

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

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

AN ACT

RELATING TO HAZARDOUS MATERIALS; 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.

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

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1 conditions of temperature and pressure of sixty degrees
2 Fahrenheit and fourteen and seven-tenths pounds per square inch
3 absolute, and the volume of which is more than ninety percent
4 above the surface of the ground. "Above ground storage tank"
5 does not include any:

6 (1) farm, ranch or residential tank used for
7 storing motor fuel for noncommercial purposes;

8 (2) pipeline facility, including gathering
9 lines, that is regulated under Chapter 601 of Title 49 of the
10 United States Code or that is an intrastate pipeline facility
11 regulated under state laws as provided in Chapter 601 of Title
12 49 of the United States Code and that is determined by the
13 United States secretary of transportation to be connected to a
14 pipeline, or to be operated or intended to be capable of
15 operating at pipeline pressure or as an integral part of a
16 pipeline;

17 (3) surface impoundment, pit, pond or lagoon;

18 (4) storm water or wastewater collection
19 system;

20 (5) flow-through process tank;

21 (6) liquid trap, tank or associated gathering
22 lines or other storage methods or devices related to oil, gas
23 or mining exploration, production, transportation, refining,
24 processing or storage, or to oil field service industry
25 operations;

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

3 (8) pipes connected to any tank that is
4 described in Paragraphs (1) through (7) of this subsection; or

5 (9) tanks or related pipelines and facilities
6 owned or used by a refinery, natural gas processing plant or
7 pipeline company in the regular course of its refining,
8 processing or pipeline business;

9 B. "board" means the environmental improvement
10 board;

11 C. "corrective action" means an action taken in
12 accordance with rules of the board to investigate, minimize,
13 eliminate or clean up a release to protect the public health,
14 safety and welfare or the environment;

15 D. "director" or "secretary" means the secretary of
16 environment;

17 E. "disposal" means the discharge, deposit,
18 injection, dumping, spilling, leaking or placing of any solid
19 waste or hazardous waste into or on any land or water so that
20 the solid waste or hazardous waste or constituent thereof may
21 enter the environment or be emitted into the air or discharged
22 into any waters, including ground waters;

23 F. "division" or "department" means the department
24 of environment;

25 G. "federal agency" means any department, agency or

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1 other instrumentality of the federal government and any
2 independent agency or establishment of that government,
3 including any government corporation and the government
4 publishing office;

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

7 I. "hazardous agricultural waste" means hazardous
8 waste generated as part of the licensed activity by any person
9 licensed pursuant to the Pesticide Control Act or hazardous
10 waste designated as hazardous agricultural waste by the board,
11 but does not include animal excrement in connection with farm,
12 ranch or feedlot operations;

13 J. "hazardous substance incident" means any
14 emergency incident involving a chemical or chemicals, including
15 transportation wrecks, accidental spills or leaks, fires or
16 explosions, which incident creates the reasonable probability
17 of injury to human health or property;

18 K. "hazardous waste" means any solid waste or
19 combination of solid wastes that because of their quantity,
20 concentration or physical, chemical or infectious
21 characteristics may:

22 (1) cause or significantly contribute to an
23 increase in mortality or an increase in serious irreversible or
24 incapacitating reversible illness; or

25 (2) pose a substantial present or potential

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1 hazard to human health or the environment when improperly
2 treated, stored, transported, disposed of or otherwise managed.
3 "Hazardous waste" does not include any of the following, until
4 the board determines that they are subject to Subtitle C of the
5 federal Resource Conservation and Recovery Act of 1976, as
6 amended, 42 U.S.C. 6901 et seq.:

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

10 (b) fly ash waste;

11 (c) bottom ash waste;

12 (d) slag waste;

13 (e) flue gas emission control waste
14 generated primarily from the combustion of coal or other fossil
15 fuels;

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

20 (g) cement kiln dust waste;

21 L. "hazardous waste constituent" or "hazardous
22 constituent" means a chemical or substance that has been
23 identified as such by the federal environmental protection
24 agency, that has been identified by the board as having toxic,
25 carcinogenic, mutagenic or teratogenic effects on humans or

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1 other life forms or that is subject to corrective action
2 requirements under the Hazardous Waste Act;

3 [E-] M. "manifest" means the form used for
4 identifying the quantity, composition, origin, routing and
5 destination of hazardous waste during transportation from point
6 of generation to point of disposal, treatment or storage;

7 [M-] N. "person" means an individual, trust, firm,
8 joint stock company, federal agency, corporation, including a
9 government corporation, partnership, association, state,
10 municipality, commission, political subdivision of a state or
11 any interstate body;

12 [N-] O. "regulated substance" means:

