

1 HOUSE BILL 213

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Paul C. Bandy

5
6
7
8 FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

9
10 AN ACT

11 RELATING TO EXECUTIVE REORGANIZATION; ELIMINATING THE
12 ENVIRONMENTAL IMPROVEMENT BOARD'S AUTHORITY TO ENACT RULES,
13 ISSUE PERMITS OR LICENSES AND CONDUCT HEARINGS AND TRANSFERRING
14 SUCH AUTHORITY TO THE DEPARTMENT OF ENVIRONMENT; TRANSFERRING
15 LICENSING AUTHORITY UNDER THE MEDICAL IMAGING AND RADIATION
16 THERAPY HEALTH AND SAFETY ACT FROM THE DEPARTMENT OF
17 ENVIRONMENT TO THE DEPARTMENT OF HEALTH; TRANSFERRING THE
18 POWERS AND DUTIES OF THE OCCUPATIONAL HEALTH AND SAFETY REVIEW
19 COMMISSION TO THE DEPARTMENT OF ENVIRONMENT; ELIMINATING THE
20 WATER QUALITY CONTROL COMMISSION'S AUTHORITY TO ENACT RULES AND
21 TRANSFERRING SUCH AUTHORITY TO THE DEPARTMENT OF ENVIRONMENT;
22 SPECIFYING MEMBERSHIP QUALIFICATIONS FOR THE WATER QUALITY
23 CONTROL COMMISSION; TRANSFERRING THE POWERS AND DUTIES OF THE
24 WASTEWATER TECHNICAL ADVISORY COMMITTEE TO THE DEPARTMENT OF
25 ENVIRONMENT; ELIMINATING THE STORAGE TANK COMMITTEE, WASTEWATER

.183544.2

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

underscored material = new
[bracketed material] = delete

1 TECHNICAL ADVISORY COMMITTEE, OCCUPATIONAL HEALTH AND SAFETY
2 REVIEW COMMISSION, OCCUPATIONAL HEALTH AND SAFETY SPECIAL
3 COMMITTEES AND FOOD SERVICE SANITATION ADVISORY COUNCIL;
4 SUNSETTING ALL BOARDS AND COMMISSIONS ADDRESSING ENVIRONMENTAL
5 ISSUES; PROVIDING FOR TRANSFERS OF FUNCTIONS, APPROPRIATIONS,
6 MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES;
7 AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978;
8 RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN
9 LAWS 1991 AND 2000; RECONCILING CONFLICTING AMENDMENTS TO THE
10 SAME SECTION OF LAW BY REPEALING LAWS 1991, CHAPTER 185,
11 SECTION 2.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 SECTION 1. Section 25-1-2 NMSA 1978 (being Laws 1977,
15 Chapter 309, Section 2, as amended) is amended to read:

16 "25-1-2. DEFINITIONS.--As used in the Food Service
17 Sanitation Act:

18 A. [~~"agency" or "division"~~] "department" means the
19 department of environment;

20 B. "board" means the environmental improvement
21 board;

22 C. "employee" means any individual employed in a
23 food service establishment who transports food or food
24 containers, who handles food during storage, preparation or
25 serving, who comes in contact with any utensils or who is

.183544.2

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

1 employed in a room in which food is stored, prepared or served;

2 D. "food" means any solid or liquid substance
3 intended for human consumption by eating or drinking;

4 E. "general public" includes beneficiaries of
5 governmental feeding programs and private charitable feeding
6 programs and residents and employees of institutions that
7 provide meals to their residents and employees either with or
8 without direct payment to the institution by the residents or
9 employees;

10 F. "temporary food service establishment" means a
11 food service establishment that operates at a fixed location in
12 conjunction with a single event or celebration for a short
13 period of time not exceeding the event or celebration or not
14 exceeding thirty days;

15 G. "person" means an individual or any other legal
16 entity;

17 H. "food service establishment" means:

18 (1) any fixed or mobile place where food is
19 served and sold for consumption on the premises;

20 (2) any fixed or mobile place where food is
21 prepared for sale to or consumption by the general public
22 either on or off the premises, including any place where food
23 is manufactured for ultimate sale in a sealed original package,
24 but "prepared" as used in this paragraph does not include the
25 preparation of raw fruits, vegetables or pure honey for display

.183544.2

underscored material = new
[bracketed material] = delete

1 and sale in a grocery store or similar operation. For purposes
2 of this paragraph, "pure honey" means natural liquid or solid
3 honey, extracted from the combs or in the comb, taken from
4 beehives, with no processing or additional ingredients. "Food
5 service establishment" does not mean a dairy establishment; and

6 (3) meat markets, whether or not operated in
7 conjunction with a grocery store;

8 I. "utensil" means any implement used in the
9 storage, preparation, transportation or service of food; and

10 J. "dairy establishment" means a milk processing or
11 milk producing facility."

12 SECTION 2. Section 25-1-3 NMSA 1978 (being Laws 1977,
13 Chapter 309, Section 3) is amended to read:

14 "25-1-3. PURPOSE.--The purpose of the Food Service
15 Sanitation Act is to protect the public health by establishing
16 standards and provisions for the regulation of food service
17 establishments and by appropriate delegations of authority to
18 the [~~board and agency~~] department to adopt and enforce
19 regulations covering the environmental health aspects of food
20 service establishments to assure that consumers are not exposed
21 to adverse environmental health conditions arising out of the
22 operations of food service establishments."

23 SECTION 3. Section 25-1-4 NMSA 1978 (being Laws 1977,
24 Chapter 309, Section 4) is amended to read:

25 "25-1-4. [~~BOARD~~] DEPARTMENT--POWERS AND DUTIES.--The

.183544.2

underscored material = new
[bracketed material] = delete

1 [board] department shall promulgate procedural and substantive
2 regulations consistent with the provisions of Section [~~12-12-13~~
3 ~~NMSA 1953~~] 74-1-9 NMSA 1978 and shall include provisions for:

4 A. requiring food service establishments to prepare
5 and serve food in a manner safe for human consumption, free
6 from adulteration, spoilage, contamination and unwholesomeness,
7 and, to accomplish this standard, the following areas of food
8 service establishment operations shall be covered by the
9 regulations:

- 10 (1) disease control;
- 11 (2) employee hygiene and sanitation;
- 12 (3) food service establishment premises
13 sanitation;

14 (4) all aspects of food service establishment
15 construction relating to food service sanitation, including
16 requirements for food service establishment construction plans
17 and specifications review and approval by the [~~agency~~]
18 department;

- 19 (5) control of pests and infestation by pests;
- 20 (6) lavatory and toilet facility placement and
21 sanitation;
- 22 (7) lavatory hygiene;
- 23 (8) food equipment and utensil design and
24 construction;
- 25 (9) food equipment and utensil storage and

underscored material = new
[bracketed material] = delete

1 handling;

2 (10) liquid and solid waste disposal;

3 (11) food and drink preparation, handling,
4 display and storage;

5 (12) food service establishment ventilation;

6 (13) water supply;

7 (14) itinerant food service establishment
8 construction and operation; and

9 (15) any other facet of food service
10 operations that reasonably may be considered to pose an
11 existing or potential hazard to the health of the consuming
12 public;

13 B. the issuance, suspension and revocation of
14 permits required under the Food Service Sanitation Act, which
15 regulations shall provide for prior notice to and a hearing for
16 any applicant for or holder of a permit when the [~~agency~~
17 ~~proposed~~] department-proposed action is to deny an application
18 for or suspend or revoke a permit, except in those specified
19 instances under the provisions of the Food Service Sanitation
20 Act when the [~~agency~~] department is authorized to take any of
21 the foregoing actions without prior notice and hearing; and

22 C. establishing requirements for inspections of
23 food service establishments, which shall include provisions for
24 inspections at a frequency of at least once every twelve
25 months."

.183544.2

underscored material = new
[bracketed material] = delete

1 SECTION 4. Section 25-1-5 NMSA 1978 (being Laws 1977,
2 Chapter 309, Section 5, as amended) is amended to read:

3 "25-1-5. OPTIONAL POWERS.--

4 A. The board may establish a system of grading food
5 service establishments for the purpose of certifying compliance
6 with the Food Service Sanitation Act and regulations requiring
7 food service establishments to display in a designated manner a
8 grade as notice of compliance to the public. Such regulations
9 shall include provisions for the revocation and reinstatement
10 of the permit that are consistent with due process of law.

11 B. The board shall establish a schedule of fees for
12 the issuance and renewal of permits issued by the [~~division~~]
13 department under the Food Service Sanitation Act. The board
14 shall set the schedule of fees so that no fee established by
15 such schedule shall be less than one hundred dollars (\$100) or
16 more than two hundred dollars (\$200) annually for a food
17 service establishment with not more than a twenty-five-dollar
18 (\$25.00) incremental increase per fiscal year. The board shall
19 establish a separate schedule of fees not to exceed twenty-five
20 dollars (\$25.00) per single event or celebration per temporary
21 food service establishment. Fees shall be waived for all
22 temporary non-potentially hazardous food service operations,
23 for any temporary food service establishment operating no more
24 than two calendar days in any calendar month and for any food
25 service establishment that provides food to the general public

.183544.2

underscored material = new
[bracketed material] = delete

1 at no charge. Fees collected for the issuance and renewal of
2 permits pursuant to the Food Service Sanitation Act shall be
3 deposited in the food service sanitation fund."

4 SECTION 5. Section 25-1-5.1 NMSA 1978 (being Laws 1993,
5 Chapter 100, Section 5, as amended) is amended to read:

6 "25-1-5.1. FOOD SERVICE SANITATION FUND.--The "food
7 service sanitation fund" is created in the state treasury, and
8 money in the fund is subject to appropriation by the
9 legislature to the department of environment for the purpose of
10 paying the costs of administering [~~regulations promulgated by~~
11 ~~the board to carry out~~] the provisions of the Food Service
12 Sanitation Act."

13 SECTION 6. Section 25-1-6 NMSA 1978 (being Laws 1977,
14 Chapter 309, Section 6) is amended to read:

15 "25-1-6. [~~AGENCY~~] DEPARTMENT--POWERS AND DUTIES.--

16 A. The [~~agency~~] department is authorized and has
17 the duty to execute any provisions of the Food Service
18 Sanitation Act delegated to it under that act or by the board
19 under authority of that act and specifically is directed to
20 administer and enforce the provisions of regulations adopted
21 under it.

22 B. The [~~director of the agency~~] department may
23 appoint an advisory council composed of food service
24 technicians to assist in carrying out the objectives of the
25 Food Service Sanitation Act."

.183544.2

underscored material = new
[bracketed material] = delete

1 SECTION 7. Section 25-1-7 NMSA 1978 (being Laws 1977,
2 Chapter 309, Section 7, as amended) is amended to read:

3 "25-1-7. PERMITS--PERMIT REQUIRED--APPLICATION--
4 REVOCATION--SUSPENSION.--

5 A. No person may operate a food service
6 establishment unless [~~he~~] the person possesses a valid and
7 unsuspended permit issued by the [~~agency~~] department in
8 accordance with the Food Service Sanitation Act and the
9 regulations adopted under it. The permit shall be posted in a
10 conspicuous place within the food service establishment. No
11 person may display a permit unless it has been issued to [~~him~~]
12 the person by the [~~agency~~] department and has not been revoked
13 and is not under suspension.

14 B. Any person desiring to operate a food service
15 establishment shall apply to the [~~agency~~] department for the
16 issuance of a permit. Applications shall be made in a form and
17 in accordance with procedures established by regulations of the
18 [~~board~~] department. The [~~agency~~] department shall issue a
19 permit to any applicant that complies with the regulations of
20 the [~~board~~] department covering the issuance of permits and who
21 demonstrates to the satisfaction of the [~~agency-his~~] department
22 the ability to comply with all the provisions of the Food
23 Service Sanitation Act and all regulations of the [~~board~~]
24 department applicable to [~~his~~] the applicant's proposed food
25 service establishment operation.

.183544.2

underscored material = new
[bracketed material] = delete

1 C. The [~~board~~] department shall promulgate
2 regulations for the revocation or suspension of permits for
3 those food service establishments [~~which~~] that fail to come
4 into compliance with a provision of the Food Service Sanitation
5 Act or regulation promulgated under it. No permit shall be
6 suspended or revoked under the provisions of this subsection
7 unless there have been repeated violations of the same standard
8 and without first providing the operator of a food service
9 establishment an opportunity for [~~an agency~~] a department
10 hearing. The hearing officer shall not be any person
11 previously involved in the suspension or revocation action. No
12 inspection made more than twenty-four months prior to the most
13 recent [~~such~~] inspection shall be used as a basis for
14 suspension or revocation."

15 **SECTION 8.** Section 25-1-8 NMSA 1978 (being Laws 1977,
16 Chapter 309, Section 8) is amended to read:

17 "25-1-8. INSPECTION BY [~~AGENCY~~] DEPARTMENT.--

18 A. The [~~agency~~] department shall inspect food
19 service establishments to determine compliance or lack of
20 compliance with the Food Service Sanitation Act and regulations
21 of the [~~board~~] department. The procedures for inspection shall
22 be in accordance with regulations of the [~~board~~] department.
23 Upon request by the [~~agency~~] department to a food service
24 establishment operator or to [~~his~~] an employee or agent in
25 charge of the food service establishment premises, [~~he~~] the

.183544.2

underscored material = new
[bracketed material] = delete

1 operator shall permit the [~~agency~~] department official, upon
2 proper identification, to enter the premises, inspect all parts
3 of the premises and inspect and copy any records of food
4 purchases by the food service establishment. The operator or
5 [~~his~~] an employee or agent in charge of the food service
6 establishment premises shall be given an opportunity to
7 accompany the [~~agency~~] department official on [~~his~~] the
8 inspection and, as soon as possible after the inspection, a
9 report of the inspection shall be furnished to [~~him~~] the
10 operator. Refusal to allow an inspection is grounds for
11 revocation of the permit of the operator, provided that the
12 [~~agency~~] department official has tendered proper identification
13 prior to the refusal.

14 B. During an inspection, the [~~agency~~] department
15 may take samples of food and other substances found on the
16 premises for the purpose of determining compliance with
17 provisions of the Food Service Sanitation Act and regulations
18 of the [~~board~~] department."

19 SECTION 9. Section 25-1-9 NMSA 1978 (being Laws 1977,
20 Chapter 309, Section 9) is amended to read:

21 "25-1-9. IMMEDIATE SUSPENSION OF PERMIT BY [~~AGENCY~~]
22 DEPARTMENT.--The [~~agency~~] department may suspend a permit
23 immediately without prior notice to the holder of the permit if
24 it determines, after inspection, that conditions within a food
25 service establishment present a substantial danger of illness,

.183544.2

underscored material = new
[bracketed material] = delete

1 serious physical harm or death to consumers who might patronize
2 the food service establishment. A suspension action taken
3 under this section is effective when communicated to the food
4 service establishment operator or any employee or agent of the
5 operator who is in charge of the premises involved. If there
6 is no designated employee or agent in charge of the premises,
7 communication to any employee physically present on the
8 premises is sufficient communication to make the suspension
9 effective. No suspension action taken under this section shall
10 continue beyond the time that the conditions causing the
11 suspension cease to exist, as determined by an inspection by
12 the [agency] department at the request of the food service
13 operator."

14 SECTION 10. Section 25-1-10 NMSA 1978 (being Laws 1977,
15 Chapter 309, Section 10) is amended to read:

16 "25-1-10. PROCEEDING UNDER NEW MEXICO FOOD ACT AUTHORIZED
17 WHEN ADULTERATED OR MISBRANDED FOOD FOUND DURING INSPECTION.--
18 Whenever, during an inspection authorized under the Food
19 Service Sanitation Act, the [agency] department finds or has
20 probable cause to believe that any food on the food service
21 establishment premises is adulterated or so misbranded as to be
22 dangerous or fraudulent within the meaning of the New Mexico
23 Food Act, it may proceed immediately to have the food detained,
24 embargoed, destroyed or condemned under the provisions of
25 Section [~~54-1-6 NMSA 1953~~] 25-2-6 NMSA 1978."

.183544.2

underscored material = new
[bracketed material] = delete

1 SECTION 11. Section 25-1-11 NMSA 1978 (being Laws 1977,
2 Chapter 309, Section 11, as amended) is amended to read:

3 "25-1-11. JUDICIAL REVIEW OF [~~BOARD AND DIVISION~~]
4 DEPARTMENT ACTIONS.--

5 A. Rules adopted by the [~~board~~] department are
6 subject to judicial review under the provisions of Section
7 74-1-9 NMSA 1978.

8 B. Any person to whom the [~~division~~] department
9 denies a permit or whose permit is suspended or revoked by the
10 division may appeal to the district court pursuant to the
11 provisions of Section 39-3-1.1 NMSA 1978."

12 SECTION 12. Section 25-1-12 NMSA 1978 (being Laws 1977,
13 Chapter 309, Section 12) is amended to read:

14 "25-1-12. ENFORCEMENT.--

15 A. The [~~agency~~] department may seek relief in
16 district court to enjoin the operation of any food service
17 establishment not complying with the Food Service Sanitation
18 Act or any regulation adopted under that act.

19 B. In addition to granting injunctive relief, the
20 district court may impose a civil penalty not exceeding five
21 hundred dollars (\$500) on any person who violates any provision
22 of the Food Service Sanitation Act. Each [~~and every~~] violation
23 of the provisions of that act [~~shall constitute~~] constitutes a
24 separate offense."

25 SECTION 13. A new section of the Food Service Sanitation

.183544.2

underscored material = new
[bracketed material] = delete

1 Act is enacted to read:

2 "[NEW MATERIAL] BOARD DUTIES.--The board shall assist the
3 department in carrying out the objectives of the Food Service
4 Sanitation Act, including advising the department on permit
5 applications and regulations adopted pursuant to that act and
6 other duties as determined by the department."

7 SECTION 14. Section 25-2-1 NMSA 1978 (being Laws 1951,
8 Chapter 169, Section 1) is amended to read:

9 "25-2-1. SHORT TITLE.--~~[This Act]~~ Chapter 25, Article 2
10 NMSA 1978 may be cited as the "New Mexico Food Act".

11 SECTION 15. Section 25-2-2 NMSA 1978 (being Laws 1951,
12 Chapter 169, Section 2, as amended) is amended to read:

13 "25-2-2. DEFINITIONS.--For the purpose of the New Mexico
14 Food Act:

- 15 A. "board" means the environmental improvement
16 board;
- 17 B. "dairy establishment" means a milk processing or
18 milk producing facility;
- 19 C. "department" or "division" means the department
20 of environment;
- 21 D. "director" means the secretary of environment or
22 ~~[his]~~ the secretary's authorized representative;
- 23 E. "person" includes an individual, partnership,
24 corporation and association;
- 25 F. "food" means:

underscored material = new
[bracketed material] = delete

1 (1) articles used for food or drink for [~~man~~]
2 people or animals;

3 (2) chewing gum; and

4 (3) articles used for components of food or
5 drink or chewing gum for [~~man~~] people or animals;

6 G. "label" means a display of written, printed or
7 graphic matter upon the immediate container of any article. A
8 requirement made by or under authority of the New Mexico Food
9 Act that any word, statement or other information appear on the
10 label shall not be considered to be complied with unless such
11 word, statement or other information also appears on the
12 outside container or wrapper, if any, of the retail package of
13 such article or is easily legible through the outside container
14 or wrapper;

15 H. "immediate container" does not include package
16 liners;

17 I. "labeling" means all labels and other written,
18 printed or graphic matter:

19 (1) upon an article or any of its containers
20 or wrappers; or

21 (2) accompanying such article;

22 [~~J. if an article is alleged to be misbranded~~
23 ~~because the labeling is misleading or if an advertisement is~~
24 ~~alleged to be false because it is misleading, then in~~
25 ~~determining whether the labeling or advertisement is~~

.183544.2

underscored material = new
[bracketed material] = delete

1 ~~misleading, there shall be taken into account, among other~~
2 ~~things, not only representations made or suggested by~~
3 ~~statement, word, design, device, sound or in any combination~~
4 ~~thereof, but also the extent to which the labeling or~~
5 ~~advertisement fails to reveal facts material in the light of~~
6 ~~such representations or material with respect to consequences~~
7 ~~which may result from the use of the article to which the~~
8 ~~labeling or advertisement relates under the conditions of use~~
9 ~~prescribed in the labeling or advertisement thereof or under~~
10 ~~such conditions of use as are customary or usual;~~

11 ~~K.]~~ J. "advertisement" means all representations
12 disseminated in any manner or by any means, other than by
13 labeling, for the purpose of inducing, or ~~[which]~~ that are
14 likely to induce, directly or indirectly, the purchase of food;

15 ~~[L.]~~ K. "contaminated with filth" applies to any
16 food not securely protected from dust, dirt and, so far as may
17 be necessary by all reasonable means, from all foreign or
18 injurious contaminations, or any food found to contain any
19 dust, dirt, foreign or injurious contamination or infestation;
20 and

21 ~~[M. the provisions shall be considered to include~~
22 ~~the manufacture, production, processing, packing, exposure,~~
23 ~~offer, possession and holding of any such article and the~~
24 ~~supplying or applying of any such articles in the conduct of~~
25 ~~any food establishment; and~~

.183544.2

underscored material = new
[bracketed material] = delete

1 N.] L. "federal act" means the Federal Food, Drug,
2 and Cosmetic Act, [~~21 USC § 301 et seq.~~] the Federal Meat
3 Inspection Act [~~21 USC § 601 et seq.~~] and the federal Poultry
4 Products Inspection Act [~~21 USC § 451 et seq.~~]."

5 SECTION 16. Section 25-2-3 NMSA 1978 (being Laws 1951,
6 Chapter 169, Section 3) is amended to read:

7 "25-2-3. PROHIBITED ACTS.--

8 A. The following acts and the causing thereof
9 within the state [~~of New Mexico~~] are [~~hereby~~] prohibited:

10 [~~(a)~~] (1) the manufacture, sale or delivery or
11 holding or offering for sale of any food that is adulterated or
12 misbranded;

13 [~~(b)~~] (2) the adulteration or misbranding of
14 any food;

15 [~~(c)~~] (3) the receipt in commerce of any food
16 that is adulterated or misbranded and the delivery or proffered
17 delivery [~~thereof~~] of the adulterated or misbranded food for
18 pay or otherwise;

19 [~~(d)~~] (4) the sale, delivery for sale, holding
20 for sale or offering for sale of any article in violation of
21 Section [~~12~~] 25-2-12 NMSA 1978;

22 [~~(e)~~] (5) the dissemination of any false
23 advertisement;

24 [~~(f)~~] (6) the refusal to permit entry or
25 inspection or to permit the taking of a sample as authorized by

underscored material = new
[bracketed material] = delete

1 Section [~~16~~] 25-2-16 NMSA 1978;

2 [~~(g)~~] (7) the giving of a guaranty or
3 undertaking, which guaranty or undertaking is false, except by
4 a person who relied on a guaranty or undertaking to the same
5 effect signed by and containing the name and address of the
6 person residing in the state [~~of New Mexico~~] from whom [~~he~~] the
7 person received the food in good faith;

8 [~~(h)~~] (8) the removal or disposal of a
9 detained or embargoed article in violation of Section [~~6~~]
10 25-2-6 NMSA 1978;

11 [~~(i)~~] (9) the alteration, mutilation,
12 destruction, obliteration or removal of the whole or any part
13 of the labeling of, or the doing of any other act with respect
14 to, a food if such act is done while [~~such~~] the article is held
15 for sale and results in [~~such~~] the article being misbranded;
16 and

17 [~~(j)~~] (10) forging, counterfeiting, simulating
18 or falsely representing or without proper authority using any
19 mark, stamp, tag, label or other identification device
20 authorized or required by regulations promulgated under the
21 provisions of [~~this~~] the New Mexico Food Act.

22 B. If an article is alleged to be misbranded because
23 the labeling is misleading or if an advertisement is alleged to
24 be false because it is misleading, then in determining whether
25 the labeling or advertisement is misleading, there shall be

.183544.2

underscored material = new
[bracketed material] = delete

1 taken into account, among other things, not only
2 representations made or suggested by statement, word, design,
3 device, sound or in any combination thereof, but also the
4 extent to which the labeling or advertisement fails to reveal
5 facts material in the light of such representations or material
6 with respect to consequences that may result from the use of
7 the article to which the labeling or advertisement relates
8 under the conditions of use prescribed in the labeling or
9 advertisement thereof or under such conditions of use as are
10 customary or usual.

11 C. The prohibitions in this section shall apply
12 equally to the manufacture, production, processing, packing,
13 exposure, offer, possession and holding of adulterated or
14 misbranded food by any food establishment."

15 SECTION 17. Section 25-2-9 NMSA 1978 (being Laws 1951,
16 Chapter 169, Section 9, as amended) is amended to read:

17 "25-2-9. PROMULGATION OF DEFINITIONS AND STANDARDS BY THE
18 [BOARD] DEPARTMENT.--

19 A. Whenever in the judgment of the [board] department
20 such action will promote honesty and fair dealing in the
21 interest of consumers, the [board] department shall promulgate
22 regulations fixing and establishing for any food or class of
23 food a reasonable definition and standard of identity or
24 reasonable standard of quality or fill of container or any
25 combination of such requirements. In prescribing a definition

.183544.2

underscoring material = new
[bracketed material] = delete

1 and standard of identity for any food or class of food in which
2 optional ingredients are permitted, the ~~[board]~~ department
3 shall, for the purpose of promoting honesty and fair dealing in
4 the interest of consumers, designate the optional ingredients
5 ~~[which]~~ that shall be named on the label. The definitions and
6 standards ~~[so]~~ promulgated shall conform so far as practicable
7 to the definitions and standards promulgated under the
8 authority of the federal act.

9 B. In promulgating regulations pursuant to this
10 section, the ~~[board]~~ department shall follow the procedures set
11 forth in Section 74-1-9 NMSA 1978."

