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HOUSE BILL 1057

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE CLANDESTINE DRUG LABORATORY ACT; PROVIDING FOR REMEDIATION, NOTICE AND RESTITUTION; AUTHORIZING DESTRUCTION OF PROPERTY; IMPOSING PENALTIES.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Clandestine Drug Laboratory Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the Clandestine Drug Laboratory Act:

A. "board" means the environmental improvement board;

B. "clandestine drug laboratory" means the area where a controlled substance or a derivative of a controlled

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1 substance has been manufactured, processed, cooked, disposed of  
2 or stored and all proximate areas and equipment that are likely  
3 to be contaminated as a result;

4 C. "controlled substance" means a drug or substance  
5 listed in Schedules I through V of the Controlled Substances  
6 Act;

7 D. "remediation" means the cleanup or removal of  
8 chemicals or contaminants to conform with applicable standards  
9 adopted by the board and any action necessary to investigate,  
10 prevent, minimize or mitigate damages to the public health or  
11 to the environment that may otherwise result from the chemicals  
12 or contaminants; and

13 E. "residual contamination" means chemicals and  
14 contaminants that exist in the area where a clandestine drug  
15 laboratory was found and where visible evidence of chemicals,  
16 equipment or manufacture of a controlled substance was  
17 observed.

18 Section 3. [NEW MATERIAL] CLANDESTINE DRUG LABORATORIES--  
19 PROCEDURES UPON DISCOVERY.--A law enforcement officer who  
20 discovers a clandestine drug laboratory shall:

21 A. seize and remove all chemicals, equipment and  
22 other components of the clandestine drug laboratory;

23 B. order the removal of all persons from the area  
24 where the clandestine drug laboratory existed;

25 C. affix a notice of contamination in a conspicuous

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1 place on the real property, mobile home, recreational or other  
2 vehicle or in the area where the clandestine drug laboratory  
3 existed;

4 D. at the time of discovery, deliver a copy of the  
5 notice of contamination to the occupant, owner, landlord or  
6 manager of the area where the clandestine drug laboratory  
7 existed; and

8 E. within two business days after discovery, send  
9 the notice of contamination:

10 (1) by certified mail to the owner, landlord  
11 or manager of the area where the clandestine drug laboratory  
12 existed;

13 (2) to the department of environment;

14 (3) to the local fire department; and

15 (4) to the county health office.

16 Section 4. [NEW MATERIAL] NOTICE OF CONTAMINATION.--The  
17 notice of contamination shall be in writing and shall contain:

18 A. the word "WARNING" in large bold type at the top  
19 and bottom of the notice;

20 B. a statement that a clandestine drug laboratory  
21 was seized;

22 C. the date of the seizure;

23 D. the address or location of the property,  
24 including the identification of any dwelling unit, room number,  
25 apartment number or vehicle model and number;

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1 E. the name of the law enforcement agency or other  
2 agency that seized the clandestine drug laboratory and the  
3 agency's telephone number;

4 F. a statement that hazardous substances, toxic  
5 chemicals or other waste products may still be present on the  
6 property;

7 G. a statement that it is unlawful for an  
8 unauthorized person to enter the property, mobile home,  
9 recreational or other vehicle or area until the owner, landlord  
10 or manager has remediated the property pursuant to cleanup  
11 standards adopted by the board;

12 H. a statement that it is a fourth degree felony to  
13 violate the provisions of the notice of contamination; and

14 I. a statement that it is a misdemeanor to disturb  
15 the notice of contamination posted on the property.

16 Section 5. [NEW MATERIAL] REMEDIATION OF PROPERTY.--

17 A. The owner of the property shall remediate the  
18 residual contamination in the area where a clandestine drug  
19 laboratory was found.

20 B. The owner shall comply with all requirements,  
21 remediation standards and time limitations established by the  
22 department of environment.

23 C. When remediation is complete, the department of  
24 environment shall issue a document stating its determination  
25 that residual contamination on the property has been

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1 remediated. After receipt of the document, the owner shall  
2 remove the notice of contamination.

3 D. After the department of environment has  
4 determined that the property has been remediated, any person  
5 may use, enter and occupy the property and the owner may sell,  
6 rent, lease, assign or exchange the property without providing  
7 the notice required under Section 6 of the Clandestine Drug  
8 Laboratory Act.