13 (1) a substance defined in Section 101(14) of
14 the federal Comprehensive Environmental Response, Compensation,
15 and Liability Act of 1980, but not including a substance
16 regulated as a hazardous waste under Subtitle C of the federal
17 Resource Conservation and Recovery Act of 1976, as amended; and

18 (2) petroleum, including crude oil or any
19 fraction thereof that is liquid at standard conditions of
20 temperature and pressure of sixty degrees Fahrenheit and
21 fourteen and seven-tenths pounds per square inch absolute;

22 [O-] P. "solid waste" means any garbage, refuse,
23 sludge from a waste treatment plant, water supply treatment
24 plant or air pollution control facility and other discarded
25 material, including solid, liquid, semisolid or contained

1 gaseous material resulting from industrial, commercial, mining
2 and agricultural operations, and from community activities, but
3 does not include solid or dissolved materials in domestic
4 sewage or solid or dissolved materials in irrigation return
5 flows or industrial discharges that are point sources subject
6 to permits under Section 402 of the Federal Water Pollution
7 Control Act, as amended, 86 Stat. 880, or source, special
8 nuclear or byproduct material as defined by the federal Atomic
9 Energy Act of 1954, as amended, 68 Stat. 923;

10 ~~[P.]~~ Q. "storage" means the containment of
11 hazardous waste, either on a temporary basis or for a period of
12 years, in such a manner as not to constitute disposal of such
13 hazardous waste;

14 ~~[Q.]~~ R. "storage tank" means an above ground
15 storage tank or an underground storage tank;

16 ~~[R.]~~ S. "tank installer" means any individual who
17 installs or repairs a storage tank;

18 ~~[S.]~~ T. "tank tester" means any individual who
19 tests storage tanks;

20 ~~[T.]~~ U. "transporter" means a person engaged in the
21 movement of hazardous waste, not including movement at the site
22 of generation, disposal, treatment or storage;

23 ~~[U.]~~ V. "treatment" means any method, technique or
24 process, including neutralization, designed to change the
25 physical, chemical or biological character or composition of a

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1 hazardous waste so as to neutralize the waste or so as to
2 render the waste nonhazardous, safer for transport, amenable to
3 recovery, amenable to storage or reduced in volume.

4 "Treatment" includes any activity or processing designed to
5 change the physical form or chemical composition of hazardous
6 waste so as to render it nonhazardous;

7 [V-] W. "underground storage tank" means a single
8 tank or a combination of tanks, including underground pipes
9 connected thereto, that is used to contain an accumulation of
10 regulated substances and the volume of which, including the
11 volume of the underground pipes connected thereto, is ten
12 percent or more beneath the surface of the ground.

13 "Underground storage tank" does not include any:

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

17 (2) septic tank;

18 (3) pipeline facility, including gathering
19 lines, that is regulated under Chapter 601 of Title 49 of the
20 United States Code or that is an intrastate pipeline facility
21 regulated under state laws as provided in Chapter 601 of Title
22 49 of the United States Code and that is determined by the
23 United States secretary of transportation to be connected to a
24 pipeline, or to be operated or intended to be capable of
25 operating at pipeline pressure or as an integral part of a

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1 pipeline;

2 (4) surface impoundment, pit, pond or lagoon;

3 (5) storm water or wastewater collection

4 system;

5 (6) flow-through process tank;

6 (7) liquid trap, tank or associated gathering
7 lines directly related to oil or gas production and gathering
8 operations;

9 (8) storage tank situated in an underground
10 area, such as a basement, cellar, mineworking drift, shaft or
11 tunnel, if the storage tank is situated upon or above the
12 surface of the undesignated floor;

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

15 (10) tank exempted by rule of the board after
16 finding that the type of tank is adequately regulated under
17 another federal or state law; or

18 (11) pipes connected to any tank that is
19 described in Paragraphs (1) through (10) of this subsection;
20 and

21 [~~W.~~] X. "used oil" means any oil that has been
22 refined from crude oil, or any synthetic oil, that has been
23 used and as a result of such use is contaminated by physical or
24 chemical impurities."

