

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 140

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO HAZARDOUS MATERIALS; Hf11→~~ADDING A DEFINITION OF
"HAZARDOUS WASTE CONSTITUENT" TO THE HAZARDOUS WASTE ACT;
AMENDING AND ADDING THE IDENTIFICATION AND LISTING OF HAZARDOUS
WASTE CONSTITUENTS TO THE DUTIES AND POWERS OF THE
ENVIRONMENTAL IMPROVEMENT BOARD.~~←Hf11 Hf11→**AMENDING THE
DEFINITION OF "HAZARDOUS WASTE"; AUTHORIZING THE ENVIRONMENTAL
IMPROVEMENT BOARD TO ADOPT RULES FOR PER- AND POLYFLUOROALKYL**

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SUBSTANCES THAT ARE DESIGNATED HAZARDOUS WASTE. ←Hf11

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) 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 for noncommercial purposes;

(2) pipeline facility, including gathering lines, that is regulated under Chapter 601 of Title 49 of the United States Code or that is an intrastate pipeline facility regulated under state laws as provided in Chapter 601 of Title 49 of the United States Code and that is determined by the United States secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of

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operating at pipeline pressure or as an integral part of a pipeline;

(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 oil field service industry operations;

(7) tank used for storing heating oil for consumptive use on the premises where stored;

(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 its 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;

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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 the 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 publishing office;

H. "generator" means any person producing hazardous waste;

I. "hazardous agricultural waste" means hazardous waste generated as part of the licensed activity by any person licensed pursuant to the Pesticide Control Act or 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

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transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

~~Hf11→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.:~~

~~(a) drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy;~~

~~(b) fly ash waste;~~

~~(c) bottom ash waste;~~

~~(d) slag waste;~~

~~(e) flue gas emission control waste~~

~~generated primarily from the combustion of coal or other fossil~~

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~~fuels;~~

~~(f) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;~~

~~or~~

~~(g) cement kiln dust waste;~~

~~L. "hazardous waste constituent" or "hazardous constituent" means a chemical or substance that has been identified as such by the federal environmental protection agency, that has been identified by the board as having toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms or that is subject to corrective action requirements under the Hazardous Waste Act;~~ ←Hf11

Hf11→K. "hazardous waste":

(1) means any solid waste or combination of solid wastes that, because of quantity, concentration or physical, chemical or infectious characteristics, may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed;

(2) includes:

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(a) discarded aqueous film-forming foam containing intentionally added per- or polyfluoroalkyl substances; and

(b) all solid waste or combination of solid wastes listed and designated as hazardous waste by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976; provided that any solid waste or combination of solid wastes designated as hazardous by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976 on July 1, 2025 and subsequently removed by the federal environmental protection agency shall be considered hazardous waste; and

(3) does not include the following substances, until the board determines that the substance is subject to Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.:

(a) drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy;

(b) fly ash waste;

(c) bottom ash waste;

(d) slag waste;

(e) flue gas emission control waste

generated primarily from the combustion of coal or other fossil

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fuels;

(f) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;

(g) cement kiln dust waste; or

(h) solid wastes generated by the growing and harvesting of agricultural crops or the raising of animals, including animal manures, when those solid wastes are returned to the soils as fertilizer;

~~[E.]~~ ~~Hf11~~ ~~→~~ ~~M.~~ ~~←~~ ~~Hf11~~ ~~Hf11~~ ~~→~~ ~~L.~~ ~~←~~ ~~Hf11~~ "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.]~~ ~~Hf11~~ ~~→~~ ~~N.~~ ~~←~~ ~~Hf11~~ ~~Hf11~~ ~~→~~ ~~M.~~ ~~←~~ ~~Hf11~~ "person" means an 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.]~~ ~~Hf11~~ ~~→~~ ~~O.~~ ~~←~~ ~~Hf11~~ ~~Hf11~~ ~~→~~ ~~N.~~ ~~←~~ ~~Hf11~~ "regulated substance" means:

(1) a substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not including a substance regulated as a hazardous waste under Subtitle C of the federal

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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;

[Ø-] Hf11→**P.**←Hf11 Hf11→**O.**←Hf11 "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-] Hf11→**Q.**←Hf11 Hf11→**P.**←Hf11 "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-] Hf11→**R.**←Hf11 Hf11→**Q.**←Hf11 "storage tank"

means an above ground storage tank or an underground storage

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tank;

[R-] Hf11→S.←Hf11 Hf11→R.←Hf11 "tank installer"
means any individual who installs or repairs a storage tank;

[S-] Hf11→T.←Hf11 Hf11→S.←Hf11 "tank tester"
means any individual who tests storage tanks;

[T-] Hf11→U.←Hf11 Hf11→T.←Hf11 "transporter"
means a person engaged in the movement of hazardous waste, not
including movement at the site of generation, disposal,
treatment or storage;

[U-] Hf11→V.←Hf11 Hf11→U.←Hf11 "treatment" means
any method, technique or process, including neutralization,
designed to change the physical, chemical or biological
character or composition of a hazardous waste so as to
neutralize the waste or so as to render the 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;

[V-] Hf11→W.←Hf11 Hf11→V.←Hf11 "underground
storage tank" means a single tank or a combination of tanks,
including underground pipes connected thereto, that is 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

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any:

(1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines, that is regulated under Chapter 601 of Title 49 of the United States Code or that is an intrastate pipeline facility regulated under state laws as provided in Chapter 601 of Title 49 of the United States Code and that is determined by the United States secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(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;

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(9) tank used for storing heating oil for consumptive use on the premises where stored;

(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

[W.] Hf11→X.←Hf11 Hf11→W.←Hf11 "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) 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, Hf11→~~hazardous constituents and hazardous waste constituents~~,←Hf11 as may be necessary to protect public health and the environment, that are equivalent to and at least as stringent as 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 Hf11→~~and hazardous waste constituents~~←Hf11 , taking into account toxicity, persistence and degradability,

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potential for accumulation in tissue and other related factors, including flammability, corrosiveness and other hazardous characteristics; Hf11→~~[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]~~←Hf11 Hf11→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;←Hf11

(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) recordkeeping practices that accurately identify the quantities of hazardous waste

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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

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other reasonable means necessary to ensure 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; 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 requirements for:

(a) recordkeeping 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

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(d) transportation of all the hazardous waste only to the hazardous waste treatment, storage or disposal facility 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 the waste was treated, stored or disposed of;

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(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, Hf11 → ~~hazardous constituents or hazardous waste constituents~~ ← Hf11 from a solid waste management

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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

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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

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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 at least as stringent as federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

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

E. Rules adopted pursuant to this section shall include:

- (1) standards for the installation, operation, maintenance, repair and replacement 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 recordkeeping;
- (7) requirements for the reporting,

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containment and remediation of all leaks from any storage tanks; and

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

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

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

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

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

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

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

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

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

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

J. The board shall adopt rules concerning the management of used oil that are equivalent to and at least as stringent as federal regulations adopted by the federal

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environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

K. 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.

L. Before the board adopts a rule for the management of hazardous waste, concerning storage tanks or concerning used oil, that is more stringent than the federal regulations, the board shall make a determination, based on substantial evidence and after notice and public hearing, that the proposed rule will be more protective of public health and the environment. Hf11→"~~"~~←Hf11

Hf11→M. The board may adopt rules pertaining to aqueous film-forming foam containing intentionally added per- or polyfluoroalkyl substances pursuant to the Hazardous Waste Act."←Hf11

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