9 E. The department of environment shall maintain and  
10 make available on request any documents and information  
11 relating to the remediation of the property.

12 F. If the property owner and any lien or mortgage  
13 holder refuse to remediate the property or fail to remediate  
14 the property within the time limits imposed by the department  
15 of environment, then the appropriate local government agency  
16 shall condemn the property.

17 Section 6. [NEW MATERIAL] NOTICE BY OWNER--PENALTY.--

18 A. Until remediation is completed, the owner shall  
19 not sell, lease, rent, loan, assign or exchange the residually  
20 contaminated property unless the owner:

21 (1) provides written notice that  
22 methamphetamine or another controlled substance was  
23 manufactured on the property and that the property is  
24 contaminated; and

25 (2) receives a written acknowledgment that the

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1 notice was received by the other party.

2 B. Any formal or informal agreement or contract  
3 shall be void if notice is not provided pursuant to this  
4 section.

5 C. If an owner fails to comply with the provisions  
6 of this section, the owner shall be subject to a civil penalty  
7 of one thousand dollars (\$1,000) and shall be liable for any  
8 harm resulting from the owner's failure to comply with the  
9 requirements of this section.

10 Section 7. [NEW MATERIAL] DESTRUCTION OF CONTAMINATED  
11 PROPERTY.--

12 A. An owner of property used as a clandestine drug  
13 laboratory may elect, in lieu of remediation and cleanup, to  
14 dispose of the contaminated property, if feasible. Any  
15 disposal shall be in accordance with standards adopted by the  
16 board.

17 B. If a mobile home or recreational vehicle in a  
18 space-rental park was used as a clandestine drug laboratory,  
19 the landlord shall request the lienholder and owner of the unit  
20 to remove it from the park within thirty days. If the unit is  
21 not removed within thirty days, the landlord may remove or  
22 dispose of the unit. Removal and disposal shall be in  
23 accordance with standards established by the board. After  
24 disposal of the unit, the landlord shall notify the department  
25 of transportation of the disposal. A landlord shall not be

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1     liable to the owner for actions taken in accordance with this  
2     subsection.

3             Section 8.   ~~[NEW MATERIAL]~~ RESTITUTION TO OWNER.--A person  
4     who has operated a clandestine drug laboratory on property not  
5     owned by that person shall pay restitution to the owner of the  
6     property for all costs and fees that the owner incurred to  
7     remediate or dispose of the property.

8             Section 9.   ~~[NEW MATERIAL]~~ PENALTIES.--

9             A.   A person who knowingly violates a notice of  
10    contamination issued by a law enforcement officer pursuant to  
11    the Clandestine Drug Laboratory Act is guilty of a fourth  
12    degree felony and shall be sentenced in accordance with the  
13    provisions of Section 31-18-15 NMSA 1978.

14            B.   A person who knowingly disturbs a notice of  
15    contamination posted on residually contaminated property is  
16    guilty of a misdemeanor and shall be sentenced in accordance  
17    with the provisions of Section 31-19-1 NMSA 1978.

18            Section 10.   Section 74-4-3 NMSA 1978 (being Laws 1977,  
19    Chapter 313, Section 3, as amended) is amended to read:

20            "74-4-3.   DEFINITIONS.--As used in the Hazardous Waste  
21    Act:

22            A.   "above ground storage tank" means a single tank  
23    or combination of tanks, including underground pipes connected  
24    thereto, that are used to contain petroleum, including crude  
25    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 or heating oil for noncommercial purposes;

8 (2) pipeline facility, including gathering  
9 lines regulated under the federal Natural Gas Pipeline Safety  
10 Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act  
11 of 1979, or that is an intrastate pipeline facility regulated  
12 under state laws comparable to either act;

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

14 (4) storm water or wastewater collection  
15 system;

16 (5) flow-through process tank;

17 (6) liquid trap, tank or associated gathering  
18 lines or other storage methods or devices related to oil, gas  
19 or mining exploration, production, transportation, refining,  
20 processing or storage, or to ~~[the]~~ oil field service industry  
21 operations;

22 (7) tank associated with an emergency  
23 generator system;

24 (8) ~~[pipes]~~ pipe connected to any tank that is  
25 described in Paragraphs (1) through (7) of this subsection; or

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1                   (9) [~~tanks~~] tank or related [~~pipelines~~]  
2 pipeline and [~~facilities~~] facility owned or used by a refinery,  
3 natural gas processing plant or pipeline company in the regular  
4 course of their refining, processing or pipeline business;