12 SECTION 18. Section 25-2-11 NMSA 1978 (being Laws 1951,
13 Chapter 169, Section 11) is amended to read:

14 "25-2-11. FOOD DEEMED MISBRANDED.--A food shall be deemed
15 to be misbranded:

16 ~~[(a)]~~ A. if its labeling is false or misleading in
17 any particular;

18 ~~[(b)]~~ B. if it is offered for sale under the name of
19 another food;

20 ~~[(c)]~~ C. if it is an imitation of another food,
21 unless its label bears, in type of uniform size and prominence,
22 the word "imitation" and, immediately thereafter, the name of
23 the food imitated;

24 ~~[(d)]~~ D. if its container is so made, formed or
25 filled as to be misleading;

.183544.2

underscored material = new
[bracketed material] = delete

1 [~~e~~] E. if in package form, unless it bears a label
2 containing:

3 (1) the name and place of business of the
4 manufacturer, packer or distributor; or

5 (2) an accurate statement of the quantity of the
6 contents in terms of weight, measure or numerical count;
7 provided that, [~~under clause (2) of~~] pursuant to this
8 paragraph, reasonable variations shall be permitted and
9 exemptions as to small packages shall be established by
10 regulations prescribed by the [~~board~~] department;

11 [~~f~~] F. if any word, statement or other information
12 required by or under authority of [~~this~~] the New Mexico Food
13 Act to appear on the label or labeling is not prominently
14 placed [~~thereon~~] with such conspicuousness, as compared with
15 other words, statements, designs or devices in the labeling,
16 and in such terms as to render it likely to be read and
17 understood by the ordinary individual under customary
18 conditions of purchase and use;

19 [~~g~~] G. if it purports to be or is represented as a
20 food for which a definition and standard of identity has been
21 prescribed by regulations as provided by Section [9] 25-2-9
22 NMSA 1978 unless:

23 (1) it conforms to such definition and standard;

24 and

25 (2) its label bears the name of the food

.183544.2

underscored material = new
[bracketed material] = delete

1 specified in the definition and standard and, insofar as may be
2 required by such regulations, the common names of optional
3 ingredients, other than spices, flavoring and coloring, present
4 in such food;

5 [~~(h)~~] H. if it purports to be or is represented as:

6 (1) a food for which a standard of quality has
7 been prescribed by regulations as provided by Section [9]
8 25-2-9 NMSA 1978 and its quality falls below [~~such~~] that
9 standard unless its label bears in such manner and form as
10 [~~such~~] the regulations specify a statement that it falls below
11 [~~such~~] the standard; or

12 (2) a food for which a standard [~~or standards~~]
13 of fill of container [~~have~~] has been prescribed by regulation
14 as provided by Section [9] 25-2-9 NMSA 1978 and it falls below
15 the standard of fill of container applicable [~~thereto~~] to it,
16 unless its label bears in such manner and form as [~~such~~] the
17 regulations specify a statement that it falls below [~~such~~] the
18 standard;

19 [~~(i)~~] I. if it is not subject to the provisions of
20 [~~paragraph (g)~~] Subsection G of this section, unless it bears
21 labeling clearly giving:

22 (1) the common or usual name of the food, if any
23 [~~there be~~]; and

24 (2) in case it is fabricated from two or more
25 ingredients, the common or usual name of each [~~such~~]

.183544.2

underscored material = new
[bracketed material] = delete

1 ingredient, except that spices, flavorings and colorings, other
2 than those sold as such, may be designated as spices,
3 flavorings and colorings without naming each; provided that to
4 the extent that compliance with the requirements of [~~clause (2)~~
5 ~~of~~] this paragraph is impractical or results in deception or
6 unfair competition, exemptions shall be established by
7 regulations promulgated by the [~~board~~] department; and provided
8 further that the requirements of [~~Clause (2) of~~] this paragraph
9 shall not apply to any carbonated beverage, the ingredients of
10 which have been fully and correctly disclosed in an affidavit
11 filed with the [~~board~~] department;

12 [~~(j)~~] J. if it purports to be or is represented for
13 special dietary uses, unless its label bears such information
14 concerning its vitamin, mineral and other dietary properties as
15 the [~~board~~] department determines to be, and by regulations
16 [~~prescribed~~] prescribes as, necessary in order to fully inform
17 purchasers as to its value for such uses; and

18 [~~(k)~~] K. if it bears or contains any artificial
19 flavoring, artificial coloring or chemical preservative, unless
20 it bears labeling stating that fact; provided that to the
21 extent that compliance with the requirements of this
22 [~~paragraph~~] subsection is impracticable, exemptions shall be
23 established by regulations promulgated by the [~~board~~]
24 department."

25 SECTION 19. Section 25-2-12 NMSA 1978 (being Laws 1951,

.183544.2

underscored material = new
[bracketed material] = delete

1 Chapter 169, Section 12, as amended) is amended to read:

2 "25-2-12. MANUFACTURING, PACKING AND PROCESSING PERMITS
3 FOR CERTAIN CLASSES OF FOOD--SUSPENSION--INSPECTIONS.--

4 A. Whenever the [~~board~~] department finds after
5 investigation that the distribution in New Mexico of any class
6 of food may, by reason of contamination with microorganisms
7 during manufacture, processing or packing [~~thereof~~] in any
8 locality, be injurious to health and that such injurious nature
9 cannot be adequately determined after [~~such~~] the articles have
10 entered commerce, [~~it~~] the department then and in such case
11 only shall promulgate regulations providing for the issuance,
12 by the director to manufacturers, processors or packers of such
13 class of food in such locality, of permits to which shall be
14 attached such conditions governing the manufacture, processing
15 or packing of such class of food for such temporary period of
16 time as may be necessary to protect the public health, and
17 after the effective date of [~~such~~] the regulations and during
18 [~~such~~] the temporary period, no person shall introduce or
19 deliver for introduction into commerce any such food
20 manufactured, processed or packed by any such manufacturer,
21 processor or packer unless [~~such~~] the manufacturer, processor
22 or packer holds a permit issued by the director as provided by
23 such regulations. In promulgating regulations pursuant to this
24 section, the [~~board~~] department shall follow the procedures set
25 forth in Section 74-1-9 NMSA 1978.

.183544.2

underscored material = new
[bracketed material] = delete

1 B. The director is authorized to suspend immediately
2 upon notice any permit issued under authority of this section
3 if it is found that any of the conditions of the permit have
4 been violated. The holder of a permit so suspended shall be
5 privileged at any time to apply for the reinstatement of [~~such~~]
6 the permit, and the director shall, immediately after prompt
7 hearing and an inspection of the establishment, reinstate
8 [~~such~~] the permit if it is found that adequate measures have
9 been taken to comply with and maintain the conditions of the
10 permit as originally issued or as amended.

11 C. The director shall have access to any factory or
12 establishment, the operator of which holds a permit from the
13 director, for the purpose of ascertaining whether or not the
14 conditions of the permit are being complied with, and denial of
15 access for [~~such~~] inspection shall be ground for suspension of
16 the permit until [~~such~~] access is freely given by the
17 operator."

18 **SECTION 20.** Section 25-2-13 NMSA 1978 (being Laws 1951,
19 Chapter 169, Section 13, as amended) is amended to read:

20 "25-2-13. PROMULGATING REGULATIONS GOVERNING THE ADDITION
21 OF ANY POISONOUS OR DELETERIOUS SUBSTANCES IN FOOD.--

22 A. Any poisonous or deleterious substance added to
23 any food, except where [~~such~~] the substance is required in
24 [~~the~~] production [~~thereof~~] or cannot be avoided by good
25 manufacturing practice, shall be deemed to be unsafe for

.183544.2

underscored material = new
[bracketed material] = delete

1 purposes of the application of Paragraph (2) of Subsection A of
2 Section 25-2-10 NMSA 1978; but when [~~such~~] the substance is
3 [~~so~~] required or cannot be [~~so~~] avoided, the [~~board~~] department
4 shall promulgate regulations limiting the quantity therein or
5 thereon to such extent as the [~~board~~] department finds
6 necessary for the protection of public health, and any quantity
7 exceeding the limits so fixed shall also be deemed to be unsafe
8 for [~~purpose~~] purposes of the application of Paragraph (2) of
9 Subsection A of Section 25-2-10 NMSA 1978. While such a
10 regulation is in effect limiting the quantity of any such
11 substance in the case of any food, [~~such~~] the food shall not,
12 by reason of bearing or containing any added amount of [~~such~~]
13 the substance, be considered to be adulterated within the
14 meaning of Paragraph (1) of Subsection A of Section 25-2-10
15 NMSA 1978. In determining the quantity of [~~such~~] the added
16 substance to be tolerated in or on different articles of food,
17 the [~~board~~] department shall take into account the extent to
18 which the use of [~~such~~] the substance is required or cannot be
19 avoided in the production of each [~~such~~] article and the other
20 ways in which the consumer may be affected by the same or other
21 poisonous or deleterious substances.

22 B. In promulgating regulations pursuant to this
23 section, the [~~board~~] department shall follow the procedure set
24 forth in Section 74-1-9 NMSA 1978."

25 SECTION 21. Section 25-2-15 NMSA 1978 (being Laws 1951,

.183544.2

underscored material = new
[bracketed material] = delete

1 Chapter 169, Section 15, as amended) is amended to read:

2 "25-2-15. PROMULGATING REGULATIONS--PROCEDURE.--

3 A. The authority to promulgate regulations for the
4 efficient enforcement of the New Mexico Food Act is [~~hereby~~]
5 vested in the [~~board~~] department. The [~~board~~] department is
6 [~~hereby~~] authorized to make the regulations promulgated under
7 the federal act.

8 B. In promulgating regulations pursuant to this
9 section, the board shall assist the department, and the
10 department shall follow the procedures set forth in Section
11 74-1-9 NMSA 1978."

12 SECTION 22. Section 25-5-1 NMSA 1978 (being Laws 1955,
13 Chapter 244, Section 1, as amended) is amended to read:

14 "25-5-1. DEFINITIONS.--As used in the Flour and Bread
15 Act, unless the context otherwise requires:

16 A. "flour" means foods commonly known in the milling
17 and baking industries [~~as~~] and:

18 (1) includes:

19 (a) white flour, also known as wheat flour
20 or plain flour;

21 [~~(2)~~] (b) bromated flour;

22 [~~(3)~~] (c) self-rising flour, also known as
23 self-rising white flour or self-rising wheat flour; and

24 [~~(4)~~] (d) phosphated flour, also known as
25 phosphated white flour or phosphated wheat flour; [~~but~~] and

.183544.2

underscored material = new
[bracketed material] = delete

1 (2) excludes whole wheat flour and [~~also~~
2 ~~excludes~~] special flours not used for bread, roll, bun or
3 biscuit baking, such as specialty cake, pancake and pastry
4 flours;

5 B. "white bread" means any bread made with flour as
6 defined in Subsection A of this section, whether baked in a pan
7 or on a hearth or screen, [~~which~~] that is commonly known or
8 usually represented and sold as white bread, including Vienna
9 bread, French bread and Italian bread;

10 C. "rolls" includes plain white rolls and buns of the
11 semi-bread dough type, namely: soft rolls such as hamburger
12 rolls, hot dog rolls and Parker House rolls and hard rolls such
13 as Vienna rolls and Kaiser rolls, but [~~shall~~] does not include
14 yeast-raised sweet rolls or sweet buns made with fillings or
15 coatings such as cinnamon rolls or buns and butterfly rolls;

16 D. "board" means the environmental improvement board;

17 E. "director" means the [~~director of the division~~]
18 secretary of environment or [~~his~~] the secretary's authorized
19 representative;

20 F. "division" means the [~~environmental improvement~~
21 ~~division of the health and~~] department of environment
22 [~~department~~]; and

23 G. "person" means an individual, corporation,
24 partnership, association, joint stock company, trust or any
25 group of persons, whether incorporated or not, engaged in the

.183544.2

underscored material = new
[bracketed material] = delete

1 commercial manufacture or sale of flour, white bread or rolls."

2 SECTION 23. Section 25-5-1.1 NMSA 1978 (being Laws 1982,
3 Chapter 73, Section 15) is amended to read:

4 "25-5-1.1. SHORT TITLE.--~~[Sections 25-5-1 through 25-5-9]~~
5 Chapter 25, Article 5 NMSA 1978 may be cited as the "Flour and
6 Bread Act"."

7 SECTION 24. Section 25-5-2 NMSA 1978 (being Laws 1955,
8 Chapter 244, Section 2) is amended to read:

9 "25-5-2. MANUFACTURE OR SALE OF UNENRICHED FLOUR
10 UNLAWFUL.--

11 A. It ~~[shall be]~~ is unlawful for any person to
12 manufacture, mix, compound, sell or offer for sale for human
13 consumption in this state flour ~~[(as defined in Section 1)]~~
14 unless the following vitamins and minerals are contained in
15 each pound of ~~[such]~~ the flour: not less than two milligrams
16 and not more than two and one-half milligrams of thiamine; not
17 less than one and two-tenths milligrams and not more than one
18 and one-half milligrams of riboflavin; not less than sixteen
19 milligrams and not more than twenty milligrams of niacin or
20 niacin-amide; and not less than thirteen milligrams and not
21 more than sixteen and one-half milligrams of iron (Fe); except
22 in the case of self-rising flour ~~[which]~~ that, in addition to
23 the above ingredients, shall contain not less than five hundred
24 milligrams and not more than fifteen hundred milligrams of
25 calcium (Ca); provided, however, that the terms of this section

.183544.2

underscored material = new
[bracketed material] = delete

1 shall not apply to flour sold to distributors, bakers or other
2 processors if the purchaser furnishes to the seller a
3 certificate in such form as the ~~[board shall]~~ division by
4 regulation ~~[prescribe]~~ prescribes certifying that ~~[such]~~ the
5 flour will be:

6 (1) resold to a distributor, baker or other
7 processor; ~~[or]~~

8 (2) used in the manufacture, mixing or
9 compounding of flour, white bread or rolls enriched to meet the
10 requirements of ~~[this]~~ the Flour and Bread Act; or

11 (3) used in the manufacture of products other
12 than flour, white bread or rolls.

13 B. It ~~[shall be]~~ is unlawful for any such purchaser
14 so furnishing any such certificate to use or resell the flour
15 ~~[so]~~ purchased in any manner other than as prescribed in this
16 section."

17 **SECTION 25.** Section 25-5-4 NMSA 1978 (being Laws 1955,
18 Chapter 244, Section 4, as amended) is amended to read:

19 "25-5-4. DIVISION--DUTY TO ENFORCE.--The division is
20 ~~[hereby]~~ charged with the duty of enforcing the provisions of
21 the Flour and Bread Act ~~[and rules, regulations and orders of~~
22 ~~the board promulgated pursuant to the Flour and Bread Act]."~~

23 **SECTION 26.** Section 25-5-5 NMSA 1978 (being Laws 1955,
24 Chapter 244, Section 5, as amended) is amended to read:

25 "25-5-5. ~~[BOARD]~~ DIVISION--REVISION OF REQUIREMENTS.--

.183544.2

underscored material = new
[bracketed material] = delete

1 A. Whenever the vitamin and mineral requirements set
2 forth in Sections 25-5-2 and 25-5-3 NMSA 1978 are no longer in
3 conformity with the legally established standards governing the
4 interstate shipment of enriched flour and enriched white bread
5 or enriched rolls, the [~~board~~] division, in order to maintain
6 uniformity between intrastate and interstate vitamin and
7 mineral requirements for the foods within the provisions of the
8 Flour and Bread Act, is authorized and directed to modify or
9 revise such requirements to conform with amended standards
10 governing interstate shipments.

11 B. In promulgating regulations pursuant to this
12 section, the [~~board~~] division shall follow the procedures set
13 forth in Section 74-1-9 NMSA 1978."

14 **SECTION 27.** Section 25-5-6 NMSA 1978 (being Laws 1955,
15 Chapter 244, Section 6, as amended) is amended to read:

16 "25-5-6. [~~BOARD~~] DIVISION--POWER TO ADJUST IN CASE OF
17 SHORTAGE.--

18 A. In the event of findings by the [~~board~~] division
19 that there is an existing or imminent shortage of any
20 ingredient required by Section 25-5-2 or 25-5-3 NMSA 1978 and
21 that because of [~~such~~] the shortage the sale and distribution
22 of flour or white bread or rolls may be impeded by the
23 enforcement of the Flour and Bread Act, the [~~board~~] division
24 shall issue an order, to be effective immediately upon
25 issuance, permitting the omission of [~~such~~] the ingredient from

.183544.2

underscored material = new
[bracketed material] = delete

1 flour or white bread or rolls and, if it finds it necessary or
2 appropriate, excepting such foods from labeling requirements
3 until the further order of the [~~board~~] division. Any such
4 findings may be made without hearings on the basis of an order
5 or of factual information supplied by the appropriate federal
6 agency or officer. In the absence of any such order of the
7 appropriate federal agency or factual information supplied by
8 it, the [~~board~~] division on its own motion may, and upon
9 receiving the sworn statements of ten or more persons subject
10 to the Flour and Bread Act that they believe [~~such~~] a shortage
11 exists or is imminent shall, within twenty days [~~thereafter~~]
12 hold a public hearing with respect [~~thereto~~] to the shortage,
13 at which any interested person may present evidence, and shall
14 make findings based upon the evidence presented. The [~~board~~]
15 division shall publish notice of [~~any such~~] the hearing at
16 least ten days prior [~~thereto~~] to the hearing.

17 B. Whenever the [~~board~~] division has reason to
18 believe that [~~such~~] the shortage no longer exists, it shall
19 hold a public hearing, after at least ten days' notice [~~shall~~
20 ~~have~~] has been given, at which any interested person may
21 present evidence, and it shall make findings based upon the
22 evidence [~~so~~] presented. If [~~its findings be~~] the division
23 finds that [~~such~~] the shortage no longer exists, it shall issue
24 an order to become effective not less than thirty days after
25 publication [~~thereof~~] revoking [~~such~~] the previous order;

.183544.2

underscored material = new
[bracketed material] = delete

1 provided, however, that undisposed of flour stocks of flour on
2 hand at the effective date of [~~such~~] the revocation order or
3 flour manufactured prior to [~~such~~] the effective date for sale
4 in this state may thereafter be lawfully sold or disposed of.

5 C. In conducting hearings pursuant to this section,
6 the [~~board~~] division shall follow the procedures set forth in
7 Section 74-1-9 NMSA 1978, except for the number of days' notice
8 required for [~~such~~] the hearing."

9 SECTION 28. Section 25-5-7 NMSA 1978 (being Laws 1955,
10 Chapter 244, Section 7) is amended to read:

11 "25-5-7. PUBLICATION OF REGULATIONS.--All orders, rules
12 and regulations adopted by the [~~board~~] division pursuant to
13 [~~this~~] the Flour and Bread Act shall be published at least
14 twice in at least one daily newspaper of general circulation
15 printed and published in this state and shall become effective
16 upon such date after publication as the [~~board shall fix~~]
17 division fixes."

18 SECTION 29. Section 25-5-9 NMSA 1978 (being Laws 1955,
19 Chapter 244, Section 9) is amended to read:

20 "25-5-9. PENALTY.--Any person who violates any of the
21 provisions of [~~this~~] the Flour and Bread Act or the orders,
22 rules or regulations promulgated by the [~~board~~] division under
23 authority [~~thereof, shall~~] of that act, upon conviction,
24 [~~thereof be subjected~~] is subject to fine for each [~~and every~~]
25 offense in a sum not exceeding five hundred dollars [~~(\$500.00)]~~

.183544.2

underscored material = new
[bracketed material] = delete

1 (\$500) or to imprisonment not to exceed ninety days."

2 SECTION 30. A new section of the Flour and Bread Act is
3 enacted to read:

4 "[NEW MATERIAL] BOARD DUTIES.--The board shall assist the
5 division in carrying out the objectives of the Flour and Bread
6 Act, including advising the division on regulations enacted
7 pursuant to that act and other duties as determined by the
8 division."

9 SECTION 31. Section 50-9-1 NMSA 1978 (being Laws 1972,
10 Chapter 63, Section 1, as amended) is amended to read:

11 "50-9-1. SHORT TITLE.--~~[Sections 50-9-1 through 50-9-25]~~
12 Chapter 50, Article 9 NMSA 1978 may be cited as the
13 "Occupational Health and Safety Act"."

14 SECTION 32. Section 50-9-3 NMSA 1978 (being Laws 1972,
15 Chapter 63, Section 3, as amended) is amended to read:

16 "50-9-3. DEFINITIONS.--As used in the Occupational Health
17 and Safety Act:

18 A. "person" means any individual, partnership, firm,
19 public or private corporation, association, trust, estate,
20 political subdivision or agency or any other legal entity or
21 ~~[their]~~ its legal representatives, agents or assigns;

22 B. "employee" means an individual who is employed by
23 an employer but does not include a domestic employee or a
24 volunteer nonsalaried firefighter;

25 C. "employer" means any person who has one or more

underscored material = new
[bracketed material] = delete

1 employees but does not include the United States;

2 D. "board" means the environmental improvement board;

3 E. "department" means the department of environment;

4 F. "place of employment" means any place, area or
5 environment in or about which an employee is required or
6 permitted to work;

7 ~~[G. "commission" means the occupational health and
8 safety review commission established under the Occupational
9 Health and Safety Act;~~

10 H.] G. "chemical" means any element, chemical
11 compound or mixture of elements or compounds;

12 ~~[I.]~~ H. "hazardous chemical" means any chemical or
13 combination of chemicals that has been labeled hazardous by the
14 chemical manufacturer, importer or distributor in accordance
15 with regulations promulgated by the federal Occupational Safety
16 and Health Act of 1970;

17 ~~[J.]~~ I. "label" means any written, printed or graphic
18 material displayed on or affixed to containers of chemicals
19 ~~[which]~~ that identifies the chemical as hazardous;

20 ~~[K.]~~ J. "material safety data sheet" means written or
21 printed material concerning a hazardous chemical and that
22 contains information on the identity listed on the label, the
23 chemical and common names of the hazardous ingredients, the
24 physical and health hazards, the primary route of entry, the
25 exposure limits, any generally applicable control measures, any

.183544.2

underscored material = new
[bracketed material] = delete

1 emergency or first aid procedures, the date of preparation and
2 the name, address and telephone number of the chemical
3 manufacturer, importer, employer or other responsible party
4 preparing or distributing the material safety data sheet;

5 ~~[H.]~~ K. "mobile work site" means any place of
6 employment in standard industrial classification codes 13, oil
7 and gas extraction, and 15 through 17, construction, where work
8 is performed in a different location than the principal office
9 in a fixed location used by the employer; and

10 ~~[M.]~~ L. "secretary" means the secretary of
11 environment."

12 **SECTION 33.** Section 50-9-5 NMSA 1978 (being Laws 1972,
13 Chapter 63, Section 5, as amended) is amended to read:

14 "50-9-5. EMPLOYER AND EMPLOYEE DUTIES.--

15 A. Every employer shall furnish to each of ~~[his]~~ the
16 employer's employees employment and a place of employment
17 ~~[which]~~ that are free from recognized hazards that are causing
18 or are likely to cause death or serious physical harm to ~~[his]~~
19 the employees.

20 B. Every employer shall furnish and maintain a place
21 of employment that must comply with the health and safety
22 regulations promulgated by the ~~[board]~~ department. The
23 regulations shall provide for the adoption of practices, means,
24 methods, operations, conditions and processes in order to
25 provide safe and healthful employment and places of employment.

.183544.2

underscored material = new
[bracketed material] = delete

1 C. Each employer shall, through posting of notices at
2 the place or places where notices to employees are normally
3 posted or other appropriate means, keep [~~his~~] employees
4 informed of their protections and obligations under the
5 Occupational Health and Safety Act, including provisions of
6 applicable regulations.

7 D. Each employee shall comply with the provisions of
8 the Occupational Health and Safety Act and any rules and orders
9 promulgated pursuant thereto [~~which~~] that are applicable to
10 [~~his~~] the employee's own actions and conduct in the course of
11 [~~his~~] employment."

12 SECTION 34. Section 50-9-5.1 NMSA 1978 (being Laws 1987,
13 Chapter 178, Section 3) is amended to read:

14 "50-9-5.1. EMPLOYER DUTIES--HAZARDOUS CHEMICALS.--

15 A. All incoming containers labeled as hazardous shall
16 be subject to this section. The employer shall not remove or
17 deface any label [~~which~~] that indicates on an incoming
18 container that a chemical is hazardous, unless the container is
19 immediately marked with the required information.

20 B. Each employer shall obtain and maintain material
21 safety data sheets for each chemical used in [~~his~~] the place of
22 employment and labeled as hazardous. Each employer shall
23 ensure that the information on material safety data sheets for
24 hazardous chemicals is readily accessible to employees during
25 each work shift. The [~~board~~] department shall promulgate

.183544.2

underscored material = new
[bracketed material] = delete

1 regulations [~~which~~] that assure reasonable compliance with this
2 provision at mobile work sites. If a material safety data
3 sheet has not been supplied from the manufacturer, importer or
4 distributor of the hazardous chemical, the employer shall
5 obtain the material safety data sheet by writing the
6 manufacturer, importer or distributor and requesting that [~~he~~
7 ~~send~~] the material safety data sheet be sent immediately.

8 C. Each employer shall maintain a current inventory
9 of all chemicals that have been labeled as hazardous in [~~his~~]
10 the place of employment.

11 D. Each employer shall develop and implement a
12 written hazard communication program for [~~his~~] the place of
13 employment [~~which~~] that describes how the criteria specified
14 for labels and other forms of warning, material safety data
15 sheets and employee information and training will be met and
16 [~~which~~] that also includes the following:

17 (1) a list of the hazardous chemicals known to
18 be present, using an identity that is referenced on the
19 appropriate material safety data sheet. The list may be
20 compiled for the place of employment as a whole or for
21 individual work areas;

22 (2) the methods the employer will use to inform
23 employees of the hazards of nonroutine tasks, for example, the
24 cleaning of reactor vessels and the hazards associated with
25 chemicals contained in unlabeled pipes in their work areas; and

.183544.2

underscored material = new
[bracketed material] = delete

1 (3) the methods the employer will use to inform
2 any contract employers whose employees work in the employer's
3 place of business of the hazardous chemicals their employees
4 may be exposed to while performing their work and any
5 suggestions for appropriate protective measures.

6 The employer may rely on an existing hazard communication
7 program to comply with these requirements provided that it
8 meets the provisions of this subsection. The employer shall
9 make the written hazard communication program available upon
10 request to employees, their designated representatives and the
11 occupational health and safety bureau of the [~~environmental~~
12 ~~improvement division of the health and environment~~]
13 department.

14 E. Each employer shall provide employees with
15 information and training on hazardous chemicals they use or may
16 become exposed to during the course of employment.

17 F. The requirements of Subsection E of this section
18 [~~shall~~] do not apply to any hazardous chemical received by an
19 employer in a sealed package or container and subsequently sold
20 or transferred if the seal is maintained.

21 G. Nothing in this section shall supersede any other
22 requirements in the Occupational Health and Safety Act."

23 **SECTION 35.** Section 50-9-6 NMSA 1978 (being Laws 1972,
24 Chapter 63, Section 6, as amended) is amended to read:

25 "50-9-6. TRAINING--ASSISTANCE--CONSULTATION--RESEARCH.--

.183544.2

underscored material = new
[bracketed material] = delete

1 A. The department shall provide for the establishment
2 and supervision of programs for the education and training of
3 employers and employees in the recognition, avoidance and
4 prevention of unsafe working conditions in employment and
5 places of employment and consult with, advise and assist
6 employers and employees about effective means of preventing
7 occupational injuries and illnesses.

8 B. Upon an employer's request, the department shall
9 provide an on-site consultation inspection of conditions and
10 practices of the employer's work place without issuing
11 citations or proposing penalties for violations noted, provided
12 that imminent danger situations found during the on-site
13 consultative visit [~~must~~] shall be pointed out to the employer.
14 In the event the imminent danger is pointed out by the
15 department consultant but immediate steps are not taken by the
16 employer to eliminate [~~such~~] the danger, the emergency
17 procedures provided in Section 50-9-14 NMSA 1978 shall be
18 pursued by the department to assure timely abatement of the
19 imminent danger situation.

20 C. The secretary is responsible for programs
21 involving research in occupational health and safety, for
22 surveys and recommendations for occupational health and safety
23 programs and for promotional, educational and advisory
24 activities in occupational health and safety.

25 ~~[D. The board or the secretary may appoint special~~

underscored material = new
[bracketed material] = delete

1 ~~committees composed of technicians or professionals~~
2 ~~specializing in occupational health or safety to assist in~~
3 ~~carrying out the objectives of the Occupational Health and~~
4 ~~Safety Act. Members of such committees shall be reimbursed as~~
5 ~~provided in the Per Diem and Mileage Act.]"~~

6 SECTION 36. Section 50-9-7 NMSA 1978 (being Laws 1972,
7 Chapter 63, Section 7, as amended) is amended to read:

8 "50-9-7. DUTIES AND POWERS OF THE [BOARD] DEPARTMENT.--

9 A. The [board] department shall promulgate
10 regulations that are and will continue to be at least as
11 effective as standards promulgated pursuant to the federal
12 Occupational Safety and Health Act of 1970 to prevent or abate
13 detriment to the health and safety of employees. In adopting,
14 amending and repealing its regulations, the [board] department
15 shall provide an opportunity for representatives of employers
16 and employees affected by the regulations to be heard and shall
17 give weight it deems appropriate to all relevant facts and
18 circumstances presented at the public hearing, including but
19 not limited to:

20 (1) character and degree of injury to or
21 interference with the health and safety of employees proposed
22 to be abated or prevented by the regulation;

23 (2) technical practicability and economic
24 reasonableness of the regulation and the existence of
25 alternatives to the prevention or abatement of detriment to the

.183544.2

underscored material = new
[bracketed material] = delete

1 health and safety of employees proposed by the regulation; and

2 (3) the public interest, including the social
3 and economic effects of work-related accidents, injuries and
4 illnesses.