25 SECTION 2. Section 74-4-4 NMSA 1978 (being Laws 1977,

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1 Chapter 313, Section 4, as amended) is amended to read:

2 "74-4-4. DUTIES AND POWERS OF THE BOARD.--

3 A. The board shall adopt rules for the management
4 of hazardous waste, hazardous constituents and hazardous waste
5 constituents, as may be necessary to protect public health and
6 the environment, that are equivalent to and at least as
7 stringent as federal regulations adopted by the federal
8 environmental protection agency pursuant to the federal
9 Resource Conservation and Recovery Act of 1976, as amended:

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

22 (2) establishing standards applicable to
23 generators identified or listed under this subsection,
24 including requirements for:

25 (a) furnishing information on the

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1 location and description of the generator's facility and on the
2 production or energy recovery activity occurring at that
3 facility;

4 (b) recordkeeping practices that
5 accurately identify the quantities of hazardous waste
6 generated, the constituents of the waste that are significant
7 in quantity or in potential harm to human health or the
8 environment and the disposition of the waste;

9 (c) labeling practices for any
10 containers used for the storage, transport or disposal of the
11 hazardous waste that will identify accurately the waste;

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

14 (e) furnishing the information on the
15 general chemical composition of the hazardous waste to persons
16 transporting, treating, storing or disposing of the waste;

17 (f) implementation of programs to reduce
18 the volume or quantity and toxicity of the hazardous waste
19 generated;

20 (g) submission of reports to the
21 secretary at such times as the secretary deems necessary,
22 setting out the quantities of hazardous waste identified or
23 listed pursuant to the Hazardous Waste Act that the generator
24 has generated during a particular time period and the
25 disposition of all hazardous waste reported, the efforts

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1 undertaken during a particular time period to reduce the volume
2 and toxicity of waste generated and the changes in volume and
3 toxicity of waste actually achieved during a particular time
4 period in comparison with previous time periods; and

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

18 (3) establishing standards applicable to
19 transporters of hazardous waste identified or listed under this
20 subsection or of fuel produced from any such hazardous waste or
21 of fuel from such waste and any other material, as may be
22 necessary to protect human health and the environment,
23 including requirements for:

24 (a) recordkeeping concerning the
25 hazardous waste transported and its source and delivery points;

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1 (b) transportation of the hazardous
2 waste only if properly labeled;

3 (c) compliance with the manifest system
4 referred to in Subparagraph (h) of Paragraph (2) of this
5 subsection; and

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

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

15 (a) furnishing the information stating
16 the location and general description of the facility; and

17 (b) furnishing the information
18 describing the production or energy recovery activity carried
19 out at the facility;

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

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1 of promulgation, including requirements for:

2 (a) maintaining the records of all
3 hazardous waste identified or listed under this subsection that
4 is treated, stored or disposed of, as the case may be, and the
5 manner in which the waste was treated, stored or disposed of;

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

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

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

17 (e) contingency plans for effective
18 action to minimize unanticipated damage from any treatment,
19 storage or disposal of any hazardous waste;

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

25 (g) compliance with the requirements of

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1 Paragraph (6) of this subsection respecting permits for
2 treatment, storage or disposal;

3 (h) the taking of corrective action for
4 all releases of hazardous waste, hazardous constituents or
5 hazardous waste constituents from a solid waste management unit
6 at a treatment, storage or disposal facility, regardless of the
7 time at which waste was placed in the unit; and

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

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1 and continuity of operation consistent with the degree and
2 duration of risks associated with the treatment, storage or
3 disposal of specified hazardous waste;

4 (6) requiring each person owning or operating,
5 or both, an existing facility or planning to construct a new
6 facility for the treatment, storage or disposal of hazardous
7 waste identified or listed under this subsection to have a
8 permit issued pursuant to requirements established by the
9 board;

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

17 (8) defining major and minor modifications;
18 and

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

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1 two years.

2 B. The board shall adopt rules:

3 (1) concerning hazardous substance incidents;

4 and

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

7 C. The board shall adopt rules concerning storage
8 tanks as may be necessary to protect public health and the
9 environment and that, in the case of underground storage tanks,
10 are equivalent to and at least as stringent as federal
11 regulations adopted by the federal environmental protection
12 agency pursuant to the federal Resource Conservation and
13 Recovery Act of 1976, as amended.

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

19 E. Rules adopted pursuant to this section shall
20 include:

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

23 (2) requirements for financial responsibility;

24 (3) standards for inventory control;

25 (4) standards for the detection of leaks from

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1 and the integrity-testing and monitoring of storage tanks;

2 (5) standards for the closure and dismantling
3 of storage tanks;

4 (6) requirements for recordkeeping;

5 (7) requirements for the reporting,
6 containment and remediation of all leaks from any storage
7 tanks; and

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

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

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

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

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

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

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

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

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

25 (2) a storage tank facility that is otherwise

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1 ineligible for delivery or deposit if the delivery or deposit
2 is necessary to test or calibrate a tank.

3 J. The board shall adopt rules concerning the
4 management of used oil that are equivalent to and at least as
5 stringent as federal regulations adopted by the federal
6 environmental protection agency pursuant to the federal
7 Resource Conservation and Recovery Act of 1976, as amended.

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

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