5                   B. "board" means the environmental improvement  
6 board;

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

11                  D. "director" or "secretary" means the secretary of  
12 environment;

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

19                  F. "division" or "department" means the department  
20 of environment;

21                  G. "federal agency" means any department, agency or  
22 other instrumentality of the federal government and any  
23 independent agency or establishment of that government,  
24 including any government corporation and the government  
25 printing office;

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

3 I. "hazardous agricultural waste" means hazardous  
4 waste generated as part of [~~his~~] the licensed activity by [~~any~~]  
5 a person licensed pursuant to the Pesticide Control Act or  
6 [~~any~~] hazardous waste designated as hazardous agricultural  
7 waste by the board, but does not include animal excrement in  
8 connection with farm, ranch or feedlot operations;

9 J. "hazardous substance incident" means [~~any~~] an  
10 emergency incident involving a chemical or chemicals, including  
11 but not limited to transportation wrecks, accidental spills or  
12 leaks, fires, [~~or~~] explosions or illegal drug manufacturing  
13 operations, which incident creates the reasonable probability  
14 of injury to human health or property;

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

19 (1) cause or significantly contribute to an  
20 increase in mortality or an increase in serious irreversible or  
21 incapacitating reversible illness; or

22 (2) pose a substantial present or potential  
23 hazard to human health or the environment when improperly  
24 treated, stored, transported, disposed of or otherwise managed.

25 "Hazardous waste" does not include any of the following, until

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1 the board determines that they are subject to Subtitle C of the  
2 federal Resource Conservation and Recovery Act of 1976, as  
3 amended, 42 U.S.C. 6901 et seq.:

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

7 (b) fly ash waste;

8 (c) bottom ash waste;

9 (d) slag waste;

10 (e) flue gas emission control waste  
11 generated primarily from the combustion of coal or other fossil  
12 fuels;

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

17 (g) cement kiln dust waste;

18 L. "manifest" means the form used for identifying  
19 the quantity, composition, origin, routing and destination of  
20 hazardous waste during transportation from point of generation  
21 to point of disposal, treatment or storage;

22 M. "person" means ~~[any]~~ an individual, trust, firm,  
23 joint stock company, federal agency, corporation, including a  
24 government corporation, partnership, association, state,  
25 municipality, commission, political subdivision of a state or

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1 any interstate body;

2 N. "regulated substance" means:

3 (1) [~~any~~] a substance defined in Section  
4 101(14) of the federal Comprehensive Environmental Response,  
5 Compensation, and Liability Act of 1980, but not including  
6 [~~any~~] a substance regulated as a hazardous waste under Subtitle  
7 C of the federal Resource Conservation and Recovery Act of  
8 1976, as amended; and

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

13 O. "solid waste" means any garbage, refuse, sludge  
14 from a waste treatment plant, water supply treatment plant or  
15 air pollution control facility and other discarded material,  
16 including solid, liquid, semisolid or contained gaseous  
17 material resulting from industrial, commercial, mining and  
18 agricultural operations, and from community activities, but  
19 does not include solid or dissolved materials in domestic  
20 sewage or solid or dissolved materials in irrigation return  
21 flows or industrial discharges that are point sources subject  
22 to permits under Section 402 of the federal Water Pollution  
23 Control Act, as amended, 86 Stat. 880, or source, special  
24 nuclear or byproduct material as defined by the federal Atomic  
25 Energy Act of 1954, as amended, 68 Stat. 923;

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1 P. "storage" means the containment of hazardous  
2 waste, either on a temporary basis or for a period of years, in  
3 such a manner as not to constitute disposal of such hazardous  
4 waste;

5 Q. "storage tank" means an above ground storage  
6 tank or an underground storage tank;

7 R. "tank installer" means any individual who  
8 installs or repairs a storage tank;

9 S. "transporter" means a person engaged in the  
10 movement of hazardous waste, not including movement at the site  
11 of generation, disposal, treatment or storage;

12 T. "treatment" means any method, technique or  
13 process, including neutralization, designed to change the  
14 physical, chemical or biological character or composition of  
15 [~~any~~] a hazardous waste so as to neutralize [~~such~~] the waste or  
16 so as to render [~~such~~] the waste nonhazardous, safer for  
17 transport, amenable to recovery, amenable to storage or reduced  
18 in volume. "Treatment" includes any activity or processing  
19 designed to change the physical form or chemical composition of  
20 hazardous waste so as to render it nonhazardous;