5 B. In promulgating regulations dealing with toxic
6 materials or harmful physical agents, the ~~[board]~~ department
7 shall provide regulations that most adequately assure to the
8 extent feasible, on the basis of the best available technology,
9 that no employee will suffer material impairment of health or
10 functional capacity even if the employee has regular exposure
11 to the hazard dealt with by the regulations for a period of
12 ~~[his]~~ the employee's working life. Whenever practicable, the
13 regulation promulgated shall be expressed in terms of objective
14 criteria and of the performance desired.

15 C. The regulation shall prescribe the use of labels
16 or other appropriate forms of warning as are necessary to
17 ~~[insure]~~ ensure that employees are apprised of all hazards to
18 which they are exposed, relevant symptoms and appropriate
19 emergency treatment and proper conditions and precautions of
20 safe use or exposure. Where appropriate, the standard shall
21 also prescribe suitable protective equipment and control or
22 technological procedures to be used in connection with the
23 hazards and shall provide for monitoring or measuring employee
24 exposure at such locations and intervals and in such manner as
25 may be necessary for the protection of employees. In addition,

.183544.2

underscored material = new
[bracketed material] = delete

1 where appropriate, any such standard shall prescribe the type
2 and frequency of medical examinations or other tests [~~which~~
3 that shall be made available, by the employer or at [~~his~~] the
4 employer's cost, to employees exposed to the hazards in order
5 to most effectively determine whether the health of the
6 employees is adversely affected by the exposure. Cost of
7 medical examinations for research as ordered by the secretary
8 shall be paid for by the department. Results of examinations
9 shall be made available to the secretary, to the employer and,
10 upon the request of the employee, to the employee's physician.
11 The [~~board~~] department may make appropriate modifications in
12 the foregoing requirements relating to the use of labels or
13 other forms of warning, monitoring or measuring and medical
14 examinations as may be warranted by experience, information or
15 medical or technological developments acquired subsequent to
16 the promulgation of the relevant standard.

17 D. The department shall conduct hearings as required
18 under the Occupational Health and Safety Act. The department
19 is authorized to enact such rules as are necessary for the
20 orderly transaction of its hearings. When conducting hearings,
21 the department may:

- 22 (1) order testimony to be taken by deposition;
23 (2) compel any person whose testimony may be
24 material to appear and testify and to produce books, papers,
25 documents or other like documentary evidence; and

.183544.2

1 (3) designate a hearing officer to take evidence
2 in the hearing; in such case, the department shall make its
3 decision based on the evidence in the transcript of the hearing
4 proceedings."

5 SECTION 37. Section 50-9-8 NMSA 1978 (being Laws 1972,
6 Chapter 63, Section 8, as amended) is amended to read:

7 "50-9-8. ADDITIONAL DUTIES AND POWERS OF THE DEPARTMENT.--

8 The department shall:

9 A. prevent or abate detriment to the health and
10 safety of employees arising out of and in the course of
11 employment;

12 B. develop an effective and comprehensive program for
13 the prevention or abatement of detriment to the health and
14 safety of employees within the state;

15 C. advise and recommend an effective and
16 comprehensive program of occupational health and safety
17 applicable to all employees of public agencies of the state and
18 its political subdivisions;

19 D. cause to be instituted legal proceedings to compel
20 compliance with the Occupational Health and Safety Act [~~or any~~
21 ~~regulation of the board~~];

22 E. accept, receive and administer grants or other
23 funds or gifts from public or private agencies, including the
24 federal government;

25 F. take reasonable steps to inform employees of their

.183544.2

underscored material = new
[bracketed material] = delete

1 protections and obligations under the Occupational Health and
2 Safety Act, including the provisions of applicable regulations;
3 and

4 G. make reports to the secretary of the United States
5 department of labor in the form and containing the information
6 as [~~the~~] that secretary may from time to time require."

7 SECTION 38. Section 50-9-10 NMSA 1978 (being Laws 1972,
8 Chapter 63, Section 9, as amended) is amended to read:

9 "50-9-10. RIGHT OF ENTRY AND INSPECTION--COMPLAINTS--
10 CONSULTATION--NOTIFICATION.--

11 A. In order to carry out the purposes of the
12 Occupational Health and Safety Act, the department's authorized
13 representatives, upon presenting appropriate credentials to the
14 owner, operator or agent in charge, are authorized to and may:

15 (1) enter and inspect any place of employment at
16 reasonable times and without delay; and

17 (2) question privately the employer and
18 employees and to inspect and investigate during regular working
19 hours and at other reasonable times and within reasonable
20 limits and in a reasonable manner, the place of employment and
21 all pertinent conditions, structures, machines, apparatus,
22 devices, equipment and materials therein. The department's
23 representative is not authorized to question privately the
24 employer or employees until the [~~board~~] department has adopted
25 regulations protecting the rights of [~~such~~] the employer and

.183544.2

underscoring material = new
[bracketed material] = delete

1 employees.

2 B. Any employee or representative of employees may
3 file a written complaint with the department concerning any
4 alleged violation of a regulation or any hazardous condition.
5 A copy of the complaint shall be provided to the employer at
6 the time of the inspection. However, upon the request of the
7 complainant, the complainant's name shall not appear on the
8 copy. The department shall investigate the complaint and
9 notify the complainant and employer in writing of the results
10 of the investigation and any action to be taken. If no action
11 is contemplated, the department shall notify the complainant
12 and include in the notice the reasons therefor. The department
13 shall provide for the informal review of decisions not to take
14 compliance action at the request of the complainant. The
15 review shall not be by those who investigated the complaint.

16 C. In order to aid inspections, a representative of
17 the employer and a representative authorized by employees shall
18 be given an opportunity to accompany the department inspector
19 during the physical inspection of the work place. If there is
20 no authorized employee representative, the department inspector
21 shall consult with a reasonable number of employees.

22 D. Prior to or during any inspection of a work place,
23 any employees or representative of employees employed in [~~such~~]
24 the work place may notify the department or the department
25 inspector in writing of any violation of the Occupational

.183544.2

underscored material = new
[bracketed material] = delete

1 Health and Safety Act [~~which~~] that they have reason to believe
2 exists in [~~such~~] the work place. The department shall
3 establish procedures for informal review of the decision made
4 by the inspector, and, if no citation is issued with respect to
5 the alleged violation, it shall furnish the employee requesting
6 [~~such~~] the review a written statement of the reasons for the
7 department's final disposition of the case.

8 E. If an inspection reveals that employees are
9 exposed to toxic materials or harmful physical agents at levels
10 in excess of those prescribed by regulations of the [~~board~~]
11 department, the department shall provide the employees with
12 access to the results of the inspection. The employer shall
13 promptly notify the employees who are being exposed to the
14 agents or materials in excess of the applicable regulations and
15 inform them of the corrective action being taken or that review
16 has been requested in accordance with Section 50-9-17 NMSA
17 1978.

18 F. It is unlawful for any person to give advance
19 notice of any inspection to be conducted under the Occupational
20 Health and Safety Act without the written approval of the
21 secretary or the secretary's authorized representative.

22 G. The [~~board~~] department shall adopt regulations to
23 implement this section."

24 **SECTION 39.** Section 50-9-11 NMSA 1978 (being Laws 1972,
25 Chapter 63, Section 10, as amended) is amended to read:

.183544.2

1 "50-9-11. REPORTS AND RECORDKEEPING BY EMPLOYERS.--

2 A. An employer shall keep such records and make such
3 reports to the department as [~~the board~~] required by regulation
4 [~~may require~~] to carry out the purposes of the Occupational
5 Health and Safety Act. [~~Such~~] The regulation regarding records
6 and reports shall be at least as effective as and consistent
7 with the occupational safety and health record and report
8 requirements of the United States department of labor. These
9 records and reports shall be obtained with a minimum burden
10 upon employers, especially those operating small businesses.
11 Unnecessary duplication of efforts in obtaining information
12 shall be reduced to the maximum extent feasible.

13 B. Employers shall maintain accurate records of
14 employee exposures to potentially toxic material or harmful
15 physical agents [~~which~~] that are required to be monitored or
16 measured as the [~~board~~] department may prescribe by
17 regulations. Employees and their representatives shall be
18 given an opportunity to observe [~~such~~] the monitoring and
19 measuring. Employees and former employees shall be granted
20 access to their own records as will indicate their own exposure
21 to toxic material or harmful agents. Each employer shall
22 promptly notify any employee who has been or is being exposed
23 to toxic materials or harmful physical agents in concentrations
24 or levels that exceed those prescribed by an applicable
25 regulation adopted pursuant to the Occupational Health and

.183544.2

underscored material = new
[bracketed material] = delete

1 Safety Act and shall inform any employee who is being thus
2 exposed of the corrective action being taken. Employers shall
3 retain the records of exposure of employees to specific toxic
4 material and harmful agents for periods of time to be specified
5 in regulations."

6 SECTION 40. Section 50-9-12 NMSA 1978 (being Laws 1972,
7 Chapter 63, Section 11, as amended) is amended to read:

8 "50-9-12. ADOPTION OF REGULATIONS--NOTICE AND HEARING.--

9 A. Any person may recommend or propose regulations to
10 the [~~board~~] department for promulgation. The [~~board~~]
11 department shall determine whether to hold a hearing within
12 sixty days of submission of a proposed regulation.

13 B. No regulations shall be adopted, amended or
14 repealed until after a public hearing by the [~~board~~]
15 department. Notice of the hearing shall be given at least
16 thirty days prior to the hearing date and shall state the
17 subject, time and place of the hearing and the manner in which
18 interested persons may secure copies of any regulations
19 proposed to be adopted, amended or repealed. The notice shall
20 be published in a newspaper of general circulation in the
21 state. Reasonable effort shall be made to give notice to all
22 persons who have made a written request to the [~~board~~]
23 department for advance notice of hearings. At the hearing, the
24 [~~board~~] department shall allow all interested persons
25 reasonable opportunity to submit data, views or arguments

.183544.2

underscored material = new
[bracketed material] = delete

1 orally or in writing. Any person heard or represented at the
2 hearing shall be given written notice of the action by the
3 ~~[board]~~ department. The ~~[board]~~ department may designate a
4 hearing officer to take evidence in the hearing and present the
5 evidence to the ~~[board]~~ department. A record shall be made of
6 each hearing.

7 C. Notwithstanding the provisions of Subsection B of
8 this section, the secretary may adopt an emergency regulation
9 to take immediate effect upon its filing under the State Rules
10 Act if the secretary determines:

11 (1) that employees are exposed to grave danger
12 from exposure to substances or agents determined to be toxic or
13 physically harmful or from new hazards; and

14 (2) that the emergency regulation is necessary
15 to protect employees from the danger.

16 D. The emergency regulation shall be effective until
17 superseded by a final regulation promulgated in accordance with
18 the procedures prescribed in Subsection B of this section. The
19 final regulation shall be promulgated within one hundred twenty
20 days of the date of promulgation of the relevant emergency
21 regulation.

22 E. If the emergency regulation is promulgated in
23 response to an emergency temporary standard issued pursuant to
24 the federal Occupational Safety and Health Act of 1970, ~~[then~~
25 ~~such]~~ the emergency regulation shall only be enforceable to the

.183544.2

underscored material = new
[bracketed material] = delete

1 same extent as the federal emergency temporary standard.

2 F. If the federal emergency temporary standard is
3 superseded by a federal permanent standard, [~~then~~] the state
4 emergency regulation shall remain in effect for an additional
5 one hundred twenty days after promulgation of the superseding
6 standard. During this additional one hundred twenty days, the
7 [~~board~~] department shall promulgate a regulation in accordance
8 with the procedures prescribed in Subsection B of this
9 section."

10 SECTION 41. Section 50-9-13 NMSA 1978 (being Laws 1972,
11 Chapter 63, Section 12, as amended) is amended to read:

12 "50-9-13. ADOPTING STANDARDS BY REFERENCE.--In the event
13 the [~~board~~] department wishes to adopt regulations that are
14 identical with standards approved by an agency of the federal
15 government, the [~~board~~] department, after notice and hearing,
16 may adopt the regulations by reference to the standards without
17 setting forth the provisions of the standards."

18 SECTION 42. Section 50-9-15 NMSA 1978 (being Laws 1972,
19 Chapter 63, Section 14, as amended) is amended to read:

20 "50-9-15. VALIDITY OF REGULATION--VARIANCE
21 DETERMINATION--JUDICIAL REVIEW.--

22 A. [~~Any~~] Except for those regulations adopted by
23 reference pursuant to the provisions of Section 50-9-13 NMSA
24 1978, a person who is or may be affected by a [~~regulation~~] rule
25 adopted by the [~~board~~] department may appeal to the court of

underscored material = new
[bracketed material] = delete

1 appeals for further relief. All appeals shall be upon the
2 record made at the hearing and shall be taken to the court of
3 appeals within thirty days after filing of the [~~regulation~~]
4 rule pursuant to the State Rules Act. The [~~board~~] department
5 shall be made a party to the action.

6 B. Upon appeal, the court of appeals shall set aside
7 a [~~regulation~~] rule only if it is found to be:

8 (1) arbitrary, capricious or an abuse of
9 discretion;

10 (2) not supported by substantial evidence in the
11 record; or

12 (3) otherwise not in accordance with law.

13 C. A variance petitioner may appeal to the district
14 court from an order of the department denying the variance.
15 The appeal shall be filed pursuant to the provisions of Section
16 39-3-1.1 NMSA 1978."

17 SECTION 43. Section 50-9-17 NMSA 1978 (being Laws 1972,
18 Chapter 63, Section 16, as amended) is amended to read:

19 "50-9-17. ENFORCEMENT--APPEALS.--

20 A. If as a result of investigation the department has
21 good cause to believe that [~~any~~] an employer is violating [~~any~~]
22 a provision of the Occupational Health and Safety Act or [~~any~~]
23 a rule of the [~~board~~] department, the department shall send
24 prompt notice of the violation by certified mail to the
25 employer believed to be in violation. The citation shall

.183544.2

underscored material = new
[bracketed material] = delete

1 describe with particularity the provision of the Occupational
2 Health and Safety Act or rule alleged to have been violated.
3 The notice shall also state the time for abatement of the
4 violation. Each citation issued pursuant to this section, or a
5 copy thereof, shall be promptly and prominently posted by the
6 cited employer, as prescribed in rules issued by the ~~[board]~~
7 department, at or near the place where the violation occurred.
8 No citation may be issued under this section after the
9 expiration of six months following the occurrence of any
10 violation. The ~~[board]~~ department may issue a ~~[regulation]~~
11 rule prescribing procedures for the use of a notice in lieu of
12 a citation with respect to de minimis violations that have no
13 direct or immediate relationship to safety or health.

14 B. If the department issues a citation as provided in
15 Subsection A of this section, it shall, within a reasonable
16 time after issuance of the citation, notify the employer by
17 certified mail of the penalty, if any, proposed to be assessed
18 and that the employer has fifteen working days within which to
19 notify the department in writing that ~~[he]~~ the employer wishes
20 to contest the citation or proposed penalty. If within fifteen
21 working days from the receipt of the notice issued by the
22 department the employer fails to notify the department that
23 ~~[he]~~ the employer intends to contest the citation or proposed
24 penalty and no notice is filed by an employee or employee
25 representative as provided by Subsection D of this section

.183544.2

underscored material = new
[bracketed material] = delete

1 within that time, the citation and the assessment of penalty,
2 if any, as proposed shall be deemed the final order of the
3 [~~commission~~] department and not subject to review by any court
4 or agency.

5 C. If the department has reason to believe that an
6 employer has failed to correct a violation for which a citation
7 has been issued within the abatement period permitted, which
8 period shall not begin to run until the entry of a final order
9 by the [~~commission~~] department in the case of any review
10 proceedings under this section initiated by the employer in
11 good faith and not solely for delay or avoidance of penalties,
12 the department shall notify the employer by certified mail of
13 the failure to correct and of the penalty proposed to be
14 assessed by reason of the failure and that the employer has
15 fifteen working days within which to notify the department in
16 writing that [~~he~~] the employer wishes to contest the
17 department's notification or the proposed assessment of
18 penalty. If within fifteen working days from the receipt of
19 notification issued by the department the employer fails to
20 notify the department that [~~he~~] the employer intends to contest
21 the notification or proposed assessment of penalty, the
22 notification and assessment as proposed shall be deemed a final
23 order of the [~~commission~~] department and not subject to review
24 by any court [~~or department~~].

25 D. If [~~any~~] an employer notifies the department in

.183544.2

underscored material = new
[bracketed material] = delete

1 writing that [~~he~~] the employer intends to contest the citation
2 issued to [~~him~~] the employer pursuant to provisions of
3 Subsection A of this section or notification issued pursuant to
4 provisions of Subsection B or C of this section, or if within
5 fifteen working days of the receipt of notice pursuant to the
6 provisions of this section any employee of an employer cited or
7 any employee's representative files a notice with the
8 department alleging that the period of time fixed in the
9 citation for the abatement of the violation is unreasonable,
10 the department shall provide prompt opportunity for informal
11 administrative review. If the matter is not successfully
12 resolved at the informal administrative review, the petitioner
13 may request a hearing before the [~~commission~~] department within
14 fifteen days after the administrative review. The [~~commission~~]
15 department shall afford an opportunity for a hearing within
16 thirty days after receipt of the petition. The [~~commission~~]
17 department shall thereafter issue an order, based on findings
18 of fact, affirming, modifying or vacating the department's
19 citation or the proposed penalty fixed by the department or
20 directing other appropriate relief.

21 E. At any time prior to the expiration of an
22 abatement period, an employer may notify the department in
23 writing that [~~he~~] the employer is unable to take the corrective
24 action required within the period of abatement. The department
25 shall provide prompt opportunity for informal administrative

.183544.2

underscored material = new
[bracketed material] = delete

1 review. If the matter is not successfully resolved at the
2 informal administrative review, the petitioner may request a
3 hearing before the [~~commission~~] department after the
4 administrative review. The [~~commission~~] department shall
5 afford prompt opportunity for a hearing after receipt of the
6 petition. The only grounds for modifying an abatement period
7 provided by this subsection are a showing by the employer of a
8 good-faith effort to comply with the abatement requirement of a
9 citation and that abatement has not been completed because of
10 factors beyond the employer's control.

11 F. Affected employees or their representatives shall
12 be provided an opportunity to participate as parties at both
13 informal administrative review and [~~commission~~] department
14 hearings provided for in this section.

15 G. Any person [~~including the department~~] adversely
16 affected by an order of the [~~commission~~] department issued
17 pursuant to provisions of this section may obtain a review of
18 the order in the district court pursuant to the provisions of
19 Section 39-3-1.1 NMSA 1978."

20 SECTION 44. Section 50-9-19 NMSA 1978 (being Laws 1972,
21 Chapter 63, Section 18, as amended) is amended to read:

22 "50-9-19. ACCIDENT REPORTS AND RECORDS.--

23 A. Every employer shall keep records and submit
24 reports of occupational injuries and illnesses as prescribed by
25 the department. Reports shall not require employee

.183544.2

underscoring material = new
[bracketed material] = delete

1 identification by name.

2 B. The department shall publish annually a detailed
3 summary of the statistical data received from employers. The
4 department shall make a copy of [~~such~~] the summary available on
5 request to each employer, and the summary shall be made
6 available upon request to any person having an interest in the
7 report. In the preparation, publication or release of the
8 statistical summary, the department shall not in any manner
9 disclose information identifying any employer unless prior
10 permission has been obtained from the employer in writing. The
11 reports of each employer shall remain confidential and shall
12 not be released, revealed or otherwise disclosed to any person
13 other than the bureau of labor statistics and the occupational
14 safety and health administration of the United States
15 department of labor without prior permission of the employer
16 unless pursuant to an administrative hearing of the [~~board~~]
17 department or an order of a court of competent jurisdiction."

18 SECTION 45. Section 50-9-22 NMSA 1978 (being Laws 1972,
19 Chapter 63, Section 21, as amended) is amended to read:

20 "50-9-22. PREEMPTION.--

21 A. Nothing in the Occupational Health and Safety Act
22 shall affect the jurisdiction of any state agency or any
23 political subdivision performing like functions or exercising
24 like responsibilities with regard to occupational health and
25 safety matters except as provided in Subsection B or C of this

.183544.2

underscored material = new
[bracketed material] = delete

1 section.

2 B. Whenever the [~~board~~] department prescribes or
3 adopts a regulation under the procedures provided in the
4 Occupational Health and Safety Act, the regulation shall, when
5 a copy thereof is filed with the clerk of the political
6 subdivision to which it applies, establish a minimum
7 requirement concerning the matters covered by the regulation
8 and shall be construed in connection with any local requirement
9 relative to the same matter. The regulation of the [~~board~~]
10 department amends or modifies any requirement of the local
11 standard [~~which~~] that does not meet the regulation.

12 C. The Occupational Health and Safety Act and
13 regulations promulgated under it, and not the acts and
14 regulations enforced by the state mine inspector, shall apply
15 to places of employment subject to the jurisdiction of the
16 United States department of labor acting under the provisions
17 of the federal Occupational Safety and Health Act of 1970 (84
18 Stat. 1590), as amended.

19 D. Compliance with a regulation of the [~~board~~]
20 department does not relieve any person from the obligation to
21 comply with a stricter state agency or political subdivision
22 health or safety requirement, but the state agency or political
23 subdivision shall be responsible for the enforcement of the
24 health and safety requirements established by that state agency
25 or local authority."

.183544.2

underscored material = new
[bracketed material] = delete

1 SECTION 46. Section 50-9-23 NMSA 1978 (being Laws 1972,
2 Chapter 63, Section 22, as amended) is amended to read:

3 "50-9-23. LIMITATION ON APPLICABILITY OF THE ACT TO
4 CERTAIN EMPLOYERS AND THEIR EMPLOYEES.--The Occupational Health
5 and Safety Act and regulations promulgated under it do not
6 apply to a specific activity of an employer or to a specific
7 occupational health or safety condition of [~~his~~] the employer's
8 employees if the specific activity or specific occupational
9 health or safety condition is subject to the jurisdiction of
10 and is regulated by:

11 A. any federal agency except the United States
12 department of labor acting under the provisions of the federal
13 Occupational Safety and Health Act of 1970 (84 Stat. 1590); or

14 B. the [~~board~~] department pursuant to the agreement
15 specified in Section 74-3-15 NMSA 1978."

16 SECTION 47. Section 50-9-24 NMSA 1978 (being Laws 1975,
17 Chapter 290, Section 14, as amended) is amended to read:

18 "50-9-24. PENALTIES.--

19 A. Any employer who willfully or repeatedly violates
20 any provision of the Occupational Health and Safety Act or any
21 regulation or order promulgated pursuant to that act may be
22 assessed a civil penalty not to exceed seventy thousand dollars
23 (\$70,000) for each violation; provided that a civil penalty
24 shall not be less than five thousand dollars (\$5,000) for each
25 willful violation.

.183544.2

underscored material = new
[bracketed material] = delete

1 B. Any employer who has received a citation for a
2 serious violation of any provision of the Occupational Health
3 and Safety Act or any regulation or order promulgated pursuant
4 to that act shall be assessed a civil penalty not to exceed
5 seven thousand dollars (\$7,000) for each [~~such~~] violation.

6 C. Any employer who has received a citation for a
7 violation of any provision of the Occupational Health and
8 Safety Act or any regulation or order promulgated pursuant to
9 that act that is determined not to be of a serious nature may
10 be assessed a civil penalty of up to seven thousand dollars
11 (\$7,000) for each [~~such~~] violation.

12 D. Any employer who fails to correct a violation for
13 which a citation has been issued within the period permitted
14 for its correction, which period shall not begin to run until
15 the date of the final order of the [~~commission~~] department in
16 the case of any review proceeding [~~under~~] provided for in
17 Section 50-9-17 NMSA 1978 initiated by the employer in good
18 faith and not solely for delay or avoidance of penalties, may
19 be assessed a civil penalty not to exceed seven thousand
20 dollars (\$7,000) for each day during which the failure or
21 violation continues.

22 E. Any civil penalty assessed against the state, a
23 political subdivision of the state or any agency of either
24 pursuant to Subsection B, C or G of this section shall not be
25 collected during the time permitted for correction of the

underscored material = new
[bracketed material] = delete

1 violation, and if the violation is corrected within such time,
2 the civil penalty shall be deemed paid without further action
3 of the state, political subdivision or agency.

4 F. For purposes of this section, a serious violation
5 shall be deemed to exist in a place of employment if there is a
6 substantial probability that death or serious physical harm
7 could result from a condition that exists or from one or more
8 practices, means, methods, operations or processes that have
9 been adopted or are in use in the place of employment unless
10 the employer did not and could not with the exercise of
11 reasonable diligence know of the presence of the violation.

12 G. Any employer who violates any of the posting
13 requirements as prescribed by the Occupational Health and
14 Safety Act shall be assessed a civil penalty not to exceed
15 seven thousand dollars (\$7,000) for each violation.

16 H. The [~~commission~~] department has authority to
17 assess all civil penalties provided in this section, giving due
18 consideration to the appropriateness of the penalty with
19 respect to the size of the business of the employer being
20 charged, the gravity of the violation, the good faith of the
21 employer and the history of previous violations.

22 I. Civil penalties imposed [~~under~~] pursuant to
23 provisions of this section shall be paid into the general fund.

24 J. Any employer who willfully violates any provision
25 of the Occupational Health and Safety Act or any regulation or

.183544.2

underscored material = new
[bracketed material] = delete

1 order promulgated pursuant to that act causing death to any
2 employee by that violation shall, upon conviction, be punished
3 by a fine of not more than ten thousand dollars (\$10,000) or by
4 imprisonment for not more than six months or by both; except
5 that if the conviction is for a violation committed after a
6 first conviction of [~~such~~] the person, punishment shall be by a
7 fine of not more than twenty thousand dollars (\$20,000) or by
8 imprisonment for less than one year or by both.

9 K. Any person who gives advance notice of any
10 inspection to be conducted under the Occupational Health and
11 Safety Act without authority of the secretary shall, upon
12 conviction, be punished by a fine of not more than one thousand
13 dollars (\$1,000) or by imprisonment for not more than six
14 months or by both.

15 L. Whoever knowingly makes any false statement,
16 representation or certification in any application, record,
17 report, plan or other document filed or required to be
18 maintained pursuant to the Occupational Health and Safety Act
19 shall, upon conviction, be punished by a fine of not more than
20 ten thousand dollars (\$10,000) for each such violation or by
21 imprisonment for not more than six months or by both.

22 M. A person who reveals a trade secret in violation
23 of Section 50-9-21 NMSA 1978 violates this subsection and
24 shall, upon conviction, be punished by a fine of not more than
25 ten thousand dollars (\$10,000) or by imprisonment for less than

.183544.2

underscored material = new
[bracketed material] = delete

1 one year or both."

