or in potential harm to human health or the  
4 environment and the disposition of the waste;

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

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

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

13 (f) implementation of programs to reduce  
14 the volume or quantity and toxicity of the hazardous waste  
15 generated;

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

.220113.2

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

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

20 (a) recordkeeping concerning the  
21 hazardous waste transported and its source and delivery points;

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

24 (c) compliance with the manifest system  
25 referred to in Subparagraph (h) of Paragraph (2) of this

.220113.2

1 subsection; and

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

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

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

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

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

23 (a) maintaining the records of all  
24 hazardous waste identified or listed under this subsection that  
25 is treated, stored or disposed of, as the case may be, and the

.220113.2

1 manner in which the waste was treated, stored or disposed of;

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

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

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

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

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

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

24 (h) the taking of corrective action for  
25 all releases of hazardous waste or constituents from a solid

.220113.2

1 waste management unit at a treatment, storage or disposal  
2 facility, regardless of the time at which waste was placed in  
3 the unit; and

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

25 (6) requiring each person owning or operating,



1 or both, an existing facility or planning to construct a new  
2 facility for the treatment, storage or disposal of hazardous  
3 waste identified or listed under this subsection to have a  
4 permit issued pursuant to requirements established by the  
5 board;

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

13 (8) defining major and minor modifications;  
14 and

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

23 B. The board shall adopt rules:

24 (1) concerning hazardous substance incidents;  
25 and

.220113.2

underscoring material = new  
~~[bracketed material] = delete~~

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

3 C. The board shall adopt rules concerning storage  
4 tanks as may be necessary to protect public health and the  
5 environment and that, in the case of underground storage tanks,  
6 are equivalent to and [~~no more~~] at least as stringent [~~than~~] as  
7 federal regulations adopted by the federal environmental  
8 protection agency pursuant to the federal Resource Conservation  
9 and Recovery Act of 1976, as amended.

10 D. The board shall adopt rules concerning storage  
11 tanks that implement the federal Energy Policy Act of 2005,  
12 Pub. L. 109-58, as amended, and that are equivalent to and [~~no~~  
13 ~~more~~] at least as stringent [~~than~~] as the Energy Policy Act and  
14 its grant guidelines and regulations.

15 E. Rules adopted pursuant to this section shall  
16 include:

17 (1) standards for the installation, operation,  
18 maintenance, repair and replacement of storage tanks;

19 (2) requirements for financial responsibility;

20 (3) standards for inventory control;

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

23 (5) standards for the closure and dismantling  
24 of storage tanks;

25 (6) requirements for recordkeeping;

.220113.2

1 (7) requirements for the reporting,  
2 containment and remediation of all leaks from any storage  
3 tanks; and

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

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

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

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

25 (2) failure to maintain required financial

.220113.2

1 responsibility for corrective action; or

2 (3) operation of the storage tank facility in  
3 a manner that creates an imminent threat to the public health  
4 and the environment.

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

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

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

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

24 ~~[J. Notwithstanding the provisions of Subsection A~~  
25 ~~of this section, the board may adopt rules for the management~~

.220113.2

1 ~~of hazardous waste and hazardous waste transformation that are~~  
 2 ~~more stringent than federal regulations adopted by the federal~~  
 3 ~~environmental protection agency pursuant to the federal~~  
 4 ~~Resource Conservation and Recovery Act of 1976, as amended, if~~  
 5 ~~the board determines, after notice and public hearing, that~~  
 6 ~~such federal regulations are not sufficient to protect public~~  
 7 ~~health and the environment. As used in this subsection,~~  
 8 ~~"transformation" means incineration, pyrolysis, distillation,~~  
 9 ~~gasification or biological conversion other than composting.~~

10 ~~K.]~~ J. The board shall adopt rules concerning the  
 11 management of used oil that are equivalent to and ~~[no more]~~ at  
 12 least as stringent ~~[than]~~ as federal regulations adopted by the  
 13 federal environmental protection agency pursuant to the federal  
 14 Resource Conservation and Recovery Act of 1976, as amended.

15 ~~[E.]~~ K. In the event the board wishes to adopt  
 16 rules that are identical with regulations adopted by an agency  
 17 of the federal government, the board, after notice and hearing,  
 18 may adopt such rules by reference to the federal regulations  
 19 without setting forth the provisions of the federal  
 20 regulations.

21 L. Before the board adopts a rule for the  
 22 management of hazardous waste, concerning storage tanks or  
 23 concerning used oil, that is more stringent than the federal  
 24 regulations, the board shall make a determination, based on  
 25 substantial evidence and after notice and public hearing, that

.220113.2

1 the proposed rule will be more protective of public health and  
2 the environment."

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

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