21 U. "underground storage tank" means a single tank  
22 or combination of tanks, including underground pipes connected  
23 thereto, that are used to contain an accumulation of regulated  
24 substances and the volume of which, including the volume of the  
25 underground pipes connected thereto, is ten percent or more

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1       beneath the surface of the ground. "Underground storage tank"  
2       does not include any:

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

6                       (2) septic tank;

7                       (3) pipeline facility, including gathering  
8       lines that are regulated under the federal Natural Gas Pipeline  
9       Safety Act of 1968 or the federal Hazardous Liquid Pipeline  
10      Safety Act of 1979, or that is an intrastate pipeline facility  
11      regulated under state laws comparable to either act;

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

13                      (5) storm water or wastewater collection  
14      system;

15                      (6) flow-through process tank;

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

19                      (8) storage tank situated in an underground  
20      area, such as a basement, cellar, mineworking drift, shaft or  
21      tunnel, if the storage tank is situated upon or above the  
22      surface of the undesignated floor;

23                      (9) tank associated with an emergency  
24      generator system;

25                      (10) tank exempted by rule of the board after

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1 finding that the type of tank is adequately regulated under  
2 another federal or state law; or

3 (11) [~~pipes~~] pipe connected to any tank that  
4 is described in Paragraphs (1) through (10) of this subsection;  
5 and

6 V. "used oil" means any oil [~~that has been~~] refined  
7 from crude oil, or any synthetic oil, that has been used and as  
8 a result of such use is contaminated by physical or chemical  
9 impurities."

10 Section 11. Section 74-4-4 NMSA 1978 (being Laws 1977,  
11 Chapter 313, Section 4, as amended) is amended to read:

12 "74-4-4. DUTIES AND POWERS OF THE BOARD.--

13 A. The board shall adopt rules for the management  
14 of hazardous waste, as may be necessary to protect public  
15 health and the environment, that are equivalent to and no more  
16 stringent than federal regulations adopted by the federal  
17 environmental protection agency pursuant to the federal  
18 Resource Conservation and Recovery Act of 1976, as amended:

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

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1 solid wastes as a hazardous waste that has not been listed and  
2 designated as a hazardous waste by the federal environmental  
3 protection agency pursuant to the federal Resource Conservation  
4 and Recovery Act of 1976, as amended;

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

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

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

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

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

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

25 (f) implementation of programs to reduce

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

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

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

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1 (3) establishing standards applicable to  
2 transporters of hazardous waste identified or listed under this  
3 subsection or of fuel produced from any such hazardous waste or  
4 of fuel from such waste and any other material, as may be  
5 necessary to protect human health and the environment,  
6 including but not limited to requirements for:

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

9 (b) transportation of the hazardous  
10 waste only if properly labeled;

11 (c) compliance with the manifest system  
12 referred to in Subparagraph (h) of Paragraph (2) of this  
13 subsection; and

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

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

23 (a) furnishing the information stating  
24 the location and general description of the facility; and

25 (b) furnishing the information

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1 describing the production or energy recovery activity carried  
2 out at the facility;

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

10 (a) maintaining the records of all  
11 hazardous waste identified or listed under this subsection that  
12 is treated, stored or disposed of, as the case may be, and the  
13 manner in which [~~such~~] the waste was treated, stored or  
14 disposed of;

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

18 (c) treatment, storage or disposal of  
19 all such waste and any liquid that is not a hazardous waste,  
20 except with respect to underground injection control into deep  
21 injection wells, received by the facility pursuant to such  
22 operating methods, techniques and practices as may be  
23 satisfactory to the secretary;

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

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1 (e) contingency plans for effective  
2 action to minimize unanticipated damage from any treatment,  
3 storage or disposal of any hazardous waste;

4 (f) maintenance and operation of the  
5 facilities and requiring any additional qualifications as to  
6 ownership, continuity of operation, training for personnel and  
7 financial responsibility, including financial responsibility  
8 for corrective action, as may be necessary or desirable;

9 (g) compliance with the requirements of  
10 Paragraph (6) of this subsection respecting permits for  
11 treatment, storage or disposal;