2 SECTION 48. A new section of the Occupational Health and
3 Safety Act is enacted to read:

4 "[NEW MATERIAL] BOARD DUTIES.--The board shall assist the
5 department in carrying out the objectives of the Occupational
6 Health and Safety Act, including advising the department on the
7 adoption and implementation of rules adopted pursuant to that
8 act, variance applications and duties as determined by the
9 department."

10 SECTION 49. Section 61-14E-4 NMSA 1978 (being Laws 1983,
11 Chapter 317, Section 4, as amended) is amended to read:

12 "61-14E-4. DEFINITIONS.--As used in the Medical Imaging
13 and Radiation Therapy Health and Safety Act:

14 A. "advisory council" means the medical imaging and
15 radiation therapy advisory council;

16 [~~B. "board" means the environmental improvement~~
17 ~~board;~~

18 G.] B. "certificate of limited practice" means a
19 certificate issued pursuant to the Medical Imaging and
20 Radiation Therapy Health and Safety Act to persons who perform
21 restricted diagnostic radiography under direct supervision of a
22 licensed practitioner limited to the following specific
23 procedures:

- 24 (1) the viscera of the thorax;
25 (2) extremities;

underscored material = new
[bracketed material] = delete

1 (3) radiation to humans for diagnostic purposes
2 in the practice of dentistry;

3 (4) axial/appendicular skeleton; or

4 (5) the foot, ankle or lower leg;

5 ~~[D.]~~ C. "certified nurse practitioner" means a person
6 licensed pursuant to Section 61-3-23.2 NMSA 1978;

7 ~~[E.]~~ D. "credential" or "certification" means the
8 recognition awarded to an individual who meets the requirements
9 of a credentialing or certification organization;

10 ~~[F.]~~ E. "credentialing organization" or
11 "certification organization" means a nationally recognized
12 organization recognized by the ~~[board]~~ department that issues
13 credentials or certification through testing or evaluations
14 that determine whether an individual meets defined standards
15 for training and competence in a medical imaging modality;

16 ~~[G.]~~ F. "department" means the department of
17 ~~[environment]~~ health;

18 ~~[H.]~~ G. "diagnostic medical sonographer" means a
19 person, including a vascular technologist or echocardiographer,
20 other than a licensed practitioner, who provides patient care
21 services using ultrasound;

22 ~~[I.] "division" means the environmental health~~
23 ~~division of the department of environment;~~

24 ~~[J.]~~ H. "ionizing radiation" means alpha particles,
25 beta particles, gamma rays, x-rays, neutrons, high-speed

.183544.2

underscored material = new
[bracketed material] = delete

1 electrons, high-speed protons and other particles capable of
2 producing ions; "ionizing radiation" does not include non-
3 ionizing radiation, such as sound waves, radio waves or
4 microwaves, or visible, infrared or ultraviolet light;

5 ~~[K-]~~ I. "license" means a document issued by the
6 department pursuant to the Medical Imaging and Radiation
7 Therapy Health and Safety Act to an individual who has met the
8 requirements of licensure;

9 ~~[H-]~~ J. "licensed practitioner" means a person
10 licensed to practice medicine, dentistry, podiatry,
11 chiropractic or osteopathy in this state;

12 ~~[M-]~~ K. "licensure" means a grant of authority
13 through a license or limited license to perform specific
14 medical imaging and radiation therapy services pursuant to the
15 Medical Imaging and Radiation Therapy Health and Safety Act;

16 ~~[N-]~~ L. "magnetic resonance technologist" means a
17 person other than a licensed practitioner who performs magnetic
18 resonance procedures under the supervision of a licensed
19 practitioner using magnetic fields and radio frequency signals;

20 ~~[O-]~~ M. "medical imaging" means the use of substances
21 or equipment emitting ionizing or non-ionizing radiation on
22 humans for diagnostic or interventional purposes;

23 ~~[P-]~~ N. "medical imaging modality" means:

24 (1) diagnostic medical sonography and all of its
25 subspecialties;

.183544.2

underscored material = new
[bracketed material] = delete

1 (2) magnetic resonance imaging and all of its
2 subspecialties;

3 (3) nuclear medicine technology and all of its
4 subspecialties;

5 (4) radiation therapy and all of its
6 subspecialties; and

7 (5) radiography and all of its subspecialties;

8 [Q-] Q. "medical imaging professional" means a person
9 who is a magnetic resonance technologist, radiographer, nuclear
10 medicine technologist or diagnostic medical sonographer and who
11 is licensed pursuant to the Medical Imaging and Radiation
12 Therapy Health and Safety Act;

13 [R-] P. "non-ionizing radiation" means the optical
14 radiations, including ultraviolet, visible, infrared and
15 lasers, static and time-varying electric and magnetic fields
16 and radio frequency, including microwave radiation and
17 ultrasound;

18 [S-] Q. "nuclear medicine technologist" means a
19 person other than a licensed practitioner who applies
20 radiopharmaceutical agents to humans for diagnostic or
21 therapeutic purposes under the direction of a licensed
22 practitioner;

23 [T-] R. "physician assistant" means a person licensed
24 pursuant to Section 61-6-7 or 61-10A-4 NMSA 1978;

25 [U-] S. "radiation therapy" means the application of

.183544.2

underscored material = new
[bracketed material] = delete

1 ionizing radiation to humans for therapeutic purposes;

2 [V.] T. "radiation therapy technologist" means a
3 person other than a licensed practitioner whose application of
4 radiation to humans is for therapeutic purposes;

5 [W.] U. "radiographer" means a person other than a
6 licensed practitioner whose application of radiation to humans
7 is for diagnostic purposes;

8 [X.] V. "radiography" means the application of
9 radiation to humans for diagnostic purposes, including
10 adjustment or manipulation of x-ray systems and accessories,
11 including image receptors, positioning of patients, processing
12 of films and any other action that materially affects the
13 radiation dose to patients;

14 [Y.] W. "radiologist" means a licensed practitioner
15 certified by the American board of radiology, the [~~British~~]
16 royal college of radiology, the American osteopathic board of
17 radiology or the American chiropractic board of radiology; and

18 [Z.] X. "radiologist assistant" means an individual
19 licensed as a radiographer as defined in the Medical Imaging
20 and Radiation Therapy Health and Safety Act who holds
21 additional certification as a registered radiologist assistant
22 by the American registry of radiologic technologists and who
23 works under the supervision of a radiologist; provided that a
24 radiologist assistant shall not interpret images, render
25 diagnoses or prescribe medications or therapies."

.183544.2

underscored material = new
[bracketed material] = delete

1 SECTION 50. Section 61-14E-5 NMSA 1978 (being Laws 1983,
2 Chapter 317, Section 5, as amended) is amended to read:

3 "61-14E-5. [~~BOARD~~] DEPARTMENT--POWERS--DUTIES.--

4 A. The [~~board~~] department shall, pursuant to the
5 advice and recommendations of the advisory council and
6 following the procedures set forth in Subsection E of Section
7 [~~74-1-9~~] 9-7-6 NMSA 1978:

8 [~~A.~~] (1) adopt and promulgate such rules
9 [~~regulations~~] and licensure standards as may be necessary to
10 effectuate the provisions of the Medical Imaging and Radiation
11 Therapy Health and Safety Act and to maintain high standards of
12 practice as verified by credentialing organizations for medical
13 imaging and radiation therapy; and

14 [~~B.~~] (2) adopt rules [~~and regulations~~]
15 establishing continuing education requirements as a condition
16 of licensure renewal for the purpose of protecting the health
17 and well-being of the citizens of New Mexico and promoting
18 current knowledge and practice as verified by credentialing
19 organizations for medical imaging and radiation therapy.

20 B. The department, pursuant to the rules promulgated
21 under Subsection A of the section, shall:

22 (1) maintain and enforce licensure standards for
23 magnetic resonance, radiography, radiation therapy technology,
24 nuclear medicine technology, diagnostic medical sonography and
25 radiology and licensure standards for restricted diagnostic

underscored material = new
[bracketed material] = delete

1 radiography;

2 (2) refer to national educational accreditation
3 standards for educational programs and, pursuant to those
4 standards, establish criteria for education programs of
5 magnetic resonance, radiography, radiation therapy technology,
6 nuclear medicine technology and diagnostic medical sonography;

7 (3) provide for surveys of educational programs
8 preparing persons for certification under the Medical Imaging
9 and Radiation Therapy Health and Safety Act;

10 (4) grant, deny or withdraw approval from
11 educational programs for failure to meet prescribed standards;

12 (5) establish procedures for examination,
13 certification and renewal of certificates of applicants; and

14 (6) establish scope of practice and ethics
15 rules."

16 SECTION 51. A new section of the Medical Imaging and
17 Radiation Therapy Health and Safety Act is enacted to read:

18 "[NEW MATERIAL] TERMINATION OF AGENCY LIFE--DELAYED
19 REPEAL.--The medical imaging and radiation therapy advisory
20 council is terminated on July 1, 2017 pursuant to the
21 provisions of the Sunset Act. The council shall continue to
22 operate according to the provisions of Section 61-14E-5.1 NMSA
23 1978 until July 1, 2018. Effective July 1, 2018, Section
24 61-14E-5.1 NMSA 1978 is repealed."

25 SECTION 52. Section 61-33-2 NMSA 1978 (being Laws 1992,
.183544.2

underscored material = new
[bracketed material] = delete

1 Chapter 44, Section 2, as amended) is amended to read:

2 "61-33-2. DEFINITIONS.--As used in the Utility Operators
3 Certification Act:

4 A. "certified operator" means a person who is
5 certified by the department as being qualified to operate one
6 of the classifications of public water supply systems or public
7 wastewater facilities;

8 B. "commission" means the water quality control
9 commission;

10 C. "department" means the department of environment;

11 D. "domestic liquid waste" means human excreta and
12 water-carried waste from typical residential plumbing fixtures
13 and activities, including waste from toilets, sinks, bath
14 fixtures, clothes or dishwashing machines and floor drains;

15 E. "domestic liquid waste treatment unit" means any
16 system that is designed to discharge less than two thousand
17 gallons per day and that is subject to rules promulgated by the
18 [~~environmental improvement board~~] department pursuant to
19 [~~Paragraph (3) of Subsection A of~~] Section [~~74-1-8~~] 74-1-7 NMSA
20 1978 or a watertight unit designed, constructed and installed
21 to stabilize only domestic liquid waste and to retain solids
22 contained in such domestic liquid waste, including septic
23 tanks;

24 F. "operate" means performing any activity, function,
25 process control decision or system integrity decision regarding

.183544.2

1 water quality or water quantity that has the potential to
2 affect the proper functioning of a public water supply system
3 or public wastewater facility or to affect human health, public
4 welfare or the environment;

5 G. "person" means any agency, department or
6 instrumentality of the United States and any of its officers,
7 agents or employees, the state or any agency, institution or
8 political subdivision thereof, any public or private
9 corporation, individual, partnership, association or other
10 entity, and includes any officer or governing or managing body
11 of any political subdivision or public or private corporation;

12 H. "public wastewater facility" means a system of
13 structures, equipment and processes designed to collect and
14 treat domestic and industrial waste and dispose of the
15 effluent, but does not include:

16 (1) any domestic liquid waste treatment unit; or

17 (2) any industrial facility subject to an
18 industrial pretreatment program regulated by the United States
19 environmental protection agency under the requirements of the
20 federal Clean Water Act of 1977; and

21 I. "public water supply system" means:

22 (1) a system for the provision through pipes or
23 other constructed conveyances to the public of water for human
24 consumption or domestic purposes if the system:

25 (a) has at least fifteen service

underscored material = new
[bracketed material] = delete

1 connections; or

2 (b) regularly serves an average of at least
3 twenty-five individuals at least sixty days of the year; and

4 (2) includes any water supply source and any
5 treatment, storage and distribution facilities under control of
6 the operator of the system."

7 SECTION 53. Section 61-33-4 NMSA 1978 (being Laws 1973,
8 Chapter 394, Section 4, as amended) is amended to read:

9 "61-33-4. POWERS AND DUTIES OF ~~[COMMISSION]~~ DEPARTMENT.--

10 The ~~[commission]~~ department may adopt rules relating to the
11 administration and enforcement of the Utility Operators
12 Certification Act. The ~~[commission]~~ department shall:

13 A. adopt rules that classify public water supply
14 systems and public wastewater facilities based on:

15 (1) size and type of system or facility;

16 (2) capacity of the system or facility based on
17 the size of the serviced area and the number and size of the
18 users to be served;

19 (3) type and character of the water or
20 wastewater to be treated; and

21 (4) physical conditions affecting the treatment
22 plants, collection systems and distribution systems;

23 B. adopt rules providing standards and criteria for
24 the certification of operators based on their qualifications
25 and their ability to operate public water supply systems or

.183544.2

underscored material = new
[bracketed material] = delete

1 public wastewater facilities of the various classifications;

2 C. appoint a seven-member board from certified
3 operators to function with the [~~commission~~] department to
4 establish qualifications of operators, classify public water
5 supply systems and public wastewater facilities [~~adopt rules~~
6 ~~and advise the department on the administration of the Utility~~
7 ~~Operators Certification Act~~] and advise the department on such
8 matters. Two board members selected by the board shall sit as
9 commission members on matters to which [~~that~~] the Utility
10 Operators Certification Act is applicable;

11 D. adopt and file under the State Rules Act rules
12 necessary to carry out the provisions of the Utility Operators
13 Certification Act; and

14 E. adopt rules providing criteria for identifying the
15 minimum number of certified operators needed to operate the
16 various classifications of public water supply systems or
17 public wastewater facilities in order to protect human health,
18 public welfare or the environment."

19 SECTION 54. Section 61-33-9 NMSA 1978 (being Laws 1973,
20 Chapter 394, Section 9, as amended) is amended to read:

21 "61-33-9. VARIANCE PROCEDURES.--

22 A. The [~~commission~~] department shall establish by
23 regulation a variance procedure for public water supply system
24 and public wastewater facility operating authorities.

25 B. Any variance procedure established by the

.183544.2

underscored material = new
[bracketed material] = delete

1 ~~[commission]~~ department shall not allow an operating authority
2 more than six months to obtain the service of a certified
3 operator, except the ~~[commission]~~ department may give a
4 variance not to exceed eighteen months if the operator in
5 charge is involved in a training course that will bring ~~[his]~~
6 the operator's level of competency to the level required within
7 the eighteen-month period."

8 SECTION 55. Section 71-8-1 NMSA 1978 (being Laws 2007,
9 Chapter 34, Section 1) is amended to read:

10 "71-8-1. SHORT TITLE.--~~[This act]~~ Chapter 71, Article 8
11 NMSA 1978 may be cited as the "Sustainable Development Testing
12 Site Act"."

13 SECTION 56. Section 71-8-6 NMSA 1978 (being Laws 2007,
14 Chapter 34, Section 6) is amended to read:

15 "71-8-6. EXPIRATION OF TESTING SITE PERMITS.--Upon the
16 expiration of the term of a testing site permit or any renewal
17 thereof:

18 A. all activities within the area of the sustainable
19 development testing site shall comply with all applicable laws,
20 ordinances or rules, including permitting requirements; and

21 B. the permittee may provide the wastewater treatment
22 and disposal technologies to the ~~[wastewater technical advisory~~
23 ~~committee]~~ department of environment for review and, if
24 appropriate, for listing by the department ~~[of environment]~~ as
25 approved for use."

.183544.2

underscored material = new
[bracketed material] = delete

1 SECTION 57. Section 72-4A-1 NMSA 1978 (being Laws 2001,
2 Chapter 164, Section 1) is amended to read:

3 "72-4A-1. SHORT TITLE.--~~[This act]~~ Chapter 72, Article 4A
4 NMSA 1978 may be cited as the "Water Project Finance Act"."

5 SECTION 58. A new section of the Water Project Finance
6 Act is enacted to read:

7 "[NEW MATERIAL] TERMINATION OF AGENCY LIFE--DELAYED
8 REPEAL.--The water trust board is terminated on July 1, 2013
9 pursuant to the provisions of the Sunset Act. The board shall
10 continue to operate according to the provisions of Sections
11 72-4A-4 and 72-4A-5 NMSA 1978 until July 1, 2014. Effective
12 July 1, 2014, Sections 72-4A-4 and 72-4A-5 NMSA 1978 are
13 repealed."

14 SECTION 59. Section 74-1-5 NMSA 1978 (being Laws 1971,
15 Chapter 277, Section 6, as amended) is amended to read:

16 "74-1-5. ENVIRONMENTAL IMPROVEMENT BOARD--DUTIES.--The
17 board shall ~~[promulgate all regulations applying to persons and~~
18 ~~entities outside of the department]~~ be advisory to the
19 department in carrying out the objectives of the Environmental
20 Improvement Act."

21 SECTION 60. Section 74-1-6 NMSA 1978 (being Laws 1971,
22 Chapter 277, Section 9, as amended) is amended to read:

23 "74-1-6. DEPARTMENT--POWERS.--The department shall have
24 power to:

- 25 A. sue and be sued;

underscored material = new
[bracketed material] = delete

1 B. make contracts to carry out its delegated duties;

2 C. enter into agreements with environmental and
3 consumer protection agencies of other states and the federal
4 government pertaining to duties of the department;

5 D. enter into investigation and remediation
6 agreements with persons potentially responsible for sites
7 within New Mexico subject to the federal Comprehensive
8 Environmental Response, Compensation, and Liability Act of
9 1980, and such agreements shall not duplicate or take any
10 authority from the oil conservation commission;

11 E. serve as agent of the state in matters of
12 environmental management and consumer protection not expressly
13 delegated by law to another department, commission or political
14 subdivision in which the United States is a party;

15 F. enforce the rules, regulations and orders
16 promulgated by the [~~board~~] department and environmental
17 management and consumer protection laws for which the
18 department is responsible by appropriate action in courts of
19 competent jurisdiction;

20 G. collect civil penalties pursuant to law, including
21 reduction or elimination of penalties for violations from
22 persons that:

23 (1) within sixty days of the discovery of a
24 potential violation, voluntarily report to the department
25 potential violations of law enforced by the department;

.183544.2

underscored material = new
[bracketed material] = delete

1 (2) initiate corrective action for the potential
2 violation;

3 (3) have not previously violated the same
4 provision of law; and

5 (4) do not present an imminent and substantial
6 endangerment to health or the environment by the potential
7 violation;

8 ~~[H. on the same basis as any other person, recommend
9 and propose regulations for promulgation by the board;~~

10 ~~[F.]~~ H. on the same basis as any other person, present
11 data, views or arguments and examine witnesses and otherwise
12 participate at all hearings conducted by ~~[the board or any
13 other]~~ an administrative agency with responsibility in the
14 areas of environmental management or consumer protection, but
15 shall not be given any special status over any other party; and

16 ~~[J.]~~ I. have such other powers as may be necessary
17 and appropriate for the exercise of the powers and duties
18 delegated to the department."

19 **SECTION 61.** Section 74-1-7 NMSA 1978 (being Laws 1971,
20 Chapter 277, Section 10, as amended by Laws 2000, Chapter 86,
21 Section 1 and also by Laws 2000, Chapter 96, Section 1) is
22 amended to read:

23 "74-1-7. DEPARTMENT--DUTIES.--

24 A. The department is responsible for environmental
25 management and consumer protection programs. In that respect,

.183544.2

underscored material = new
[bracketed material] = delete

1 the department shall maintain, develop and enforce rules and
2 standards in the following areas:

3 (1) food protection;

4 (2) water supply, including implementing a
5 capacity development program to assist water systems in
6 acquiring and maintaining technical, managerial and financial
7 capacity in accordance with Section 1420 of the federal Safe
8 Drinking Water Act of 1974 and establishing administrative
9 penalties for enforcement;

10 (3) liquid waste, including exclusive authority
11 to collect on-site liquid waste system fees that are no more
12 than the average charged by the contiguous states to New Mexico
13 for similar permits and services and to implement and
14 administer an inspection and permitting program for on-site
15 liquid waste systems;

16 (4) air quality management as provided in the
17 Air Quality Control Act;

18 (5) radiation control and collection of license,
19 registration and other related fees, not to exceed fees charged
20 by the United States nuclear regulatory commission for similar
21 licenses, as provided in the Radiation Protection Act;

22 (6) noise control;

23 (7) nuisance abatement;

24 (8) vector control;

25 (9) occupational health and safety as provided

.183544.2

underscored material = new
[bracketed material] = delete

1 in the Occupational Health and Safety Act;

2 (10) sanitation of public swimming pools and
3 public baths;

4 (11) plumbing, drainage, ventilation and
5 sanitation of public buildings in the interest of public
6 health;

7 [~~(12)~~ ~~medical radiation, health and safety~~
8 ~~certification and standards for radiologic technologists as~~
9 ~~provided in the Medical Radiation Health and Safety Act;~~

10 ~~(13)]~~ (12) hazardous wastes and underground
11 storage tanks as provided in the Hazardous Waste Act; and

12 [~~(14)]~~ (13) solid waste as provided in the Solid
13 Waste Act.

14 B. Nothing in Subsection A of this section imposes
15 requirements for the approval of subdivision plats in addition
16 to those required elsewhere by law. Nothing in Subsection A of
17 this section preempts the authority of any political
18 subdivision to approve subdivision plats.

19 C. Administrative penalties collected pursuant to
20 Paragraph (2) of Subsection A of this section shall be
21 deposited in the water conservation fund.

22 D. On-site liquid waste system fees shall be
23 deposited in the liquid waste fund.

24 E. Radiation license and registration and other
25 related fees shall be deposited in the radiation protection

.183544.2

underscoring material = new
[bracketed material] = delete

1 fund."

2 SECTION 62. Section 74-1-9 NMSA 1978 (being Laws 1971,
3 Chapter 277, Section 13, as amended) is amended to read:

4 "74-1-9. ADOPTION OF REGULATIONS--NOTICE AND HEARING--
5 APPEAL.--

6 A. Any person may recommend or propose regulations to
7 the [~~board~~] department for promulgation. The [~~board~~]
8 department shall determine whether [~~or not~~] to hold a hearing
9 within sixty days of submission of a proposed regulation.

10 B. [~~No~~] A regulation shall not be adopted until after
11 a public hearing by the [~~board~~] department. As used in this
12 section, "regulation" includes any amendment or repeal
13 [~~thereof~~]. Hearings on regulations of nonstatewide application
14 shall be held within [~~that~~] the area [~~which~~] that is
15 substantially affected by the regulation. Hearings on
16 regulations of statewide application may be held at Santa Fe or
17 within any area of the state substantially affected by the
18 regulation. In making its regulations, the [~~board~~] department
19 shall give the weight it deems appropriate to all relevant
20 facts and circumstances presented at the public hearing,
21 including but not limited to:

22 (1) the character and degree of injury to or
23 interference with health, welfare, animal and plant life,
24 property and the environment;

25 (2) the public interest, including the social,

.183544.2

underscored material = new
[bracketed material] = delete

1 economic and cultural value of the regulated activity and the
2 social, economic and cultural effects of environmental
3 degradation; and

4 (3) the technical practicability, necessity for
5 and economic reasonableness of reducing, eliminating or
6 otherwise taking action with respect to environmental
7 degradation.

8 C. The standards for regulations set forth in
9 Subsection A of this section do not apply to the promulgation
10 of regulations under the Air Quality Control Act or any other
11 act in which specific standards are set forth for the [~~board's~~]
12 department's consideration.

13 D. Notice of the hearing shall be given at least
14 sixty days prior to the hearing date and shall state the
15 subject, the time and the place of the hearing and the manner
16 in which interested persons may present their views. The
17 proposed language amending any existing regulation or any
18 proposed new regulation shall be made available to the public
19 as of the date the notice of the hearing is given. The notice
20 shall also state where interested persons may secure copies of
21 any proposed amendment or new regulation. The notice shall be
22 published in a newspaper of general circulation in the area
23 affected. Reasonable effort shall be made to give notice to
24 all persons who have made a written request to the board for
25 advance notice of hearings.

.183544.2

underscored material = new
[bracketed material] = delete

1 E. At the hearing, the [~~board~~] department shall allow
2 all interested persons reasonable opportunity to submit data,
3 proposed changes to the proposed regulation, views or arguments
4 orally or in writing and to examine witnesses testifying at the
5 hearing. Any person heard or represented at the hearing shall
6 be given written notice of the action of the [~~board~~]
7 department.

8 F. The [~~board~~] department may designate a hearing
9 officer to take evidence in the hearing. A transcript shall be
10 made of the entire hearing proceedings.

11 G. [~~No~~] A regulation or an amendment or repeal
12 [~~thereof~~] of a regulation adopted by the [~~board~~] department
13 shall not become effective until thirty days after its filing
14 under the State Rules Act.

15 H. Any person who is or may be affected by a
16 regulation adopted by the [~~board~~] department may appeal to the
17 court of appeals for further relief. All such appeals shall be
18 upon the transcript made at the hearing and shall be taken to
19 the court of appeals within thirty days after filing of the
20 regulation under the State Rules Act.

21 I. The procedure for perfecting an appeal to the
22 court of appeals under this section consists of the timely
23 filing of a notice of appeal with a copy attached to the
24 regulation from which the appeal is taken. The appellant shall
25 certify in [~~his~~] the notice of appeal that arrangements have

.183544.2

underscored material = new
[bracketed material] = delete

1 been made with the [~~board~~] department for preparation of a
2 sufficient number of transcripts of the record of the hearing
3 on which the appeal depends to support [~~his~~] the appeal to the
4 court, at the expense of the appellant, including three copies
5 [~~which he~~] that the appellant shall furnish to the [~~board~~]
6 department.

7 J. Upon appeal, the court of appeals shall set aside
8 the regulation only if found to be:

9 (1) arbitrary, capricious or an abuse of
10 discretion;

11 (2) not supported by substantial evidence in the
12 transcript; or

13 (3) otherwise not in accordance with law."

14 SECTION 63. Section 74-1-10 NMSA 1978 (being Laws 1973,
15 Chapter 340, Section 8, as amended) is amended to read:

16 "74-1-10. PENALTY.--

17 A. A person who violates any [~~regulation~~] rule of the
18 [~~board~~] department is guilty of a petty misdemeanor. This
19 section does not apply to any [~~regulation~~] rule for which a
20 criminal penalty is otherwise provided by law.

21 B. Whenever, on the basis of any information, the
22 secretary determines that a person has violated, is violating
23 or threatens to violate any provision of Paragraph (2) or (3)
24 of Subsection A of Section [~~74-1-8~~] 74-1-7 NMSA 1978 or any
25 rule, regulation or permit condition adopted and promulgated

.183544.2

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

1 thereunder, the secretary may:

2 (1) issue a compliance order stating with
3 reasonable specificity the nature of the violation, or
4 threatened violation, requiring compliance immediately or
5 within a specified time period and assessing a civil penalty
6 for any past or current violation, or both; or

7 (2) commence a civil action in district court
8 for appropriate relief, including a temporary or permanent
9 injunction.

10 C. An order issued pursuant to Subsection B of this
11 section may include suspension or revocation of any permit
12 issued by the department. Any penalty assessed in the order,
13 except for residential on-site liquid waste systems, shall not
14 exceed one thousand dollars (\$1,000) for each violation. Any
15 penalty assessed in the order for a residential on-site liquid
16 waste system shall not exceed one hundred dollars (\$100) for
17 each violation. A penalty imposed for violation of drinking
18 water regulations 20 NMAC 7.1 or permit conditions shall not
19 exceed one thousand dollars (\$1,000) per violation per day. In
20 assessing the penalty, the secretary shall take into account
21 the seriousness of the violation and any good-faith efforts to
22 comply with the applicable requirements.