12 (h) the taking of corrective action for  
13 all releases of hazardous waste or constituents from ~~[any]~~ a  
14 solid waste management unit at a treatment, storage or disposal  
15 facility, regardless of the time at which waste was placed in  
16 the unit; and

17 (I) the taking of corrective action  
18 beyond a facility's boundaries where necessary to protect human  
19 health and the environment unless the owner or operator of that  
20 facility demonstrates to the satisfaction of the secretary  
21 that, despite the owner's or operator's best efforts, the owner  
22 or operator was unable to obtain the necessary permission to  
23 undertake such action. Rules adopted and promulgated under  
24 this subparagraph shall take effect immediately and shall apply  
25 to all facilities operating under permits issued under

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1 Paragraph (6) of this subsection and to all landfills, surface  
2 impoundments and waste pile units, including any new units,  
3 replacements of existing units or lateral expansions of  
4 existing units, that receive hazardous waste after July 26,  
5 1982. No private entity shall be precluded by reason of  
6 criteria established under Subparagraph (f) of this paragraph  
7 from the ownership or operation of facilities providing  
8 hazardous waste treatment, storage or disposal services where  
9 the entity can provide assurance of financial responsibility  
10 and continuity of operation consistent with the degree and  
11 duration of risks associated with the treatment, storage or  
12 disposal of specified hazardous waste;

13 (6) requiring each person owning or operating,  
14 or both, an existing facility or planning to construct a new  
15 facility for the treatment, storage or disposal of hazardous  
16 waste identified or listed under this subsection to have a  
17 permit issued pursuant to requirements established by the  
18 board;

19 (7) establishing procedures for the issuance,  
20 suspension, revocation and modification of permits issued under  
21 Paragraph (6) of this subsection, which rules shall provide for  
22 public notice, public comment and an opportunity for a hearing  
23 prior to the issuance, suspension, revocation or major  
24 modification of any permit unless otherwise provided in the  
25 Hazardous Waste Act;

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1 (8) defining major and minor modifications;  
2 and

3 (9) establishing procedures for the inspection  
4 of facilities for the treatment, storage and disposal of  
5 hazardous waste that govern the minimum frequency and manner of  
6 the inspections, the manner in which records of the inspections  
7 shall be maintained and the manner in which reports of the  
8 inspections shall be filed; provided, however, that inspections  
9 of permitted facilities shall occur no less often than every  
10 two years.

11 B. The board shall adopt rules:

12 (1) concerning hazardous substance incidents,  
13 including remediation standards; and

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

16 C. The board shall adopt rules concerning storage

17 tanks as may be necessary to protect public health and the  
18 environment and that, in the case of underground storage tanks,  
19 are equivalent to and no more stringent than federal  
20 regulations adopted by the federal environmental protection  
21 agency pursuant to the federal Resource Conservation and  
22 Recovery Act of 1976, as amended. Rules adopted pursuant to  
23 this subsection shall include:

24 (1) standards for the installation, operation  
25 and maintenance of storage tanks;

.153894.2

underscoring material = new  
[bracketed material] = delete

- 1 (2) requirements for financial responsibility;  
2 (3) standards for inventory control;  
3 (4) standards for the detection of leaks from  
4 and the integrity-testing and monitoring of storage tanks;  
5 (5) standards for the closure and dismantling  
6 of storage tanks;  
7 (6) requirements for record keeping; and  
8 (7) requirements for the reporting,  
9 containment and remediation of all leaks from any storage  
10 tanks.

11 D. Notwithstanding the provisions of Subsection A  
12 of this section, the board may adopt rules for the management  
13 of hazardous waste and hazardous waste transformation that are  
14 more stringent than federal regulations adopted by the federal  
15 environmental protection agency pursuant to the federal  
16 Resource Conservation and Recovery Act of 1976, as amended, if  
17 the board determines, after notice and public hearing, that  
18 such federal regulations are not sufficient to protect public  
19 health and the environment. As used in this subsection,  
20 "transformation" means incineration, pyrolysis, distillation,  
21 gasification or biological conversion other than composting.

22 E. The board shall adopt rules concerning the  
23 management of used oil that are equivalent to and no more  
24 stringent than federal regulations adopted by the federal  
25 environmental protection agency pursuant to the federal

.153894.2

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

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Resource Conservation and Recovery Act of 1976, as amended.

F. 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."

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.