23 D. If a violator fails to take corrective actions
24 within the time specified in the compliance order, the
25 secretary shall:

.183544.2

underscored material = new
[bracketed material] = delete

1 (1) assess civil penalties of not more than one
2 thousand dollars (\$1,000) for each noncompliance with the
3 order; and

4 (2) suspend or revoke any permit issued to the
5 violator pursuant to Paragraph (3) of Subsection A of Section
6 [~~74-1-8~~] 74-1-7 NMSA 1978.

7 E. An order issued pursuant to this section shall
8 become final unless, no later than thirty days after the order
9 is served, the person named in the order submits a written
10 request to the secretary for a hearing. Upon such a request,
11 the secretary shall conduct a hearing. The secretary shall
12 appoint an independent hearing officer to preside over the
13 hearing. The hearing officer shall make and preserve a
14 complete record of the proceedings and forward [~~his~~] the
15 hearing officer's recommendation based on the record to the
16 secretary, who shall make the final decision.

17 F. In connection with any proceeding pursuant to this
18 section, the secretary may issue subpoenas for the attendance
19 and testimony of witnesses and the production of relevant
20 papers, books and documents and may adopt and promulgate rules
21 for discovery procedures.

22 G. Penalties collected pursuant to violations of
23 rules, regulations or permit conditions adopted pursuant to
24 Paragraph (3) of Subsection A of Section [~~74-1-8~~] 74-1-7 NMSA
25 1978 shall be deposited in the state treasury to be credited to

.183544.2

underscored material = new
[bracketed material] = delete

1 the general fund.

2 H. Penalties collected pursuant to violations of
3 drinking water regulations 20 NMAC 7.1 or permit conditions
4 pursuant to Paragraph (2) of Subsection A of Section [~~74-1-8~~]
5 74-1-7 NMSA 1978 shall be deposited in the state treasury to
6 the credit of the water conservation fund."

7 SECTION 64. Section 74-1-16 NMSA 1978 (being Laws 2003,
8 Chapter 335, Section 1) is amended to read:

9 "74-1-16. WATER RECREATION FACILITIES FUND--CREATED--FEE
10 IMPOSITION--PURPOSE.--

11 A. The "water recreation facilities fund" is created
12 in the state treasury to be used to administer and enforce
13 rules pertaining to public swimming pools, public spas and
14 other public water recreation facilities. All fees collected
15 pursuant to Subsection B of this section shall be deposited in
16 the fund. Money in the fund shall not be transferred to any
17 other fund. Disbursements from the fund shall be drawn on
18 warrant of the secretary of finance and administration upon
19 vouchers signed by the secretary of environment or [~~his~~] the
20 secretary of environment's authorized representative.

21 B. The [~~environmental improvement board~~] department
22 may assess an annual fee not to exceed one hundred fifty
23 dollars (\$150) on the owner or operator of a public swimming
24 pool, public spa or other public water recreation facility to
25 defray the cost of administering and enforcing rules adopted

.183544.2

underscored material = new
[bracketed material] = delete

1 in accordance with the Environmental Improvement Act
2 pertaining to public water recreation facilities. The fee
3 shall be based on the size of the public water recreation
4 facility."

5 SECTION 65. A new section of the Environmental
6 Improvement Act is enacted to read:

7 "[NEW MATERIAL] TERMINATION OF AGENCY LIFE--DELAYED
8 REPEAL.--The environmental improvement board is terminated on
9 July 1, 2015 pursuant to the provisions of the Sunset Act.
10 The board shall continue to operate according to the
11 provisions of Sections 74-1-4 and 74-1-5 NMSA 1978 until July
12 1, 2016. Effective July 1, 2016, Sections 74-1-4 and 74-1-5
13 NMSA 1978 are repealed."

14 SECTION 66. A new section of the Environmental
15 Improvement Act is enacted to read:

16 "[NEW MATERIAL] WASTEWATER TREATMENT AND DISPOSAL
17 TECHNOLOGIES--DUTIES OF THE DEPARTMENT.--The department
18 shall:

19 A. provide standardized objective evaluation of
20 wastewater treatment and disposal technologies for both
21 large- and small-flow domestic, commercial and agricultural
22 wastewater systems and add the wastewater treatment and
23 disposal technologies to the list of approved technologies
24 maintained by the department; and

25 B. maintain a current list of approved wastewater

.183544.2

underscored material = new
[bracketed material] = delete

1 technologies accessible by the public on the department's
2 internet site."

3 SECTION 67. A new section of the Environmental
4 Improvement Act is enacted ro read:

5 "[NEW MATERIAL] DUTIES OF THE BOARD TO THE DEPARTMENT.--
6 Beginning July 1, 2011, the department shall assume the
7 duties of the board and the board shall become advisory to
8 the department. All rules of the board shall remain in force
9 unless the department repeals or amends them."

10 SECTION 68. Section 74-2-2 NMSA 1978 (being Laws 1967,
11 Chapter 277, Section 2, as amended) is amended to read:

12 "74-2-2. DEFINITIONS.--As used in the Air Quality
13 Control Act:

14 A. "air contaminant" means a substance, including
15 any particulate matter, fly ash, dust, fumes, gas, mist,
16 smoke, vapor, microorganisms, radioactive material, any
17 combination thereof or any decay or reaction product thereof;

18 B. "air pollution" means the emission, except
19 emission that occurs in nature, into the outdoor atmosphere
20 of one or more air contaminants in quantities and of a
21 duration that may with reasonable probability injure human
22 health or animal or plant life or as may unreasonably
23 interfere with the public welfare, visibility or the
24 reasonable use of property;

25 C. "department" means the department of

.183544.2

underscored material = new
[bracketed material] = delete

1 environment;

2 D. "director" means the administrative head of a
3 local agency;

4 E. "emission limitation" or "emission standard"
5 means a requirement established by the [~~environmental~~
6 ~~improvement board or the~~] local board, the department, the
7 local authority or the local agency or pursuant to the
8 federal act that limits the quantity, rate or concentration,
9 or combination thereof, of emissions of air contaminants on a
10 continuous basis, including any requirements relating to the
11 operation or maintenance of a source to assure continuous
12 reduction;

13 F. "federal act" means the federal Clean Air Act,
14 its subsequent amendments and successor provisions;

15 G. "federal standard of performance" means a
16 standard of performance, emission limitation or emission
17 standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

18 H. "hazardous air pollutant" means an air
19 contaminant that has been listed as a hazardous air pollutant
20 pursuant to the federal act;

21 I. "local agency" means the administrative agency
22 established by a local authority pursuant to Paragraph [~~(2)~~]
23 (1) of Subsection A of Section 74-2-4 NMSA 1978;

24 J. "local authority" means any of the following
25 political subdivisions of the state that have, by following

.183544.2

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

1 the procedure set forth in Subsection A of Section 74-2-4
2 NMSA 1978, assumed jurisdiction for local administration and
3 enforcement of the Air Quality Control Act:

4 (1) a county that was a class A county as of
5 January 1, 1980; or

6 (2) a municipality with a population greater
7 than one hundred thousand located within a county that was a
8 class A county as of January 1, 1980;

9 K. "local board" means a municipal, county or joint
10 air quality control board created by a local authority;

11 L. "mandatory class I area" means any of the
12 following areas in this state that were in existence on
13 August 7, 1977:

14 (1) national wilderness areas that exceed five
15 thousand acres in size; and

16 (2) national parks that exceed six thousand
17 acres in size;

18 M. "modification" means a physical change in, or
19 change in the method of operation of, a source that results
20 in an increase in the potential emission rate of a regulated
21 air contaminant emitted by the source or that results in the
22 emission of a regulated air contaminant not previously
23 emitted, but does not include:

24 (1) a change in ownership of the source;

25 (2) routine maintenance, repair or

.183544.2

underscored material = new
[bracketed material] = delete

1 replacement;

2 (3) installation of air pollution control
3 equipment, and all related process equipment and materials
4 necessary for its operation, undertaken for the purpose of
5 complying with regulations adopted by the [~~environmental~~
6 ~~improvement board~~] department or the local board or pursuant
7 to the federal act; or

8 (4) unless previously limited by enforceable
9 permit conditions:

10 (a) an increase in the production rate, if
11 such increase does not exceed the operating design capacity
12 of the source;

13 (b) an increase in the hours of operation;
14 or

15 (c) use of an alternative fuel or raw
16 material if, prior to January 6, 1975, the source was capable
17 of accommodating such fuel or raw material or if use of an
18 alternate fuel or raw material is caused by a natural gas
19 curtailment or emergency allocation or [~~an~~] any other lack of
20 supply of natural gas;

21 N. "nonattainment area" means for an air
22 contaminant an area that is designated "nonattainment" with
23 respect to that contaminant within the meaning of Section
24 107(d) of the federal act;

25 O. "person" includes an individual, partnership,

.183544.2

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

1 corporation, association, the state or political subdivision
2 of the state and any agency, department or instrumentality of
3 the United States and any of their officers, agents or
4 employees;

5 P. "potential emission rate" means the emission
6 rate of a source at its maximum capacity to emit a regulated
7 air contaminant under its physical and operational design,
8 provided any physical or operational limitation on the
9 capacity of the source to emit a regulated air contaminant,
10 including air pollution control equipment and restrictions on
11 hours of operation or on the type or amount of material
12 combusted, stored or processed, shall be treated as part of
13 its physical and operational design only if the limitation or
14 the effect it would have on emissions is enforceable by the
15 department or the local agency pursuant to the Air Quality
16 Control Act or the federal act;

17 Q. "regulated air contaminant" means an air
18 contaminant, the emission or ambient concentration of which
19 is regulated pursuant to the Air Quality Control Act or the
20 federal act;

21 R. "secretary" means the secretary of environment;

22 S. "significant deterioration" means an increase in
23 the ambient concentrations of an air contaminant above the
24 levels allowed by the federal act or federal regulations for
25 that air contaminant in the area within which the increase

.183544.2

underscored material = new
[bracketed material] = delete

1 occurs;

2 T. "source" means a structure, building, equipment,
3 facility, installation or operation that emits or may emit an
4 air contaminant;

5 U. "standard of performance" means a requirement of
6 continuous emission reduction, including any requirement
7 relating to operation or maintenance of a source to assure
8 continuous emission reduction;

9 V. "state implementation plan" means a plan
10 submitted by New Mexico to the federal environmental
11 protection agency pursuant to 42 U.S.C. Section 7410; and

12 W. "toxic air pollutant" means an air contaminant,
13 except a hazardous air pollutant, classified by the
14 [~~environmental improvement board~~] department or the local
15 board as a toxic air pollutant."

16 SECTION 69. Section 74-2-3 NMSA 1978 (being Laws 1967,
17 Chapter 277, Section 3, as amended) is amended to read:

18 "74-2-3. [~~ENVIRONMENTAL IMPROVEMENT BOARD~~] DEPARTMENT
19 JURISDICTION.--

20 [~~A. In taking any action under the Air Quality~~
21 ~~Control Act, a majority of the environmental improvement~~
22 ~~board constitutes a quorum, but any action, order or decision~~
23 ~~of the environmental improvement board requires the~~
24 ~~concurrence of three members present at a meeting.~~

25 B.] Except as provided in the Air Quality Control

.183544.2

underscored material = new
[bracketed material] = delete

1 Act, the jurisdiction of the [~~environmental improvement~~
2 ~~board~~] department extends to all areas of the state except
3 within the boundaries of a local authority."

4 SECTION 70. Section 74-2-4 NMSA 1978 (being Laws 1967,
5 Chapter 277, Section 4, as amended) is amended to read:

6 "74-2-4. LOCAL AUTHORITY.--

7 A. A county or municipality meeting the
8 qualifications set forth in Paragraph (1) or (2) of
9 Subsection J of Section 74-2-2 NMSA 1978 may assume
10 jurisdiction as a local authority by adopting an ordinance
11 providing for the local administration and enforcement of the
12 Air Quality Control Act. The ordinance shall:

13 [~~(1) create a local board to perform, within~~
14 ~~the boundaries of the local authority, those functions~~
15 ~~delegated to the environmental improvement board under the~~
16 ~~Air Quality Control Act, except any functions reserved~~
17 ~~exclusively for the environmental improvement board;~~

18 ~~(2)] (1) create a local board or agency to~~

19 administer and enforce the provisions of the Air Quality

20 Control Act within the boundaries of the local authority that

21 shall, within the boundaries of the local authority, perform

22 all of the duties required of the department and exert all of

23 the powers granted to the department, except for those duties

24 and powers reserved exclusively for the department; and

25 [~~(3)] (2) provide for the appointment of a~~

.183544.2

underscored material = new
[bracketed material] = delete

1 director who shall perform for the local authority the same
2 duties as required of the secretary under the Air Quality
3 Control Act, except the duties and powers reserved
4 exclusively for the secretary.

5 B. At least a majority of the members of a local
6 board shall be individuals who represent the public interest
7 and do not derive any significant portion of their income
8 from persons subject to or who appear before the local board
9 on issues related to the federal act or the Air Quality
10 Control Act.

11 C. Prior to adopting any ordinance regulating air
12 pollution, public hearings and consultations shall be held as
13 directed by the local authority adopting the ordinance. The
14 provisions of any ordinance shall be consistent with the
15 substantive provisions of the Air Quality Control Act and
16 shall provide for standards and regulations not lower than
17 those required by regulations adopted by the [~~environmental~~
18 ~~improvement board~~] department.

19 D. Notwithstanding the provisions of Subsection A
20 of this section, the [~~environmental improvement board and the~~
21 ~~secretary~~] department shall retain jurisdiction and control
22 for the administration and enforcement of the Air Quality
23 Control Act as determined in that act with respect to any act
24 or failure to act, governmental or proprietary, of any local
25 authority that causes or contributes to air pollution,

.183544.2

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

1 including proceeding against a local authority as provided in
2 Section 74-2-12 NMSA 1978. "Failure to act", as used in this
3 section, includes failure to act against any person violating
4 the applicable ordinance or regulation adopted pursuant
5 thereto.

6 E. Any local authority that is located within a
7 transportation-related pollutant nonattainment area or
8 maintenance area may provide for a vehicle emission
9 inspection and maintenance program for vehicles under
10 twenty-six thousand pounds gross vehicle weight powered by a
11 spark-ignited internal combustion engine, which program shall
12 be no more stringent than that required under the federal act
13 or under federal air quality standards. Any two or more
14 local authorities may adopt identical rules and regulations
15 necessary to implement the vehicle emission inspection and
16 maintenance program, including examining the alternatives of
17 public or private operation of the program.

18 F. Any local authority that has implemented a
19 vehicle emission inspection and maintenance program may
20 extend the enforcement of that program by entering into joint
21 powers agreements with any municipality or county within the
22 designated airshed or with the department.

23 G. No tax shall be imposed to fund any vehicle
24 emission inspection and maintenance program until the local
25 authority has submitted the question of imposition of a tax

.183544.2

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

1 to the registered voters of the local authority and those
2 registered voters have approved the imposition of the tax.

3 H. A local authority having a vehicle emission
4 inspection and maintenance program shall conduct the vehicle
5 emission inspection and maintenance program through a
6 decentralized privately owned and operated system unless air
7 quality emissions result in automatic implementation of
8 another type of program under the terms of a contingency plan
9 required and approved by the United States environmental
10 protection agency. The local authority shall set the
11 emission inspection fee by ordinance.

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

.183544.2

underscored material = new
[bracketed material] = delete

1 SECTION 71. Section 74-2-5.1 NMSA 1978 (being Laws
2 1992, Chapter 20, Section 5) is amended to read:

3 "74-2-5.1. DUTIES AND POWERS OF THE DEPARTMENT AND THE
4 LOCAL AGENCY OR BOARD.--

5 A. The department or local agency or board shall
6 prevent or abate air pollution.

7 B. The department or local agency or board shall:

8 (1) adopt, promulgate, publish, amend and
9 repeal regulations consistent with the Air Quality Control
10 Act to attain and maintain national ambient air quality
11 standards and prevent or abate air pollution, including
12 regulations prescribing air standards, within the geographic
13 area of the department's jurisdiction or the local agency's
14 or board's jurisdiction, or any part thereof; and

15 (2) adopt a plan for the regulation, control,
16 prevention or abatement of air pollution, recognizing the
17 differences, needs, requirements and conditions within the
18 geographic area of the department's jurisdiction or the local
19 agency's or board's jurisdiction or any part thereof.

20 C. Regulations adopted by the department or the
21 local agency or board may:

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

.183544.2

1 such regulations:

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

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

10 (2) prescribe standards of performance for
11 sources and emission standards for hazardous air pollutants
12 that, except as provided in this subsection:

13 (a) shall be no more stringent than, but
14 at least as stringent as required by, federal standards of
15 performance; and

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

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

22 (4) include regulations requiring the
23 installation of control technology for mercury emissions that
24 removes the greater of what is achievable with best available
25 control technology or ninety percent of the mercury from the

underscored material = new
[bracketed material] = delete

1 input fuel for all coal-fired power plants, except for
2 coal-fired power plants constructed and generating electric
3 power and energy before July 1, 2007;

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

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

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

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

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

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

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

23 D. Any regulation adopted pursuant to this section
24 shall be consistent with federal law, if any, relating to
25 control of motor vehicle emissions.

.183544.2

underscored material = new
[bracketed material] = delete

1 E. In making its regulations, the department or the
2 local agency or board shall give weight it deems appropriate
3 to all facts and circumstances, including but not limited to:

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

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

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

14 F. The department and the local agency or board for
15 their respective jurisdictions shall:

16 ~~[A.]~~ (1) develop facts and make investigations
17 and studies consistent with the Air Quality Control Act and,
18 as required for enforcement of that act, enter at all
19 reasonable times in or upon any private or public property,
20 except private residences, that the department or the local
21 agency or board has reasonable cause to believe is or will
22 become a source contributing to air pollution and require the
23 production of information relating to emissions that cause or
24 contribute to air pollution. The results of any such
25 investigations shall be reduced to writing if any enforcement

.183544.2

underscored material = new
[bracketed material] = delete

1 action is contemplated, and a copy shall be furnished to the
2 owner or occupants of the premises before the action is
3 filed;

4 [B-] (2) institute legal proceedings to compel
5 compliance with the Air Quality Control Act or any regulation
6 of the [~~environmental improvement board~~] department or the
7 local agency or board;

8 [G-] (3) encourage and make every reasonable
9 effort to obtain voluntary cooperation by the owner or
10 occupants to preserve, restore or improve air purity;

11 [D-] (4) consult with any person proposing to
12 construct, install or otherwise acquire an air contaminant
13 source, device, system or control mechanism concerning the
14 efficiency of the device, system or mechanism or the air
15 pollution problem that may be related to the source, device,
16 system or mechanism; provided that consultation shall not
17 relieve any person from compliance with the Air Quality
18 Control Act, regulations in force pursuant to that act or any
19 other provision of law;

20 [E-] (5) establish a small business stationary
21 source technical and environmental compliance assistance
22 program, consistent with the provisions of Section 507 of the
23 federal act;

24 [F-] (6) accept, receive and administer grants
25 or other funds or gifts from public and private agencies,

.183544.2

underscored material = new
[bracketed material] = delete

1 including the federal government, or from any person;

2 [G.] (7) classify and record air contaminant
3 sources that, in its judgment, may cause or contribute to air
4 pollution, according to levels and types of emissions and
5 other characteristics that relate to air pollution; provided
6 that classifications may be for application to the entire
7 geographical area of the department's responsibility or the
8 local board or authority's responsibility or to any
9 designated portion of that area and shall be made with
10 special reference to the effects on health, economic and
11 social factors and physical effects on property; and

12 [H.] (8) develop [~~and present to the~~
13 ~~environmental improvement board or the local board~~] a plan
14 for the regulation, control, prevention or abatement of air
15 pollution, recognizing the differences, needs, requirements
16 and conditions in the different portions of the geographical
17 area of the department's responsibility or the local board's
18 or authority's responsibility."

19 SECTION 72. Section 74-2-5.3 NMSA 1978 (being Laws
20 2009, Chapter 98, Section 1) is amended to read:

21 "74-2-5.3. DUTIES AND POWERS OF [~~ENVIRONMENTAL~~
22 ~~IMPROVEMENT BOARD~~] THE DEPARTMENT AND LOCAL AGENCY OR BOARD
23 FOR ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR
24 QUALITY STANDARDS FOR OZONE.--

25 A. If the [~~environmental improvement board~~]

.183544.2

underscored material = new
[bracketed material] = delete

1 department or the local agency or board determines that
2 emissions from sources within its jurisdiction cause or
3 contribute to ozone concentrations in excess of ninety-five
4 percent of a national ambient air quality standard for ozone,
5 it shall adopt a plan, including regulations, to control
6 emissions of oxides of nitrogen and volatile organic
7 compounds to provide for attainment and maintenance of the
8 standard. Regulations adopted pursuant to this section shall
9 be limited to sources of emissions within the area of the
10 state where the ozone concentrations exceed ninety-five
11 percent of the national ambient air quality standard.

12 B. Notwithstanding the limitations in Section
13 [~~74-2-5~~] 74-2-5.1 NMSA 1978, the [~~environmental improvement~~
14 ~~board~~] department or the local agency or board may adopt
15 standards of performance for sources of emissions for which
16 no federal standard of performance has been adopted and may
17 adopt standards of performance more stringent than federal
18 standards of performance for sources for which a federal
19 standard of performance has been adopted. The standards of
20 performance shall reflect the degree of emission limitation
21 achievable through the application of control technology that
22 is reasonably available considering technological and
23 economic feasibility. The standards of performance may be
24 more stringent than applicable federal standards of
25 performance if the department, local agency or board

.183544.2

underscoring material = new
[bracketed material] = delete

1 determines that the federal standards of performance do not
2 reflect the degree of emission limitation achievable through
3 the application of control technology that is reasonably
4 available, considering technological and economic
5 feasibility, and that methods to further reduce emissions are
6 commercially available and will result in substantially
7 greater reductions in emissions than the federal standards
8 for such sources.

9 C. In adopting regulations, the ~~[environmental~~
10 ~~improvement board]~~ department or the local agency or board
11 shall consider the following:

12 (1) the public interest, including the social
13 and economic value of the sources of emissions and subjects
14 of air contaminants;

15 (2) previous experience with equipment and
16 methods available to control the air contaminants involved;

17 (3) energy, environmental and economic impacts
18 and other social costs;

19 (4) efforts by sources of emissions to reduce
20 emissions prior to the effective date of regulations adopted
21 under this section; and

22 (5) for existing sources of emissions, the
23 remaining useful life of any existing source to which the
24 regulation would apply.

25 D. No regulation adopted pursuant to this section

.183544.2

underscored material = new
[bracketed material] = delete

1 shall require emission reductions for sources that between
2 March 25, 2004 and January 1, 2009:

3 (1) implemented and are operating reasonable
4 control measures, considering technological and economic
5 feasibility, that result in quantifiable reductions for
6 emission of oxides of nitrogen or volatile organic compounds;
7 or

8 (2) are mandated by other requirements
9 enforceable by the department or the local authority to
10 implement reductions in emissions of oxides of nitrogen or
11 volatile organic compounds."

12 SECTION 73. Section 74-2-6 NMSA 1978 (being Laws 1967,
13 Chapter 277, Section 6, as amended) is amended to read:

14 "74-2-6. ADOPTION OF REGULATIONS--NOTICE AND
15 HEARINGS.--

16 A. Any person may recommend or propose regulations
17 to the [~~environmental improvement board~~] department or the
18 local agency or board for adoption. The [~~environmental~~
19 ~~improvement board~~] department or the local agency or board
20 shall determine whether to hold a hearing within sixty days
21 of submission of a proposed regulation.

22 B. No [~~regulations~~] regulation or emission control
23 requirement shall be adopted until after a public hearing by
24 the [~~environmental improvement board~~] department or the local
25 agency or board. As used in this section, "regulation"

.183544.2

underscored material = new
[bracketed material] = delete

1 includes any amendment or repeal thereof. Hearings on
2 regulations of nonstatewide application shall be held within
3 that area that is substantially affected by the regulation.
4 Hearings on regulations of statewide application may be held
5 in Santa Fe or within any area of the state substantially
6 affected by the regulation.

7 C. Notice of the hearing shall be given at least
8 thirty days prior to the hearing date and shall state the
9 subject, the time and the place of the hearing and the manner
10 in which interested persons may present their views. The
11 notice shall also state where interested persons may secure
12 copies of any proposed regulation or air quality standard.
13 The notice shall be published in a newspaper of general
14 circulation in the area affected. Reasonable effort shall be
15 made to give notice to all persons who have made a written
16 request to the [~~environmental improvement board~~] department
17 or the local agency or board for advance notice of its
18 hearings.

19 D. At the hearing, the [~~environmental improvement~~
20 ~~board~~] department or the local agency or board shall allow
21 all interested persons reasonable opportunity to submit data,
22 views or arguments orally or in writing and to examine
23 witnesses testifying at the hearing. Any person heard or
24 represented at the hearing shall be given written notice of
25 the action of the [~~environmental improvement board~~]

.183544.2

underscored material = new
[bracketed material] = delete

1 department or the local agency or board.

2 E. The [~~environmental improvement board~~] department
3 or the local agency or board may designate a hearing officer
4 to take evidence in the hearing.

5 F. No [~~regulations~~] regulation or emission control
6 requirement adopted by the [~~environmental improvement board~~]
7 department or the local agency or board shall become
8 effective until thirty days after its filing under the State
9 Rules Act."

10 SECTION 74. Section 74-2-7 NMSA 1978 (being Laws 1972,
11 Chapter 51, Section 4, as amended) is amended to read:

12 "74-2-7. PERMITS--PERMIT APPEALS TO THE [~~ENVIRONMENTAL~~
13 ~~IMPROVEMENT BOARD~~] DEPARTMENT OR THE LOCAL AGENCY OR BOARD--
14 PERMIT FEES.--

15 A. By regulation, the [~~environmental improvement~~
16 ~~board~~] department or the local agency or board shall require:

17 (1) a person intending to construct or modify
18 any source, except as otherwise specifically provided by
19 regulation, to obtain a construction permit from the
20 department or the local agency prior to such construction or
21 modification; and

22 (2) a person intending to operate any source
23 for which an operating permit is required by the 1990
24 amendments to the federal act, except as otherwise
25 specifically provided by regulation, to obtain an operating

.183544.2

underscored material = new
[bracketed material] = delete

1 permit from the department or the local agency.

2 B. Regulations adopted by the [~~environmental~~
3 ~~improvement board~~] department or the local agency or board
4 shall include at least the following provisions:

5 (1) requirements for the submission of
6 relevant information, including information the department or
7 the local agency or board deems necessary to determine that
8 regulations and standards under the Air Quality Control Act
9 or the federal act will not be violated;

10 (2) specification of the deadlines for
11 processing permit applications; provided that the deadline
12 for a final decision by the department or the local agency on
13 a construction permit application may not exceed:

14 (a) ninety days after the application is
15 determined to be administratively complete, if the
16 application is not subject to requirements for prevention of
17 significant deterioration, unless the secretary or the
18 director grants an extension not to exceed ninety days for
19 good cause, including the need to have public hearings; or

20 (b) one hundred eighty days after the
21 application is determined to be administratively complete, if
22 the application is subject to requirements for prevention of
23 significant deterioration, unless the secretary or the
24 director grants an extension not to exceed ninety days for
25 good cause, including the need to have public hearings;

.183544.2

underscored material = new
[bracketed material] = delete

1 (3) that if the department or local agency
2 fails to take final action on a construction permit
3 application within the deadlines specified in Paragraph (2)
4 of this subsection, the department or local agency shall
5 notify the applicant in writing that an extension of time is
6 required to process the application and specify in detail the
7 grounds for the extension;

8 (4) a description of elements required before
9 the department or local agency shall deem an application
10 administratively complete;

11 (5) specification of the public notice,
12 comment period and public hearing, if any, required prior to
13 the issuance of a permit; provided that the permit
14 regulations adopted:

15 (a) by the [~~environmental improvement~~
16 ~~board shall~~] department include provisions governing notice
17 to nearby states; and

18 (b) by any local agency or board [~~shall~~]
19 include provisions requiring that notice be given to the
20 department of all permit applications by any source that
21 emits, or has a potential emission rate of, one hundred tons
22 per year or more of any regulated air contaminant, including
23 any source of fugitive emissions of each regulated air
24 contaminant, at least sixty days prior to the date on which
25 construction or major modification is to commence;

.183544.2

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

1 (6) a schedule of construction permit fees
2 sufficient to cover the reasonable costs of:

3 (a) reviewing and acting upon any
4 application for such permit; and

5 (b) implementing and enforcing the terms
6 and conditions of the permit, excluding any court costs or
7 other costs associated with an enforcement action;

8 (7) a schedule of emission fees consistent
9 with the provisions of Section 502(b)(3) of the 1990
10 amendments to the federal act;

11 (8) a method for accelerated permit processing
12 that may be requested at the sole discretion of the applicant
13 at the time the applicant submits a construction permit
14 application and that:

15 (a) allows the department or local agency
16 to contract with qualified outside firms to assist the
17 department or local agency in its accelerated review of the
18 construction permit application; provided that the department
19 or local agency can contract with a qualified firm that does
20 not have a conflict of interest; and

21 (b) establishes a process for the
22 department or local agency to account for the expenditure of
23 the accelerated permit processing fees;

24 (9) allowance for additional permit
25 application fees, sufficient to cover the reasonable costs of

.183544.2

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

1 an accelerated permit application review process. Before the
2 applicant is notified that the permit application has been
3 determined to be complete, the department or local agency
4 shall give the applicant a reasonable estimate of costs of an
5 accelerated permit application review process;

6 (10) specification of the maximum length of
7 time for which a permit shall be valid; provided that for an
8 operating permit such period may not exceed five years; and

9 (11) for an operating permit only:

10 (a) provisions consistent with Sections
11 502(b) and 505(b) of the federal act providing: 1) notice to
12 and review and comment by the United States environmental
13 protection agency; and 2) that if the department or local
14 agency receives notice of objection from the United States
15 environmental protection agency before the operating permit
16 is issued, the department or the local agency shall not issue
17 the permit unless it is revised and issued under Section
18 505(c) of the federal act;

19 (b) provisions governing renewal of the
20 operating permit; and

21 (c) specification of the conditions under
22 which the operating permit may be terminated, modified or
23 revoked and reissued prior to the expiration of the term of
24 the operating permit.

25 C. Except as provided in Subsection 0 of this

.183544.2

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

1 section, the department or the local agency may deny any
2 application for:

3 (1) a construction permit if it appears that
4 the construction or modification:

5 (a) will not meet applicable standards,
6 rules or requirements of the Air Quality Control Act or the
7 federal act;

8 (b) will cause or contribute to air
9 contaminant levels in excess of a national or state standard
10 or, within the boundaries of a local authority, applicable
11 local ambient air quality standards; or

12 (c) will violate any other provision of
13 the Air Quality Control Act or the federal act; and

14 (2) an operating permit if the source will not
15 meet the applicable standards, rules or requirements pursuant
16 to the Air Quality Control Act or the federal act.

17 D. The department or the local agency may specify
18 conditions to any permit granted under this section,
19 including:

20 (1) for a construction permit:

21 (a) a requirement that such source install
22 and operate control technology, determined on a case-by-case
23 basis, sufficient to meet the standards, rules and
24 requirements of the Air Quality Control Act and the federal
25 act;

.183544.2

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

1 (b) individual emission limits, determined
2 on a case-by-case basis, but only as restrictive as necessary
3 to meet the requirements of the Air Quality Control Act and
4 the federal act or the emission rate specified in the permit
5 application, whichever is more stringent;

6 (c) compliance with applicable federal
7 standards of performance;

8 (d) reasonable restrictions and
9 limitations not relating to emission limits or emission
10 rates; or

11 (e) any combination of the conditions
12 listed in this paragraph; and

13 (2) for an operating permit, terms and
14 conditions sufficient to ensure compliance with the
15 applicable standards, rules and requirements pursuant to the
16 Air Quality Control Act and the federal act.

17 E. This section does not authorize the department
18 or the local agency to require the use of machinery, devices
19 or equipment from a particular manufacturer if the federal
20 standards of performance, state regulations and permit
21 conditions may be met by machinery, devices or equipment
22 otherwise available.

23 F. The issuance of a permit does not relieve any
24 person from the responsibility of complying with the
25 provisions of the Air Quality Control Act and any applicable

.183544.2

underscored material = new
[bracketed material] = delete

1 regulations of the [~~environmental improvement board~~]
2 department or the local agency or board. Any conditions
3 placed upon a permit by the department or the local agency
4 shall be enforceable to the same extent as a regulation of
5 its board.

6 G. A person who participated in a permitting action
7 before the department or the local agency shall be notified
8 by the department or the local agency of the action taken and
9 the reasons for the action. Notification of the applicant
10 shall be by certified mail.

11 H. A person who participated in a permitting action
12 before the department or the local agency and who is
13 adversely affected by such permitting action may file a
14 petition for hearing before the [~~environmental improvement~~
15 ~~board~~] secretary or the local agency or board. The petition
16 shall be made in writing to the [~~environmental improvement~~
17 ~~board~~] secretary or the local agency or board within thirty
18 days from the date notice is given of the department's or the
19 local agency's action. Unless a timely petition for hearing
20 is made, the decision of the department or the local agency
21 shall be final.

22 I. If a timely petition for hearing is made, the
23 [~~environmental improvement board~~] secretary or the local
24 agency or board shall hold a hearing within sixty days after
25 receipt of the petition. The [~~environmental improvement~~

.183544.2

underscored material = new
[bracketed material] = delete

1 ~~board~~] secretary or the local agency or board shall notify
2 the petitioner and the applicant or permittee, if other than
3 the petitioner, by certified mail of the date, time and place
4 of the hearing. If the subject of the petition is a
5 permitting action deemed by the [~~environmental improvement~~
6 ~~board~~] secretary or the local agency or board to
7 substantially affect the public interest, the [~~environmental~~
8 ~~improvement board~~] secretary or the local agency or board
9 shall ensure that the public receives notice of the date,
10 time and place of the hearing. The public in such
11 circumstances shall also be given a reasonable opportunity to
12 submit data, views or arguments orally or in writing and to
13 examine witnesses testifying at the hearing. Any person
14 submitting data, views or arguments orally or in writing
15 shall be subject to examination at the hearing.

16 J. The [~~environmental improvement board~~] secretary
17 or the local agency or board may designate a hearing officer
18 to take evidence in the hearing. All hearings shall be
19 recorded.

20 K. The burden of proof shall be upon the
21 petitioner. Based upon the evidence presented at the
22 hearing, the [~~environmental improvement board~~] secretary or
23 the local agency or board shall sustain, modify or reverse
24 the action of the department or the local agency
25 respectively.

.183544.2

underscored material = new
[bracketed material] = delete

1 L. Notwithstanding any other provision of law and
2 subject to the provisions of Section 74-2-4 NMSA 1978, a
3 final decision on a permit by the department, [~~the~~
4 ~~environmental improvement board~~] the local agency, the local
5 board or the court of appeals that a source will or will not
6 meet applicable local, state and federal air pollution
7 standards and regulations shall be conclusive and is binding
8 on every other state agency and as an issue before any other
9 state agency shall be deemed resolved in accordance with that
10 final decision.

11 M. Subject to the provisions of Section 74-2-4 NMSA
12 1978, if the local agency or board has adopted a permit
13 regulation pursuant to this section, persons constructing or
14 modifying any source within the boundaries of the local
15 authority shall obtain a permit from the local agency and not
16 from the department.

17 N. Fees collected pursuant to this section shall be
18 deposited in:

19 (1) the state air quality permit fund created
20 by Section 74-2-15 NMSA 1978 if collected by the department;
21 or

22 (2) a fund created pursuant to Section 74-2-16
23 NMSA 1978 if collected by a local agency pursuant to a permit
24 regulation adopted by the local agency or board pursuant to
25 this section.

.183544.2

underscored material = new
[bracketed material] = delete

1 0. The department may not deny an application for a
2 construction permit for a cotton gin if the applicant
3 proposes use of the best system of emissions reduction
4 currently in use by cotton gins in the United States, as
5 specified by regulation of the [~~environmental improvement~~
6 ~~board~~] department, and the cotton gin has a potential
7 emission rate, considering the use of the proposed emissions
8 reduction system and the proposed hours of operation, of not
9 more than fifty tons per year of any regulated air
10 contaminant for which there is a national ambient air quality
11 standard. The construction permit shall require that the
12 applicant use the proposed emission reduction system and
13 limit the hours of operation to the hours specified in the
14 application. For purposes of this subsection, "best system
15 of emissions reduction" for cotton gins means a system that
16 will result in emissions reduction equal to or greater than
17 that obtained by the use of condenser screens, seventy-mesh
18 screen or equivalent on low-pressure exhausts and high-
19 efficiency cyclone dust collectors on high-pressure
20 exhausts."

21 SECTION 75. Section 74-2-8 NMSA 1978 (being Laws 1967,
22 Chapter 277, Section 8, as amended) is amended to read:

23 "74-2-8. VARIANCES.--

24 A. The [~~environmental improvement board~~] department
25 or the local agency or board may grant an individual variance

.183544.2

underscored material = new
[bracketed material] = delete

1 from the limitations prescribed under the Air Quality Control
2 Act, any regulation of the [~~environmental improvement board~~]
3 department or the local agency or board or any permit
4 condition imposed by the department or the local agency,
5 whenever it is found, upon presentation of adequate proof:

6 (1) that compliance with any part of that act,
7 any regulation of the [~~environmental improvement board~~]
8 department or the local agency or board or any permit
9 condition will:

10 (a) result in an arbitrary and
11 unreasonable taking of property; or

12 (b) impose an undue economic burden upon
13 any lawful business, occupation or activity; and

14 (2) that the granting of the variance will
15 not:

16 (a) result in a condition injurious to
17 health or safety; or

18 (b) cause or contribute to an air
19 contaminant level in excess of any primary national ambient
20 air quality standards.

21 B. [~~No~~] A variance shall not be granted pursuant to
22 this section until the [~~environmental improvement board~~]
23 department or the local agency or board has considered the
24 relative interests of the applicant, other owners of property
25 likely to be affected by the discharges and the general

.183544.2

underscored material = new
[bracketed material] = delete

1 public.

2 C. Any variance or renewal [~~thereof~~] shall be
3 granted within the requirements of Subsection A of this
4 section and for time periods and under conditions consistent
5 with the reasons [~~therefor~~] for the variance of renewal and
6 within the following limitations:

7 (1) if the variance is granted on the ground
8 that there are no practicable means known or available for
9 the adequate prevention, abatement or control of the air
10 pollution involved, it shall be only until the necessary
11 means for prevention, abatement or control become known and
12 available;

13 (2) if the variance is granted on the ground
14 that compliance with the particular requirement from which
15 variance is sought will necessitate the taking of measures
16 that, because of their extent or cost, must be spread over a
17 considerable period of time, it shall be for a period not to
18 exceed such reasonable time as, in the view of the
19 [~~environmental improvement board~~] department or the local
20 agency or board, is requisite for the taking of the necessary
21 measures. A variance granted on the ground specified in this
22 paragraph shall contain a timetable for the taking of action
23 in an expeditious manner and shall be conditioned on
24 adherence to the timetable; or

25 (3) if the variance is granted on the ground

.183544.2

underscored material = new
[bracketed material] = delete

1 that it is justified to relieve or prevent hardship of a kind
2 other than that provided for in Paragraphs (1) and (2) of
3 this subsection, it shall be for not more than one year.

4 D. Any person seeking a variance shall do so by
5 filing a petition for variance with the secretary or the
6 director charged with implementation of the Air Quality
7 Control Act at the site where the variance will apply. The
8 secretary or the director shall promptly investigate the
9 petition and make recommendation to ~~[his]~~ the secretary's or
10 the director's respective board as to the disposition of the
11 petition.

12 E. Upon receiving the recommendation of the
13 secretary or the director on the variance, the ~~[environmental~~
14 ~~improvement board]~~ department or the local agency or board
15 shall:

16 (1) if the secretary or the director favors a
17 variance, hold a public hearing prior to the granting of any
18 variance; and

19 (2) if the secretary or the director is
20 opposed to the granting of the variance, hold a hearing only
21 upon the request of the petitioner.

22 F. In the hearing, the burden of proof shall be
23 upon the petitioner."

24 SECTION 76. Section 74-2-9 NMSA 1978 (being Laws 1971,
25 Chapter 57, Section 1, as amended) is amended to read:

.183544.2

1 "74-2-9. JUDICIAL REVIEW--ADMINISTRATIVE ACTIONS.--

2 A. Any person adversely affected by an
3 administrative action taken by the [~~environmental improvement~~
4 ~~board~~] department, the local agency or board, the secretary
5 or the director may appeal to the court of appeals. All
6 appeals shall be upon the record made at the hearing and
7 shall be taken to the court of appeals within thirty days
8 following the date of the action.

9 B. For appeals of regulations, the date of the
10 action shall be the date of the filing of the regulation by
11 the [~~environmental improvement board~~] department or the local
12 agency or board pursuant to the State Rules Act.

13 C. Upon appeal, the court of appeals shall set
14 aside the action only if found to be:

15 (1) arbitrary, capricious or an abuse of
16 discretion;

17 (2) not supported by substantial evidence in
18 the record; or

19 (3) otherwise not in accordance with law.

20 D. After a hearing and a showing of good cause by
21 the appellant, a stay of the action being appealed may be
22 granted:

23 (1) by the [~~environmental improvement board,~~
24 ~~the~~] local board, the department or the local agency,
25 whichever took the action being appealed; or

.183544.2

underscored material = new
[bracketed material] = delete

1 (2) by the court of appeals if the
2 [~~environmental improvement board, the~~] local board, the
3 department or the local agency denies a stay or fails to act
4 upon an application for a stay within sixty days after
5 receipt of the application."

6 SECTION 77. Section 74-2-11.1 NMSA 1978 (being Laws
7 1979, Chapter 393, Section 7, as amended) is amended to read:

8 "74-2-11.1. LIMITATIONS ON REGULATIONS.--The Air
9 Quality Control Act does not:

10 A. authorize the [~~environmental improvement board~~]
11 department or the local agency or board to make any
12 regulation with respect to any condition or quality of the
13 outdoor atmosphere if the condition or air quality level and
14 its effect are confined entirely within the boundaries of the
15 industrial or manufacturing property within which the air
16 contaminants are or may be emitted and public access is
17 restricted within such boundaries;

18 B. grant to the [~~environmental improvement board~~]
19 department or the local agency or board any jurisdiction or
20 authority affecting the relation between employers and
21 employees with respect to or arising out of any condition of
22 air quality; or

23 C. supersede or limit the applicability of any law
24 relating to industrial health, safety or sanitation."

25 SECTION 78. Section 74-2-12 NMSA 1978 (being Laws 1992,
.183544.2

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

1 Chapter 20, Section 14, as amended) is amended to read:

2 "74-2-12. ENFORCEMENT--COMPLIANCE ORDERS--FIELD
3 CITATIONS.--

4 A. When, on the basis of any information, the
5 secretary or the director determines that a person has
6 violated or is violating a requirement or prohibition of the
7 Air Quality Control Act, a regulation promulgated pursuant to
8 that act or a condition of a permit issued under that act,
9 the secretary or the director may:

10 (1) issue a compliance order within one year
11 after the violation becomes known by the department or the
12 local agency stating with reasonable specificity the nature
13 of the violation and requiring compliance immediately or
14 within a specified time period or assessing a civil penalty
15 for a past or current violation, or both; or

16 (2) commence a civil action in district court
17 for appropriate relief, including a temporary or permanent
18 injunction.

19 B. An order issued pursuant to Subsection A of this
20 section may include a suspension or revocation of the permit
21 or portion thereof issued by the secretary or the director
22 that is alleged to have been violated. Any penalty assessed
23 in the order shall not exceed fifteen thousand dollars
24 (\$15,000) per day of noncompliance for each violation.

25 C. An order issued pursuant to Subsection A of this

.183544.2

underscored material = new
[bracketed material] = delete

1 section shall become final unless, no later than thirty days
2 after the order is served, the person named therein submits a
3 written request to the secretary or the director for a public
4 hearing. Upon such request, the secretary or the director
5 shall promptly conduct a public hearing. The secretary or
6 the director shall appoint an independent hearing officer to
7 preside over the public hearing. The hearing officer shall
8 make and preserve a complete record of the proceedings and
9 forward the hearing officer's recommendation based thereon to
10 the secretary or the director, who shall make the final
11 decision.

12 D. The [~~environmental improvement board~~] department
13 or the local agency or board may implement a field citation
14 program through regulations establishing appropriate minor
15 violations for which field citations assessing civil
16 penalties not to exceed one thousand dollars (\$1,000) per day
17 of violation may be issued by officers or employees of the
18 department or the local agency as designated by the secretary
19 or the director.

20 E. A person to whom a field citation is issued
21 pursuant to Subsection D of this section may, within a
22 reasonable time as prescribed by regulation by the
23 [~~environmental improvement board~~] department or the local
24 agency or board, elect to pay the penalty assessment or to
25 request a hearing by the issuing agency on the field

.183544.2

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

1 citation. If a request for hearing is not made within the
2 time specified in the regulation, the penalty assessment in
3 the field citation shall be final.

4 F. Payment of a civil penalty required by a field
5 citation issued pursuant to Subsection D of this section
6 shall not be a defense to further enforcement by the
7 department or the local agency to correct a violation or to
8 assess the maximum statutory penalty pursuant to other
9 authorities in the Air Quality Control Act if the violation
10 continues.

11 G. In determining the amount of a penalty to be
12 assessed pursuant to this section, the secretary, the
13 director or the person issuing a field citation shall take
14 into account the seriousness of the violation, any good-faith
15 efforts to comply with the applicable requirements and other
16 relevant factors.

17 H. In connection with a proceeding under this
18 section, the secretary or the director may issue subpoenas
19 for the attendance and testimony of witnesses and the
20 production of relevant papers, books and documents and may
21 adopt rules for discovery procedures.

22 I. If a person fails to comply with an
23 administrative order, the secretary or director may initiate
24 an action to suspend or revoke the permit, or portion
25 thereof, alleged to have been violated or to commence a civil

.183544.2

underscored material = new
[bracketed material] = delete

1 action in district court to enforce the order, or to suspend
2 or revoke the permit, or both.

3 J. If a person fails to pay an assessment of a
4 civil penalty, the secretary or director may commence a civil
5 action in district court to collect the civil penalties
6 assessed in the order.

7 K. Penalties collected pursuant to this section
8 shall be deposited in the:

9 (1) municipal or county general fund, as
10 applicable, if the administrative order or field citation was
11 directed to a source located within a local authority; or

12 (2) state general fund if the administrative
13 order or field citation was directed to any other source."

14 SECTION 79. Section 74-2-13 NMSA 1978 (being Laws 1972,
15 Chapter 51, Section 8, as amended) is amended to read:

16 "74-2-13. INSPECTION.--The secretary or the director or
17 an authorized representative of either, upon presentation of
18 [~~his~~] credentials:

19 A. shall have a right of entry to, upon or through
20 any premises on which an emission source is located or on
21 which any records required to be maintained by regulations of
22 the [~~environmental improvement board~~] department or the local
23 board or by any permit condition are located; and

24 B. may at reasonable times:

25 (1) have access to and copy any records

.183544.2

underscored material = new
[bracketed material] = delete

1 required to be established and maintained by regulations of
2 the [~~environmental improvement board~~] department or the local
3 board or any permit condition;

4 (2) inspect any monitoring equipment and
5 method required by regulations of the [~~environmental
6 improvement board~~] department or the local board or by any
7 permit condition; and

8 (3) sample any emissions that are required to
9 be sampled pursuant to regulation of the [~~environmental
10 improvement board~~] department or the local board or any
11 permit condition."

12 **SECTION 80.** Section 74-2-14 NMSA 1978 (being Laws 1967,
13 Chapter 277, Section 12, as amended) is amended to read:

14 "74-2-14. CRIMINAL PENALTIES.--

15 A. Notwithstanding any other provision of the Air
16 Quality Control Act, a local authority may prescribe
17 penalties for violations of an ordinance:

18 (1) regulating open-fire burning or
19 residential incineration; or

20 (2) prohibiting the removal of motor vehicle
21 emission control devices installed as required by law and
22 requiring the maintenance of such devices in operating
23 condition.

24 B. Notwithstanding any other provision of the Air
25 Quality Control Act, it is a petty misdemeanor to violate any

.183544.2

underscored material = new
[bracketed material] = delete

1 regulations of the [~~environmental improvement board~~]
2 department:

3 (1) regulating open-fire burning or
4 residential incineration; or

5 (2) prohibiting the removal of motor vehicle
6 emission control devices installed as required by law or
7 requiring the maintenance of such devices in operating
8 condition.

9 C. Except as provided in Subsection D of this
10 section, [~~any~~] a person who knowingly commits any of the
11 following acts is guilty of a fourth degree felony and shall
12 be sentenced in accordance with the provisions of Section
13 31-18-15 NMSA 1978:

14 (1) violation of any regulation relating to
15 commercial or industrial incineration;

16 (2) violation of any regulation adopting any
17 federal standard of performance;

18 (3) violation of any regulation relating to
19 control of hazardous air pollutants; or

20 (4) violation of any regulation relating to
21 control of toxic air pollutants.

22 D. At any source required to have an operating
23 permit pursuant to Section 502 of the federal act, [~~any~~] a
24 person who knowingly commits any violation of any applicable
25 standard, regulation or requirement under the Air Quality

.183544.2

underscored material = new
[bracketed material] = delete

1 Control Act or the federal act, any term or condition of an
2 operating permit or any emission fee or filing requirement in
3 any operating permit regulation of the [~~environmental~~
4 ~~improvement board~~] department or the local agency or board is
5 guilty of a fourth degree felony and shall, upon conviction,
6 be punished by a fine of not more than ten thousand dollars
7 (\$10,000) per day per violation or by imprisonment of not
8 more than eighteen months or both.

9 E. [~~Any~~] A person who knowingly commits any
10 violation of a regulation of the [~~environmental improvement~~
11 ~~board~~] department or the local agency or board not listed in
12 Subsection B, C or D of this section is guilty of a
13 misdemeanor and shall be sentenced in accordance with the
14 provisions of Section 31-19-1 NMSA 1978.

15 F. [~~Any~~] A person who knowingly:

16 (1) makes any false statement, representation
17 or certification in any application, record, report, plan or
18 other document filed or required to be maintained under the
19 Air Quality Control Act, any permit issued pursuant to the
20 Air Quality Control Act or any regulation adopted pursuant to
21 that act; or

22 (2) falsifies, tampers with or knowingly
23 renders inaccurate any monitoring device or method required
24 to be maintained under the Air Quality Control Act, any
25 permit issued pursuant to the Air Quality Control Act or any

.183544.2

underscored material = new
[bracketed material] = delete

1 ordinance or regulation adopted pursuant to that act; is
2 guilty of a misdemeanor and shall, upon conviction, be
3 punished by a fine of not more than ten thousand dollars
4 (\$10,000) per day per violation or by imprisonment for not
5 more than twelve months or by both.

6 G. ~~Any~~ A person who knowingly releases into the
7 ambient air any hazardous air pollutant or extremely
8 hazardous substance listed pursuant to Section 302(a)(2) of
9 the federal Superfund Amendments and Reauthorization Act of
10 1986, 42 U.S.C. 1102(a)(2) that is not listed in Section 112
11 of the federal act and who knows at the time of the release
12 that ~~he~~ it creates a substantial danger of death or serious
13 bodily injury to another person is guilty of a second degree
14 felony and, upon conviction, shall be sentenced to a term of
15 imprisonment not to exceed nine years or a fine not to exceed
16 one hundred thousand dollars (\$100,000) or both. Any person,
17 other than an individual or a governmental entity, who
18 commits such violation is guilty of a second degree felony
19 and shall be fined in an amount not to exceed two hundred
20 fifty thousand dollars (\$250,000). If a conviction of any
21 person under this subsection is for a second or subsequent
22 violation, the maximum punishment shall be doubled with
23 respect to both the fine and the imprisonment."

24 SECTION 81. A new section of the Air Quality Control
25 Act is enacted to read:

.183544.2

underscored material = new
[bracketed material] = delete

1 "[NEW MATERIAL] ENVIRONMENTAL BOARD DUTIES.--The
2 environmental improvement board shall assist the department
3 in carrying out the objectives of the Air Quality Control
4 Act, including advising the department on the adoption and
5 implementation of regulations adopted pursuant to that act,
6 permit and variance applications and other duties as
7 determined by the department."

8 **SECTION 82.** Section 74-3-3 NMSA 1978 (being Laws 1959,
9 Chapter 185, Section 3, as amended) is amended to read:

10 "74-3-3. COUNCIL DUTIES--PER DIEM.--It is the duty of
11 the council to advise the agency [~~and the board~~] on technical
12 matters relating to radiation. Members of the council shall
13 receive per diem and mileage as provided in the Per Diem and
14 Mileage Act and shall receive no other compensation,
15 perquisite or allowance. Money expended for these purposes
16 shall be paid from agency funds."

17 **SECTION 83.** Section 74-3-5 NMSA 1978 (being Laws 1971,
18 Chapter 284, Section 5, as amended) is amended to read:

19 "74-3-5. RADIATION PROTECTION CONSULTANT--RADIATION
20 REGULATIONS--INSPECTION.--

21 A. The [~~board~~] agency shall be the radiation
22 protection consultant for all agencies and institutions of
23 the state and shall, with the advice and consent of the
24 agency and council, have the authority, after considering the
25 facts and circumstances and following the procedures set

.183544.2

underscored material = new
[bracketed material] = delete

1 forth in Section 74-1-9 NMSA 1978, to promulgate rules:

2 (1) concerning the health and environmental
3 aspects of the use, management, storage and disposal of
4 radioactive material and the operation of ionizing and non-
5 ionizing radiation emitting equipment;

6 (2) prescribing license, registration and
7 other related fees, all of which shall be deposited in the
8 radiation protection fund;

9 (3) requiring the posting of a bond running
10 only to the state for licensed activities, which bond shall
11 be adequate to insure, in the event of abandonment, default
12 or other performance incapacities of the licensee, compliance
13 with the requirements of the rules or license conditions,
14 including actions of the licensee required during or after
15 the cessation of operations, which bond shall be released
16 upon demonstration by the licensee that the conditions of the
17 license have been satisfied; and

18 (4) establishing continued care fund deposit
19 requirements and other continued care requirements as
20 provided in Section 74-3-6 NMSA 1978.

21 B. Upon adoption, rules shall be furnished to
22 interested parties upon request.

23 C. In order to carry out the purposes of the
24 Radiation Protection Act, the director or [~~his~~] the
25 director's authorized representatives may, as a condition of

.183544.2

underscored material = new
[bracketed material] = delete

1 license or registration, enter at all reasonable times in or
2 upon any private or public property where the director has
3 reasonable cause to believe there is radioactive material or
4 radiation equipment."

5 SECTION 84. Section 74-3-6 NMSA 1978 (being Laws 1977,
6 Chapter 343, Section 6) is amended to read:

7 "74-3-6. CONTINUED CARE FUND REGULATIONS--REQUIREMENTS--
8 EXEMPTIONS--MODIFICATION.--

9 A. In the adoption of regulations governing
10 continued care fund requirements, the [~~board~~] agency shall
11 consider the desirability of pro-rated payments by the
12 licensee in relation to the expected life of the licensed
13 operation.

14 B. Licensees whose licensed activities consist only
15 of uses of radioactive material [~~which~~] that do not create a
16 situation requiring continued care of radioactive materials
17 after the expiration of the license, including but not
18 limited to x-ray generating devices, laboratories, medical
19 facilities, pharmacies, industrial radiography, well logging
20 and gauges, shall not be required to make deposits to the
21 continued care fund.

22 C. Until the nuclear regulatory commission adopts
23 regulations governing continued care activities, continued
24 care fund deposits required from a uranium mill license
25 holder shall be ten cents (\$.10) per pound of U_3O_8 in uranium

.183544.2

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

1 concentrate (yellow cake) produced from ~~[such]~~ the mill,
2 unless the ~~[board]~~ agency determines that a lesser amount is
3 appropriate ~~[and]~~. The requirement of a mill license holder
4 to make deposits to the continued care fund will terminate
5 for each mill after the cumulative continued care fund
6 deposit for that mill reaches one million dollars
7 (\$1,000,000).

8 D. After the nuclear regulatory commission adopts
9 regulations governing continued care activities:

10 (1) the ~~[board]~~ agency may alter the amount or
11 character of a licensee's obligation by regulation if such
12 regulations are no more stringent than the regulations of the
13 nuclear regulatory commission governing continued care
14 activities;

15 (2) the ~~[board]~~ agency may adopt continued
16 care requirements more stringent than those of the nuclear
17 regulatory commission upon the finding that such regulations
18 are necessitated by unique or special circumstances in New
19 Mexico; and

20 (3) deposits by a licensee to the continued
21 care fund shall be considered in adopting regulations
22 altering the amount or character of a licensee's continued
23 care obligation."

24 SECTION 85. Section 74-3-7 NMSA 1978 (being Laws 1977,
25 Chapter 343, Section 7, as amended) is amended to read:

.183544.2

underscored material = new
[bracketed material] = delete

1 "74-3-7. CONTINUED CARE FUND CREATED--APPROPRIATION--
2 APPROVAL--REGULATION.--

3 A. The "radiation protection continued care fund"
4 is created in the state treasury. Cash balances in the fund
5 shall be invested by the state treasurer as other state funds
6 under ~~[his]~~ the state treasurer's jurisdiction are invested.

7 B. Money in the radiation protection continued care
8 fund is appropriated to the agency for use in remedying and
9 preventing situations ~~[which]~~ that may be harmful to the
10 health, safety, welfare or property of the people and ~~[which]~~
11 that involve abandoned wastes or inoperative facilities
12 ~~[which]~~ that are or were operated by depositors to the
13 ~~[continued care]~~ fund.

14 C. Emergency expenditures up to the amount of one
15 hundred thousand dollars (\$100,000) for any single emergency
16 incident may be made from the radiation protection continued
17 care fund by the director ~~[subject to approval of the~~
18 ~~chairman of the board]~~. Expenditures involving more than one
19 hundred thousand dollars (\$100,000) shall be made only after
20 prior approval of the state board of finance.

21 D. Subject to the provisions of this section, the
22 ~~[board]~~ agency shall adopt regulations governing the
23 administration of the radiation protection continued care
24 fund."

25 SECTION 86. Section 74-3-8 NMSA 1978 (being Laws 1971,
.183544.2

underscored material = new
[bracketed material] = delete

1 Chapter 284, Section 6, as amended) is amended to read:

2 "74-3-8. REGISTRATION OF RADIATION EQUIPMENT.--

3 A. It is unlawful for [~~any~~] a person to possess,
4 use, store, dispose of, manufacture, repair, alter or inspect
5 radiation equipment specified by regulation of the [~~board~~]
6 agency unless [~~he~~] the person registers with the agency.

7 B. The agency shall issue registration certificates
8 in accordance with procedures prescribed by regulation [~~of~~
9 ~~the board~~]. Registration applications shall be made on forms
10 provided by the agency. The registration statement shall be
11 limited to information [~~which~~] that the [~~board~~] agency
12 determines to be necessary for the protection of the health
13 of the people of the state.

14 C. The requirement of registration shall not be
15 interpreted to imply approval by the agency of the manner in
16 which the activities requiring registration are carried out."

17 SECTION 87. Section 74-3-9 NMSA 1978 (being Laws 1971,
18 Chapter 284, Section 7, as amended) is amended to read:

19 "74-3-9. LICENSING OF RADIOACTIVE MATERIAL--APPEAL.--

20 A. It is unlawful for a person to possess, use,
21 store, dispose of, manufacture, process, repair or alter any
22 radioactive material unless [~~he~~] the person holds:

23 (1) a license issued by the nuclear regulatory
24 commission and notification by the licensee to the agency of
25 license identification;

.183544.2

underscored material = new
[bracketed material] = delete

1 (2) a license issued by an agreement state and
2 notification by the licensee to the agency of license
3 identification; or

4 (3) a license issued by the agency.

5 B. The agency shall issue licenses, collect
6 license, registration and other related fees and deposit
7 those fees in the radiation protection fund and shall approve
8 requests for reciprocity in accordance with procedures
9 prescribed by rule [~~of the board~~]. License applications
10 shall be made on forms provided by the agency. The agency
11 shall not issue a license unless the applicant has
12 demonstrated the capability of complying with all applicable
13 rules of the [~~board~~] agency.

14 C. The [~~board~~] agency may, by rule, establish
15 radiation license, registration and other related fees and
16 exempt from the requirements of licensure specific quantities
17 of any radioactive material determined by the [~~board~~] agency
18 not to constitute a health or environmental hazard.

19 D. The holding of a license issued by the agency,
20 the nuclear regulatory commission or an agreement state does
21 not relieve the licensee from the responsibility of complying
22 with all applicable rules of the [~~board~~] agency.

23 E. A person who is or may be affected by licensing
24 action of the agency may appeal to the district court
25 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

.183544.2

underscored material = new
[bracketed material] = delete

1 SECTION 88. Section 74-3-10 NMSA 1978 (being Laws 1971,
2 Chapter 284, Section 8, as amended) is amended to read:

3 "74-3-10. EXEMPTIONS.--

4 A. Nothing contained in the Radiation Protection
5 Act shall be construed as authorizing the agency [~~or the~~
6 ~~board~~] to limit the kind and amount of radiation that may be
7 applied to a person for diagnostic or therapeutic purposes by
8 or under the direction of a licensed physician.

9 B. The Radiation Protection Act shall not apply to
10 the transportation of any radioactive material in conformity
11 with regulations of the department of transportation or other
12 agency of the federal government having jurisdiction or to
13 any material or equipment owned by the United States and
14 being used, stored or transported by or for the United States
15 or any department, agency or instrumentality [~~thereof~~] of the
16 United States, except to the extent required or permitted by
17 the authority in control of such materials or equipment.

18 C. The Radiation Protection Act shall not apply to
19 the mining, extraction, processing, storage or transportation
20 of radioactive ores or uranium concentrates that are
21 regulated by the United States bureau of mines or any other
22 federal or state [~~agency~~] entity having authority unless the
23 authority is ceded by such [~~agency~~] entity to the [~~board~~]
24 agency."

25 SECTION 89. Section 74-3-15 NMSA 1978 (being Laws 1971,

.183544.2

underscored material = new
[bracketed material] = delete

1 Chapter 284, Section 11, as amended) is amended to read:

2 "74-3-15. AGREEMENT STATUS AUTHORIZED.--The [~~board and~~
3 ~~the~~] agency, through the governor, may enter into an
4 agreement with the nuclear regulatory commission, as provided
5 in the federal Atomic Energy Act of 1954, as amended,
6 providing for discontinuance of the regulatory authority of
7 the nuclear regulatory commission and acceptance of that
8 authority by the [~~board and~~] agency. For the duration of
9 such an agreement, the [~~board~~] agency shall have authority to
10 regulate the radioactive materials covered by the agreement
11 for the protection of the public health and safety and the
12 environment from radiation hazards."

13 **SECTION 90.** A new section of the Radiation Protection
14 Act is enacted to read:

15 "[NEW MATERIAL] TERMINATION OF AGENCY LIFE--DELAYED
16 REPEAL.--The radiation technical advisory council is
17 terminated on July 1, 2015 pursuant to the provisions of the
18 Sunset Act. The council shall continue to operate according
19 to the provisions of Sections 74-3-2 and 74-3-3 NMSA 1978
20 until July 1, 2016. Effective July 1, 2016, Sections 74-3-2
21 and 74-3-3 NMSA 1978 are repealed."

22 **SECTION 91.** A new section of the Radiation Protection
23 Act is enacted to read:

24 "[NEW MATERIAL] BOARD DUTIES.--The board shall assist
25 the agency in carrying out the objectives of the Radiation

.183544.2

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

1 Protection Act, including advising the agency on the adoption
2 and implementation of regulations adopted pursuant to that
3 act, license applications and other duties as determined by
4 the agency."

5 SECTION 92. Section 74-4-3 NMSA 1978 (being Laws 1977,
6 Chapter 313, Section 3, as amended) is amended to read:

7 "74-4-3. DEFINITIONS.--As used in the Hazardous Waste
8 Act:

9 A. "above ground storage tank" means a single tank
10 or combination of tanks, including underground pipes
11 connected thereto, that are used to contain petroleum,
12 including crude oil or any fraction thereof that is liquid at
13 standard conditions of temperature and pressure of sixty
14 degrees Fahrenheit and fourteen and seven-tenths pounds per
15 square inch absolute, and the volume of which is more than
16 ninety percent above the surface of the ground. "Above
17 ground storage tank" does not include any:

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

20 (2) pipeline facility, including gathering
21 lines, regulated under the federal Natural Gas Pipeline
22 Safety Act of 1968 or the federal Hazardous Liquid Pipeline
23 Safety Act of 1979 or that is an intrastate pipeline facility
24 regulated under state laws comparable to either act;

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

.183544.2

underscored material = new
[bracketed material] = delete

- 1 (4) storm water or wastewater collection
2 system;
- 3 (5) flow-through process tank;
- 4 (6) liquid trap, tank or associated gathering
5 lines or other storage methods or devices related to oil, gas
6 or mining exploration, production, transportation, refining,
7 processing or storage, or to oil field service industry
8 operations;
- 9 (7) tank used for storing heating oil for
10 consumptive use on the premises where stored;
- 11 (8) pipes connected to any tank that is
12 described in Paragraphs (1) through (7) of this subsection;
13 or
- 14 (9) tanks or related pipelines and facilities
15 owned or used by a refinery, natural gas processing plant or
16 pipeline company in the regular course of [~~their~~] its
17 refining, processing or pipeline business;
- 18 B. "board" means the environmental improvement
19 board;
- 20 C. "corrective action" means an action taken in
21 accordance with rules of the [~~board~~] department to
22 investigate, minimize, eliminate or clean up a release to
23 protect the public health, safety and welfare or the
24 environment;
- 25 D. "director" or "secretary" means the secretary of

.183544.2

underscored material = new
[bracketed material] = delete

1 environment;

2 E. "disposal" means the discharge, deposit,
3 injection, dumping, spilling, leaking or placing of any solid
4 waste or hazardous waste into or on any land or water so that
5 such solid waste or hazardous waste or constituent thereof
6 may enter the environment or be emitted into the air or
7 discharged into any waters, including ground waters;

8 F. "division" or "department" means the department
9 of environment;

10 G. "federal agency" means any department, agency or
11 other instrumentality of the federal government and any
12 independent agency or establishment of that government,
13 including any government corporation and the government
14 printing office;

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

17 I. "hazardous agricultural waste" means hazardous
18 waste generated as part of the licensed activity by any
19 person licensed pursuant to the Pesticide Control Act or
20 hazardous waste designated as hazardous agricultural waste by
21 the ~~[board]~~ department, but does not include animal excrement
22 in connection with farm, ranch or feedlot operations;

23 J. "hazardous substance incident" means any
24 emergency incident involving a chemical or chemicals,
25 including but not limited to transportation wrecks,

.183544.2

underscored material = new
[bracketed material] = delete

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

4 K. "hazardous waste" means any solid waste or
5 combination of solid wastes that because of their quantity,
6 concentration or physical, chemical or infectious
7 characteristics may:

8 (1) cause or significantly contribute to an
9 increase in mortality or an increase in serious irreversible
10 or incapacitating reversible illness; or

11 (2) pose a substantial present or potential
12 hazard to human health or the environment when improperly
13 treated, stored, transported, disposed of or otherwise
14 managed. "Hazardous waste" does not include any of the
15 following, until the ~~[board]~~ department determines that they
16 are subject to Subtitle C of the federal Resource
17 Conservation and Recovery Act of 1976, as amended, 42 U.S.C.
18 6901 et seq.:

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

22 (b) fly ash waste;

23 (c) bottom ash waste;

24 (d) slag waste;

25 (e) flue gas emission control waste

.183544.2

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

1 generated primarily from the combustion of coal or other
2 fossil fuels;

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

7 (g) cement kiln dust waste;

8 L. "manifest" means the form used for identifying
9 the quantity, composition, origin, routing and destination of
10 hazardous waste during transportation from point of
11 generation to point of disposal, treatment or storage;

12 M. "person" means an individual, trust, firm, joint
13 stock company, federal agency, corporation, including a
14 government corporation, partnership, association, state,
15 municipality, commission, political subdivision of a state or
16 any interstate body;

17 N. "regulated substance" means:

18 (1) a substance defined in Section 101(14) of
19 the federal Comprehensive Environmental Response,
20 Compensation, and Liability Act of 1980, but not including a
21 substance regulated as a hazardous waste under Subtitle C of
22 the federal Resource Conservation and Recovery Act of 1976,
23 as amended; and

24 (2) petroleum, including crude oil or any
25 fraction thereof that is liquid at standard conditions of

.183544.2

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

1 temperature and pressure of sixty degrees Fahrenheit and
2 fourteen and seven-tenths pounds per square inch absolute;

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

16 P. "storage" means the containment of hazardous
17 waste, either on a temporary basis or for a period of years,
18 in such a manner as not to constitute disposal of such
19 hazardous waste;

20 Q. "storage tank" means an above ground storage
21 tank or an underground storage tank;

22 R. "tank installer" means any individual who
23 installs or repairs a storage tank;

24 S. "transporter" means a person engaged in the
25 movement of hazardous waste, not including movement at the

.183544.2

underscored material = new
[bracketed material] = delete

1 site of generation, disposal, treatment or storage;

2 T. "treatment" means any method, technique or
3 process, including neutralization, designed to change the
4 physical, chemical or biological character or composition of
5 a hazardous waste so as to neutralize the waste or so as to
6 render the waste nonhazardous, safer for transport, amenable
7 to recovery, amenable to storage or reduced in volume.

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

11 U. "underground storage tank" means a single tank
12 or combination of tanks, including underground pipes
13 connected thereto, that ~~are~~ is used to contain an
14 accumulation of regulated substances and the volume of which,
15 including the volume of the underground pipes connected
16 thereto, is ten percent or more beneath the surface of the
17 ground. "Underground storage tank" does not include any:

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

21 (2) septic tank;

22 (3) pipeline facility, including gathering
23 lines, that is regulated under the federal Natural Gas
24 Pipeline Safety Act of 1968 or the federal Hazardous Liquid
25 Pipeline Safety Act of 1979 or that is an intrastate pipeline

.183544.2

underscored material = new
[bracketed material] = delete

1 facility regulated under state laws comparable to either act;

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~~]
16 department after finding that the type of tank is adequately
17 regulated under 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 V. "used oil" means any oil that has been refined
22 from crude oil, or any synthetic oil, that has been used and
23 as a result of such use is contaminated by physical or
24 chemical impurities."

25 SECTION 93. Section 74-4-4 NMSA 1978 (being Laws 1977,

.183544.2

underscored material = new
[bracketed material] = delete

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

2 "74-4-4. DUTIES AND POWERS OF THE ~~[BOARD]~~ DEPARTMENT.--

3 A. The ~~[board]~~ department shall adopt rules for the
4 management of hazardous waste, as may be necessary to protect
5 public health and the environment, that are equivalent to and
6 no more stringent than federal regulations adopted by the
7 federal environmental protection agency pursuant to the
8 federal Resource Conservation and Recovery Act of 1976, as
9 amended:

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

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

1 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 containers
10 used for the storage, transport or disposal of the hazardous
11 waste that will identify accurately the waste;

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

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

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

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

.183544.2

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

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

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

20 (3) establishing standards applicable to
21 transporters of hazardous waste identified or listed under
22 this subsection or of fuel produced from any such hazardous
23 waste or of fuel from such waste and any other material, as
24 may be necessary to protect human health and the environment,
25 including but not limited to requirements for:

.183544.2

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

1 (a) recordkeeping concerning the hazardous
2 waste transported and its source and delivery points;

3 (b) transportation of the hazardous waste
4 only if properly labeled;

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

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

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

17 (a) furnishing the information stating the
18 location and general description of the facility; and

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

22 (5) establishing performance standards as may
23 be necessary to protect human health and the environment
24 applicable to owners and operators of facilities for the
25 treatment, storage or disposal of hazardous waste identified

.183544.2

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

1 or listed under this section, distinguishing, where
2 appropriate, between new facilities and facilities in
3 existence on the date of promulgation, including requirements
4 for:

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

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

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

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

21 (e) contingency plans for effective action
22 to minimize unanticipated damage from any treatment, storage
23 or disposal of any hazardous waste;

24 (f) maintenance and operation of the
25 facilities and requiring any additional qualifications as to

.183544.2

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

1 ownership, continuity of operation, training for personnel
2 and financial responsibility, including financial
3 responsibility for corrective action, as may be necessary or
4 desirable;

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

8 (h) the taking of corrective action for
9 all releases of hazardous waste or constituents from a solid
10 waste management unit at a treatment, storage or disposal
11 facility, regardless of the time at which waste was placed in
12 the unit; and

13 (i) the taking of corrective action beyond
14 a facility's boundaries where necessary to protect human
15 health and the environment unless the owner or operator of
16 that facility demonstrates to the satisfaction of the
17 secretary that, despite the owner's or operator's best
18 efforts, the owner or operator was unable to obtain the
19 necessary permission to undertake such action. Rules adopted
20 and promulgated under this subparagraph shall take effect
21 immediately and shall apply to all facilities operating under
22 permits issued under Paragraph (6) of this subsection and to
23 all landfills, surface impoundments and waste pile units,
24 including any new units, replacements of existing units or
25 lateral expansions of existing units, that receive hazardous

.183544.2

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

1 waste after July 26, 1982. No private entity shall be
2 precluded by reason of criteria established under
3 Subparagraph (f) of this paragraph from the ownership or
4 operation of facilities providing hazardous waste treatment,
5 storage or disposal services where the entity can provide
6 assurance of financial responsibility and continuity of
7 operation consistent with the degree and duration of risks
8 associated with the treatment, storage or disposal of
9 specified hazardous waste;

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

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

23 (8) defining major and minor modifications;
24 and

25 (9) establishing procedures for the inspection

underscored material = new
[bracketed material] = delete

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

8 B. The [~~board~~] department shall adopt rules:

9 (1) concerning hazardous substance incidents;
10 and

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

13 C. The [~~board~~] department shall adopt rules
14 concerning storage tanks as may be necessary to protect
15 public health and the environment and that, in the case of
16 underground storage tanks, are equivalent to and no more
17 stringent than federal regulations adopted by the federal
18 environmental protection agency pursuant to the federal
19 Resource Conservation and Recovery Act of 1976, as amended.

20 D. The [~~board~~] department shall adopt rules
21 concerning storage tanks that implement the federal Energy
22 Policy Act of 2005, Pub. L. 109-58, as amended, and that are
23 equivalent to and no more stringent than the Energy Policy
24 Act and its grant guidelines and regulations.

25 E. Rules adopted pursuant to this section shall

.183544.2

underscored material = new
[bracketed material] = delete

1 include:

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

4 (2) requirements for financial responsibility;

5 (3) standards for inventory control;

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

8 (5) standards for the closure and dismantling
9 of storage tanks;

10 (6) requirements for recordkeeping;

11 (7) requirements for the reporting,

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

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

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

.183544.2

underscored material = new
[bracketed material] = delete

1 connector.

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

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

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

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

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

23 I. Rules adopted by the [~~board~~] department pursuant
24 to this section shall allow the department to authorize
25 delivery or deposit of petroleum products to:

.183544.2

underscored material = new
[bracketed material] = delete

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

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

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

23 K. The [~~board~~] department shall adopt rules
24 concerning the management of used oil that are equivalent to
25 and no more stringent than federal regulations adopted by the

.183544.2

underscored material = new
[bracketed material] = delete

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

4 L. In the event the [~~board~~] department wishes to
5 adopt rules that are identical with regulations adopted by an
6 agency of the federal government, the [~~board~~] department,
7 after notice and hearing, may adopt such rules by reference
8 to the federal regulations without setting forth the
9 provisions of the federal regulations."

10 SECTION 94. Section 74-4-4.1 NMSA 1978 (being Laws 1981
11 (S.S.), Chapter 8, Section 5, as amended) is amended to read:

12 "74-4-4.1. HAZARDOUS AGRICULTURAL WASTE--DUTIES AND
13 RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE.--

14 A. The New Mexico department of agriculture shall be
15 responsible for [~~the enforcement of all board~~] implementing
16 and enforcing regulations adopted pursuant to the Hazardous
17 Waste Act regarding generators of hazardous agricultural
18 waste. The division shall enforce those [~~board~~] regulations
19 pertaining to transporters, treaters, storers and disposers
20 of hazardous agricultural waste.

21 B. In the exercise of the responsibility prescribed
22 in Subsection A of this section, the New Mexico department of
23 agriculture shall have the same authority as that delegated
24 to the division, including the director.

25 C. In the adoption of regulations pertaining to

.183544.2

underscored material = new
[bracketed material] = delete

1 hazardous agricultural waste, the board shall ~~make a~~
2 ~~reasonable effort to consult with the department of~~
3 ~~agriculture prior to the adoption of the regulations. The~~
4 ~~department of agriculture shall~~] serve as the technical
5 consultant to the [board] division and New Mexico department
6 of agriculture on matters concerning hazardous agricultural
7 waste. In adopting regulations pursuant to this subsection,
8 the New Mexico department of agriculture shall comply with
9 the provisions of Section 74-4-5 NMSA 1978.

10 D. Beginning July 1, 2011, the New Mexico
11 department of agriculture and the division shall assume the
12 duties of the board under the Hazardous Waste Act. All rules
13 of the board relating to hazardous agricultural waste shall
14 remain in force unless the New Mexico department of
15 agriculture or division repeals or amends them."

16 SECTION 95. Section 74-4-4.2 NMSA 1978 (being Laws 1981
17 (1st S.S.), Chapter 8, Section 6, as amended) is amended to
18 read:

19 "74-4-4.2. PERMITS--ISSUANCE--DENIAL--MODIFICATION--
20 SUSPENSION--REVOCATION.--

21 A. An application for a permit pursuant to the
22 Hazardous Waste Act shall contain information required
23 pursuant to Section 74-4-4.7 NMSA 1978 or to regulations
24 promulgated by the [board] department and shall include:

25 (1) estimates of the composition, quantity and

.183544.2

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

1 concentration of any hazardous waste identified or listed
2 under Subsection A of Section 74-4-4 NMSA 1978 or
3 combinations of any hazardous waste and other solid waste
4 proposed to be disposed of, treated, transported or stored
5 and the time, frequency or rate at which the waste is
6 proposed to be disposed of, treated, transported or stored;
7 and

8 (2) an identification and description of, and
9 other pertinent information about, the site where hazardous
10 waste or the products of treatment of hazardous waste will be
11 disposed of, treated, transported to or stored.

12 B. Hazardous waste permits shall require corrective
13 action for all releases of hazardous waste or constituents
14 from any solid waste management unit at a treatment, storage
15 or disposal facility seeking a permit under this section.

16 C. The department shall provide timely review on
17 all permit applications. Upon a determination by the
18 secretary that the applicant has met the requirements adopted
19 pursuant to Section 74-4-4 NMSA 1978, the secretary may issue
20 a permit or a permit subject to any conditions necessary to
21 protect human health and the environment for the facility.

22 D. The secretary may deny any permit application or
23 modify, suspend or revoke any permit issued pursuant to the
24 Hazardous Waste Act if the applicant or permittee has:

25 (1) knowingly and willfully misrepresented a

.183544.2

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

1 material fact in the application for a permit;

2 (2) refused to disclose the information
3 required under the provisions of Section 74-4-4.7 NMSA 1978;

4 (3) been convicted in any court, within ten
5 years immediately preceding the date of submission of the
6 permit application, of:

7 (a) a felony or other crime involving
8 moral turpitude; or

9 (b) a crime defined by state or federal
10 statutes as involving or being in restraint of trade, price-
11 fixing, bribery or fraud;

12 (4) exhibited a history of willful disregard
13 for environmental laws of any state or the United States;

14 (5) had any permit revoked or permanently
15 suspended for cause under the environmental laws of any state
16 or the United States; or

17 (6) violated any provision of the Hazardous
18 Waste Act, any regulation adopted and promulgated pursuant to
19 that act or any condition of a permit issued under that act.

20 E. In making a finding under Subsection D of this
21 section, the secretary may consider aggravating and
22 mitigating factors.

23 F. If an applicant or permittee whose permit is
24 being considered for denial or revocation, respectively, on
25 any basis provided by Subsection D of this section has

.183544.2

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

1 submitted an action plan that has been approved in writing by
2 the secretary, and plan approval includes a period of
3 operation under a conditional permit that will allow the
4 applicant or permittee a reasonable opportunity to
5 demonstrate its rehabilitation, the secretary may issue a
6 conditional permit for a reasonable period of time. In
7 approving an action plan intended to demonstrate
8 rehabilitation, the secretary may consider:

9 (1) implementation by the applicant or
10 permittee of formal policies;

11 (2) training programs and management control
12 to minimize and prevent the occurrence of future violations;

13 (3) installation by the applicant or permittee
14 of internal environmental auditing programs;

15 (4) the applicant's release or the permittee's
16 release subsequent to serving a period of incarceration or
17 paying a fine, or both, after conviction of any crime listed
18 in Subsection D of this section; and

19 (5) any other factors the secretary deems
20 relevant.

21 G. Notwithstanding the provisions of Subsection D
22 of this section:

23 (1) a research, development and demonstration
24 permit may be terminated upon the determination by the
25 secretary that termination is necessary to protect human

.183544.2

underscored material = new
[bracketed material] = delete

1 health or the environment; and

2 (2) a permit may be modified at the request of
3 the permittee for just cause as demonstrated by the
4 permittee.

5 H. No ruling shall be made on permit issuance,
6 major modification, suspension or revocation without an
7 opportunity for a public hearing at which all interested
8 persons shall be given a reasonable chance to submit data,
9 views or arguments orally or in writing and to examine
10 witnesses testifying at the hearing; provided, however, that
11 the secretary may, pursuant to Section 74-4-10 NMSA 1978,
12 order the immediate termination of a research development and
13 demonstration permit whenever the secretary determines that
14 termination is necessary to protect human health or the
15 environment and may order the immediate suspension or
16 revocation of a permit for a facility that has been ordered
17 to take corrective action or other response measures for
18 releases of hazardous waste into the environment.

19 I. The secretary shall hold a public hearing on a
20 minor permit modification if the secretary determines that
21 there is significant public interest in the minor
22 modification.

23 J. The ~~[board]~~ department shall provide a schedule
24 of fees for businesses generating hazardous waste, conducting
25 permitted hazardous waste management activities or seeking a

.183544.2

underscored material = new
[bracketed material] = delete

1 permit for the management of hazardous waste, including but
2 not limited to:

3 (1) a hazardous waste business fee applicable
4 to any business engaged in a regulated hazardous waste
5 activity, which shall be an annual flat fee based on the type
6 of activity;

7 (2) a hazardous waste generation fee
8 applicable to any business generating hazardous waste, which
9 shall be based on the quantity of hazardous waste generated
10 annually; however, when any material listed in Paragraph (2)
11 of Subsection K of Section 74-4-3 NMSA 1978 is determined by
12 the [~~board~~] department to be subject to regulation under
13 Subtitle C of the federal Resource Conservation and Recovery
14 Act of 1976, the [~~board~~] department may set a generation fee
15 under this paragraph for that waste based on its volume,
16 toxicity, mobility and economic impact on the regulated
17 entity;

18 (3) a hazardous waste permit application fee,
19 not exceeding the estimated cost of investigating the
20 application and issuing the permit, to be paid at the time
21 the secretary notifies the applicant by certified mail that
22 the application has been deemed administratively complete and
23 a technical review is scheduled; and

24 (4) an annual hazardous waste permit
25 management fee based on and not exceeding the estimated cost

.183544.2

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

1 of conducting regulatory oversight of permitted activities.

2 K. The department and a business generating
3 hazardous waste, conducting permitted hazardous waste
4 management activities or seeking a permit for the management
5 of hazardous waste may enter into a voluntary fee agreement
6 in addition to and that includes all of the fees required by
7 Subsection J of this section."

8 SECTION 96. Section 74-4-4.4 NMSA 1978 (being Laws
9 1987, Chapter 179, Section 6, as amended) is amended to read:

10 "74-4-4.4. STORAGE TANKS--REGISTRATION--INSTALLER
11 CERTIFICATION--FEES.--

12 A. By rule, the ~~[board]~~ department shall require an
13 owner of a storage tank to register the tank with the
14 department and impose reasonable conditions for registration,
15 including the submission of plans, specifications and other
16 relevant information relating to the tank. For purposes of
17 this subsection only, the term "owner" means: in the case of
18 a storage tank in use on November 8, 1984 or brought into use
19 after that date, any person who owns the storage tank; and in
20 the case of a storage tank in use before November 8, 1984 but
21 no longer in use on that date, any person who owned the tank
22 immediately before the discontinuation of its use. The owner
23 of a tank taken out of operation on or before January 1, 1974
24 shall not be required to notify under this subsection. The
25 owner of a tank taken out of operation after January 1, 1974

.183544.2

underscored material = new
[bracketed material] = delete

1 and removed from the ground prior to November 8, 1984 shall
2 not be required to notify under this subsection. Evidence of
3 current registration pursuant to this subsection shall be
4 available for inspection at the site of the storage tank.

5 B. By rule, the [~~board~~] department shall require
6 any person who, beginning thirty days after the United States
7 environmental protection agency administrator prescribes the
8 form of notice pursuant to Section 9002(a)(5) of the Resource
9 Conservation and Recovery Act of 1976 and for eighteen months
10 thereafter, deposits a regulated substance into a storage
11 tank to give notice of the registration requirements of
12 Subsection A of this section to the owner and operator of the
13 tank.

14 C. By rule, the [~~board~~] department may require tank
15 installers to obtain certification from the department and
16 develop procedures for certification that will ensure that
17 storage tanks are installed and repaired in a manner that
18 will not encourage or facilitate leaking. If the [~~board~~]
19 department requires certification, it is unlawful for a
20 person to install or repair a storage tank unless [~~he~~] the
21 person is a certified tank installer. In accordance with the
22 Uniform Licensing Act, the department may suspend or revoke
23 the certification for a tank installer upon grounds that [~~he~~]
24 the tank installer:

25 (1) exercised fraud, misrepresentation or

.183544.2

underscored material = new
[bracketed material] = delete

1 deception in obtaining [~~his~~] certification;

2 (2) exhibited gross incompetence in the
3 installation or repair of a storage tank; or

4 (3) was derelict in the performance of a duty
5 as a certified tank installer.

6 D. By rule, the [~~board~~] department shall provide a
7 schedule of fees sufficient to defray the reasonable and
8 necessary costs of:

9 (1) reviewing and acting upon applications for
10 the registration of storage tanks;

11 (2) reviewing and acting upon applications for
12 the certification of tank installers; and

13 (3) implementing and enforcing any provision
14 of the Hazardous Waste Act applicable to storage tanks and
15 tank installers, including standards for the installation,
16 operation and maintenance of storage tanks and for the
17 certification of tank installers."

18 SECTION 97. Section 74-4-5 NMSA 1978 (being Laws 1977,
19 Chapter 313, Section 5, as amended) is amended to read:

20 "74-4-5. ADOPTION OF REGULATIONS--NOTICE AND HEARING.--

21 A. No regulation shall be adopted, amended or
22 repealed until after a public hearing by the [~~board~~]
23 department. Hearings on regulations shall be held in Santa
24 Fe or in an area of the state substantially affected by the
25 regulations. In making its regulations, the [~~board~~]

.183544.2

underscored material = new
[bracketed material] = delete

1 department shall give the weight it deems appropriate to all
2 relevant facts and circumstances presented at the public
3 hearing, including but not limited to:

4 (1) the character and degree of injury to or
5 interference with the environment or public health; and

6 (2) the technical practicability and economic
7 reasonableness of the regulation.

8 B. Notice of the hearing shall be given at least
9 thirty days prior to the hearing date and shall state the
10 subject, the time and the place of the hearing and the manner
11 in which interested persons may present their views. The
12 notice shall also state where interested persons may secure
13 copies of any proposed regulation. The notice shall be
14 published in a newspaper of general circulation in the area
15 affected. Reasonable effort shall be made to give notice to
16 all persons who have made a written request to the [~~board~~]
17 department for advance notice of hearings.

18 C. At the hearing, the [~~board~~] department shall
19 allow all interested persons reasonable opportunity to submit
20 data, views or arguments orally or in writing and to examine
21 witnesses testifying at the hearing. Any person heard or
22 represented at the hearing shall be given written notice of
23 the action of the [~~board~~] department.

24 D. The [~~board~~] department may designate a hearing
25 officer to take evidence in the hearing. A transcript shall

.183544.2

underscored material = new
[bracketed material] = delete

1 be made of the entire hearing proceedings.

2 E. No regulation or amendment or repeal of a
3 regulation adopted by the [~~board~~] department shall become
4 effective until thirty days after its filing under the State
5 Rules Act."

6 SECTION 98. Section 74-4-14 NMSA 1978 (being Laws 1992,
7 Chapter 43, Section 6) is amended to read:

8 "74-4-14. ADMINISTRATIVE ACTIONS--JUDICIAL REVIEW.--

9 A. Any person who is or may be affected by any
10 final administrative action of the [~~board or the secretary~~]
11 department may appeal to the court of appeals for further
12 relief within thirty days after the action. All appeals
13 shall be upon the record before the [~~board or the secretary~~]
14 department.

15 B. For appeals of regulations, the date of the
16 action shall be the date of filing of the regulation under
17 the State Rules Act.

18 C. Upon appeal, the court of appeals shall set
19 aside the action only if it is found to be:

- 20 (1) arbitrary, capricious or an abuse of
- 21 discretion;
- 22 (2) not supported by substantial evidence in
- 23 the record; or
- 24 (3) otherwise not in accordance with law.

25 D. A stay of enforcement of the action being

underscored material = new
[bracketed material] = delete

1 appealed may be granted after hearing and upon good cause
2 shown:

3 (1) by the [~~board or the secretary, whichever~~
4 ~~took the action being appealed~~] department; or

5 (2) by the court of appeals if the [~~board or~~
6 ~~the secretary~~] department denies a stay or fails to act upon
7 an application for a stay within sixty days after receipt."

8 SECTION 99. A new section of the Hazardous Waste Act is
9 enacted to read:

10 "[NEW MATERIAL] BOARD DUTIES.--The board shall assist
11 the department in carrying out the objectives of the
12 Hazardous Waste Act, including advising the department on the
13 adoption and implementation of regulations adopted pursuant
14 to that act, license applications and other duties as
15 determined by the department."

16 SECTION 100. Section 74-4A-1 NMSA 1978 (being Laws
17 1979, Chapter 377, Section 1, as amended) is amended to read:

18 "74-4A-1. RADIOACTIVE MATERIAL TRANSPORT--CONDITIONS.--

19 A. The [~~environmental improvement board~~] department
20 of environment shall have exclusive authority to promulgate
21 regulations prescribing the conditions for transport of
22 radioactive material on the highways. Such conditions shall
23 include the conditions of transport that the [~~environmental~~
24 ~~improvement board~~] department finds necessary to protect the
25 health, safety and welfare of the citizens of the state.

.183544.2

underscored material = new
[bracketed material] = delete

1 Except as specifically preempted by federal law, the state
2 transportation commission shall have the exclusive authority
3 within New Mexico to designate highway routes for the
4 transport of radioactive material. Any rule or regulation
5 adopted by the [~~environmental improvement board~~] department
6 that designates highway routes for the transport of
7 radioactive material and that was in effect prior to March 1,
8 1991 is deemed null and void. The state transportation
9 commission shall incorporate into the record and consider in
10 the initial designation of routes for the transport of
11 radioactive material the evidentiary record from the
12 [~~environmental improvement board~~] department public hearings
13 held for the purpose of receiving public comment regarding
14 the designation of routes for the transport of radioactive
15 material.

16 B. For the purposes of this section, "radioactive
17 material" means a material or combination of materials that
18 spontaneously emits ionizing radiation. Materials in which
19 the estimated specific activity is not greater than 0.002
20 microcuries per gram of material, and in which the
21 radioactivity is essentially uniformly distributed, are not
22 considered to be radioactive materials. "Radioactive
23 material" includes but is not limited to:

24 (1) materials associated with the operation
25 and decommissioning of nuclear reactors and the supporting

.183544.2

underscored material = new
[bracketed material] = delete

1 fuel cycle;

2 (2) industrial radioisotope sources;

3 (3) radioactive materials used in nuclear
4 medicine;

5 (4) radioactive materials used for research,
6 education or training; and

7 (5) radioactive wastes;

8 but does not include radioactive material the regulation of
9 which has been specifically preempted by federal law.

10 C. The department of environment shall have the
11 authority to impose fines not to exceed one thousand dollars
12 (\$1,000) as set by regulation of the [~~environmental~~
13 ~~improvement board~~] department for a violation of the
14 [~~board's~~] department's regulations pertaining to the
15 transport of radioactive materials.

16 D. Nothing in this section shall be construed to
17 alter the obligation of the state under the April 3, 1974
18 agreement between the state and the atomic energy commission
19 for the discontinuance of certain commission regulatory
20 authority and responsibility."

21 SECTION 101. Section 74-4A-4 NMSA 1978 (being Laws
22 1981, Chapter 374, Section 3, as amended) is amended to read:

23 "74-4A-4. DEFINITIONS.--As used in the Radioactive and
24 Hazardous Materials Act:

25 A. "committee" means the joint interim legislative

.183544.2

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

1 radioactive and hazardous materials committee;

2 B. "disposal" means the long-term isolation of
3 radioactive material, including long-term monitored storage
4 ~~[which]~~ that permits retrieval of the radioactive material
5 stored and includes the temporary or permanent disposal of
6 all hazardous wastes;

7 C. "environmental evaluation group" means the
8 independent state review facility administratively attached
9 to New Mexico institute of mining and technology and funded
10 by the United States department of energy;

11 D. "hazardous waste" means any garbage, refuse,
12 sludge from a waste treatment plant, water supply treatment
13 lplant or air pollution control facility or other discarded
14 material, including solid, liquid, semisolid or containing
15 gaseous material resulting from industrial, commercial,
16 mining or agricultural operations or from community
17 activities ~~[which]~~ that because of its quantity,
18 concentration or physical, chemical or infectious
19 characteristics may cause or significantly contribute to an
20 increase in mortality or an increase in serious irreversible
21 or incapacitating reversible illness or pose a substantial
22 ~~[present]~~ current or potential hazard to human health or the
23 environment when improperly treated, stored, transported,
24 disposed of or otherwise managed. The term "hazardous waste"
25 does not include solid or dissolved material in domestic

.183544.2

underscored material = new
[bracketed material] = delete

1 sewage or animal excrement in connection with farm, ranch or
2 feedlot operations or solid or dissolved materials in
3 irrigation return flows or industrial discharges that are
4 point sources subject to permits under Section 402 of the
5 federal Water Pollution Control Act, as amended, as the
6 provisions exist on January 1, 1981, or source, special or
7 byproduct material as defined in the federal Atomic Energy
8 Act of 1954, as amended, as these definitions exist on
9 January 1, 1981, or any of the following, until the [~~board~~
10 department of environment determines that they are subject to
11 Subtitle C of the Resource Conservation and Recovery Act, as
12 amended (42 U.S.C. 6921 et seq.): drilling fluids, produced
13 waters and other wastes associated with the exploration,
14 development or production of crude oil or natural gas or
15 geothermal energy, any fly ash waste, bottom ash waste, slag
16 waste, flue gas emission control waste generated primarily
17 from the combustion of coal or other fossil fuels, solid
18 waste from the extraction, beneficiation or processing of
19 ores and minerals, including phosphate rock and overburden
20 from the mining of uranium ore or cement kiln dust waste;

21 E. "high-level waste" means the highly radioactive
22 wastes resulting from the reprocessing of spent nuclear fuel
23 and includes both the liquid waste [~~which~~] that is produced
24 directly in reprocessing and any solid material into which
25 such liquid waste is made;

.183544.2

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

1 F. "low-level waste" means material contaminated
2 with radioactive elements emitting beta or gamma particles or
3 with traces of transuranic elements in concentrations of less
4 than one hundred nanocuries per gram;

5 G. "mixed waste" means any mixture of hazardous
6 waste regulated under the Hazardous Waste Act and radioactive
7 waste regulated under the federal Atomic Energy Act of 1954;

8 H. "radioactive materials" means any material or
9 combination of materials ~~[which]~~ that spontaneously emits
10 ionizing radiation. Materials in which the estimated
11 specific activity is not greater than 0.002 microcuries per
12 gram of material, and in which the radioactivity is
13 essentially uniformly distributed, are not considered to be
14 radioactive materials;

15 I. "radioactive waste" means high-level waste,
16 transuranic contaminated waste and low-level waste;

17 J. "spent fuel" means nuclear fuel that has been
18 irradiated in and recovered from a civilian nuclear power
19 plant;

20 K. "task force" means the radioactive waste
21 consultation task force; and

22 L. "transuranic contaminated waste" means material
23 contaminated with radionuclides emitting alpha radiation
24 having an atomic number greater than ninety-two, including
25 neptunium, plutonium, americium and curium, in concentrations

.183544.2

underscored material = new
[bracketed material] = delete

1 of greater than one hundred nanocuries per gram."

2 SECTION 102. A new section of the Radioactive and
3 Hazardous Materials Act is enacted to read:

4 "[NEW MATERIAL] TERMINATION OF AGENCY LIFE--DELAYED
5 REPEAL.--The radioactive waste consultation task force is
6 terminated on July 1, 2013 pursuant to the provisions of the
7 Sunset Act. The task force shall continue to operate
8 according to the provisions of Sections 74-4A-6 through
9 74-4A-8 NMSA 1978 until July 1, 2014. Effective July 1,
10 2014, Sections 74-4A-6 through 74-4A-8 NMSA 1978 are
11 repealed."

12 SECTION 103. A new section of the Radioactive and
13 Hazardous Materials Act is enacted to read:

14 "[NEW MATERIAL] ENVIRONMENTAL BOARD DUTIES.--The
15 environmental improvement board shall assist the department
16 of environment in carrying out the objectives of the
17 Radioactive and Hazardous Materials Act, including advising
18 the department on the adoption and implementation of
19 regulations adopted pursuant to that act and other duties as
20 determined by the department."

21 SECTION 104. A new section of the Water Quality Act is
22 enacted to read:

23 "[NEW MATERIAL] DUTIES AND POWERS OF DEPARTMENT.--The
24 department:

25 A. shall adopt, promulgate and publish regulations

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

1 to prevent or abate water pollution in the state or in any
2 specific geographic area, aquifer or watershed of the state
3 or in any part thereof, or for any class of waters, and to
4 govern the disposal of septage and sludge and the use of
5 sludge for various beneficial purposes. The regulations
6 governing the disposal of septage and sludge may include the
7 use of tracking and permitting systems or other reasonable
8 means necessary to assure that septage and sludge are
9 designated for disposal in, and arrive at, disposal
10 facilities, other than facilities on the premises where the
11 septage and sludge is generated, for which a permit or other
12 authorization has been issued pursuant to the federal act or
13 the Water Quality Act. Regulations may specify a standard of
14 performance for new sources that reflects the greatest
15 reduction in the concentration of water contaminants that the
16 commission determines to be achievable through application of
17 the best available demonstrated control technology,
18 processes, operating methods or other alternatives, including
19 where practicable a standard permitting no discharge of
20 pollutants. In making regulations, the department shall give
21 weight it deems appropriate to all relevant facts and
22 circumstances, including:

23 (1) character and degree of injury to or
24 interference with health, welfare, environment and property;

25 (2) the public interest, including the social

.183544.2

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

1 and economic value of the sources of water contaminants;

2 (3) technical practicability and economic
3 reasonableness of reducing or eliminating water contaminants
4 from the sources involved and previous experience with
5 equipment and methods available to control the water
6 contaminants involved;

7 (4) successive uses, including but not limited
8 to domestic, commercial, industrial, pastoral, agricultural,
9 wildlife and recreational uses;

10 (5) feasibility of a user or a subsequent user
11 treating the water before a subsequent use;

12 (6) property rights and accustomed uses; and

13 (7) federal water quality requirements;

14 B. may adopt regulations to require the filing with
15 it or a constituent agency of proposed plans and
16 specifications for the construction and operation of new
17 sewer systems, treatment works or sewerage systems or
18 extensions, modifications of or additions to new or existing
19 sewer systems, treatment works or sewerage systems. Filing
20 with and approval by the federal housing administration of
21 plans for an extension to an existing, or construction of a
22 new, sewerage system intended to serve a subdivision solely
23 residential in nature shall be deemed compliance with all
24 provisions of this subsection;

25 C. may adopt regulations requiring notice to it or

.183544.2

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

1 a constituent agency of intent to introduce or allow the
2 introduction of water contaminants into waters of the state;

3 D. shall specify in regulations the measures to be
4 taken to prevent water pollution and to monitor water
5 quality. The department may adopt regulations for particular
6 industries. The department shall adopt regulations for the
7 dairy industry and the copper industry. The department shall
8 consider, in addition to the factors listed in Subsection E
9 of this section, the best available scientific information.
10 The regulations may include variations in requirements based
11 on site-specific factors, such as depth and distance to
12 ground water and geological and hydrological conditions. The
13 constituent agency shall establish an advisory committee
14 composed of persons with knowledge and expertise particular
15 to the industry category and of other interested stakeholders
16 to advise the constituent agency on appropriate regulations
17 to be proposed for adoption by the department. The
18 regulations shall be developed and adopted in accordance with
19 a schedule approved by the department. The schedule shall
20 incorporate an opportunity for public input and stakeholder
21 negotiations;

22 E. may adopt regulations establishing pretreatment
23 standards that prohibit or control the introduction into
24 publicly owned sewerage systems of water contaminants that
25 are not susceptible to treatment by the treatment works or

.183544.2

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

1 that would interfere with the operation of the treatment
2 works;

3 F. shall not require a permit respecting the use of
4 water in irrigated agriculture, except in the case of the
5 employment of a specific practice in connection with such
6 irrigation that documentation or actual case history has
7 shown to be hazardous to public health or the environment;
8 and

9 G. shall not require a permit for applying less
10 than two hundred fifty gallons per day of private residential
11 gray water originating from a residence for the resident's
12 household gardening, composting or landscape irrigation if:

13 (1) a constructed gray water distribution
14 system provides for overflow into the sewer system or on-site
15 wastewater treatment and disposal system;

16 (2) a gray water storage tank is covered to
17 restrict access and to eliminate habitat for mosquitos or
18 other vectors;

19 (3) a gray water system is sited outside of a
20 floodway;

21 (4) gray water is vertically separated at
22 least five feet above the ground water table;

23 (5) gray water pressure piping is clearly
24 identified as a nonpotable water conduit;

25 (6) gray water is used on the site where it is

.183544.2

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

1 generated and does not run off the property lines;

2 (7) gray water is applied in a manner that
3 minimizes the potential for contact with people or domestic
4 pets;

5 (8) ponding is prohibited and application of
6 gray water is managed to minimize standing water on the
7 surface and to ensure that the hydraulic capacity of the soil
8 is not exceeded;

9 (9) gray water is not sprayed;

10 (10) gray water is not discharged to a
11 watercourse; and

12 (11) gray water use within municipalities or
13 counties complies with all applicable municipal or county
14 ordinances enacted pursuant to Chapter 3, Article 53 NMSA
15 1978."

16 **SECTION 105.** Section 74-6-2 NMSA 1978 (being Laws 1967,
17 Chapter 190, Section 2, as amended) is amended to read:

18 "74-6-2. DEFINITIONS.--As used in the Water Quality
19 Act:

20 A. "gray water" means untreated household
21 wastewater that has not come in contact with toilet waste and
22 includes wastewater from bathtubs, showers, washbasins,
23 clothes washing machines and laundry tubs, but does not
24 include wastewater from kitchen sinks or dishwashers or
25 laundry water from the washing of material soiled with human

.183544.2

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

1 excreta, such as diapers;

2 B. "water contaminant" means any substance that
3 could alter, if discharged or spilled, the physical,
4 chemical, biological or radiological qualities of water.
5 "Water contaminant" does not mean source, special nuclear or
6 by-product material as defined by the federal Atomic Energy
7 Act of 1954;

8 C. "water pollution" means introducing or
9 permitting the introduction into water, either directly or
10 indirectly, of one or more water contaminants in such
11 quantity and of such duration as may with reasonable
12 probability injure human health, animal or plant life or
13 property, or to unreasonably interfere with the public
14 welfare or the use of property;

15 D. "wastes" means sewage, industrial wastes or any
16 other liquid, gaseous or solid substance that may pollute any
17 waters of the state;

18 E. "sewer system" means pipelines, conduits,
19 pumping stations, force mains or any other structures,
20 devices, appurtenances or facilities used for collecting or
21 conducting wastes to an ultimate point for treatment or
22 disposal;

23 F. "treatment works" means any plant or other works
24 used for the purpose of treating, stabilizing or holding
25 wastes;

.183544.2

underscored material = new
[bracketed material] = delete

1 G. "sewerage system" means a system for disposing
2 of wastes, either by surface or underground methods, and
3 includes sewer systems, treatment works, disposal wells and
4 other systems;

5 H. "water" means all water, including water
6 situated wholly or partly within or bordering upon the state,
7 whether surface or subsurface, public or private, except
8 private waters that do not combine with other surface or
9 subsurface water;

10 I. "person" means an individual or any other
11 entity, including partnerships, corporations, associations,
12 responsible business or association agents or officers, the
13 state or a political subdivision of the state or any agency,
14 department or instrumentality of the United States and any of
15 its officers, agents or employees;

16 J. "commission" means the water quality control
17 commission;

18 K. "constituent agency" means, as the context may
19 require, any or all of the following agencies of the state:

20 (1) the department [~~of environment~~];

21 (2) the state engineer and the interstate
22 stream commission;

23 (3) the department of game and fish;

24 (4) the oil conservation commission;

25 (5) the state parks division of the energy,

.183544.2

1 minerals and natural resources department;

2 (6) the New Mexico department of agriculture;

3 (7) the soil and water conservation
4 commission; and

5 (8) the bureau of geology and mineral
6 resources at the New Mexico institute of mining and
7 technology;

8 L. "new source" means:

9 (1) any source, the construction of which is
10 commenced after the publication of proposed regulations
11 prescribing a standard of performance applicable to the
12 source; or

13 (2) any existing source when modified to treat
14 substantial additional volumes or when there is a substantial
15 change in the character of water contaminants treated;

16 M. "source" means a building, structure, facility
17 or installation from which there is or may be a discharge of
18 water contaminants directly or indirectly into water;

19 N. "septage" means the residual wastes and water
20 periodically pumped from a liquid waste treatment unit or
21 from a holding tank for maintenance or disposal purposes;

22 O. "sludge" means solid, semi-solid or liquid waste
23 generated from a municipal, commercial or industrial
24 wastewater treatment plant, water supply treatment plant or
25 air pollution control facility that is associated with the

.183544.2

underscored material = new
[bracketed material] = delete

1 treatment of these wastes. "Sludge" does not mean treated
2 effluent from a wastewater treatment plant;

3 P. "substantial adverse environmental impact" means
4 that an act or omission of the violator causes harm or
5 damage:

6 (1) to human beings; or

7 (2) that amounts to more than ten thousand
8 dollars (\$10,000) damage or mitigation costs to flora,
9 including agriculture crops; fish or other aquatic life;
10 waterfowl or other birds; livestock or wildlife or damage to
11 their habitats; ground water or surface water; or the lands
12 of the state;

13 Q. "federal act" means the Federal Water Pollution
14 Control Act, its subsequent amendment and successor
15 provisions; [~~and~~]

16 R. "standards of performance" means any standard,
17 effluent limitation or effluent standard adopted pursuant to
18 the federal act or the Water Quality Act; and

19 S. "department" means the department of
20 environment."

21 SECTION 106. Section 74-6-3 NMSA 1978 (being Laws 1967,
22 Chapter 190, Section 3, as amended) is amended to read:

23 "74-6-3. WATER QUALITY CONTROL COMMISSION CREATED.--

24 A. There is created the "water quality control
25 commission" consisting of:

.183544.2

underscored material = new
[bracketed material] = delete

1 (1) the secretary of environment or a member
2 of the secretary's staff designated by the secretary;

3 (2) the secretary of ~~[health or a member of~~
4 ~~the secretary's staff designated by the secretary]~~ energy,
5 minerals and natural resources or a member of the secretary's
6 staff designated by the secretary;

7 (3) the director of the department of game and
8 fish or a member of the director's staff designated by the
9 director;

10 ~~[(4) the state engineer or a member of the~~
11 ~~state engineer's staff designated by the state engineer;~~

12 ~~(5) the chair of the oil conservation~~
13 ~~commission or a member of the chair's staff designated by the~~
14 ~~chair;~~

15 ~~(6) the director of the state parks division~~
16 ~~of the energy, minerals and natural resources department or a~~
17 ~~member of the director's staff designated by the director;~~

18 ~~(7)]~~ (4) the director of the New Mexico
19 department of agriculture or a member of the director's staff
20 designated by the director;

21 ~~[(8) the chair of the soil and water~~
22 ~~conservation commission or a soil and water conservation~~
23 ~~district supervisor designated by the chair;~~

24 ~~(9)]~~ (5) the director of the bureau of geology
25 and mineral resources at the New Mexico institute of mining

.183544.2

underscored material = new
[bracketed material] = delete

1 and technology or a member of the director's staff designated
2 by the director;

3 [~~(10)~~] (6) a municipal [~~or county~~] government
4 representative; and

5 [~~(11) four~~] (7) three representatives of the
6 public to be appointed by the governor for terms of four
7 years and who shall be compensated from the budgeted funds of
8 the department of environment in accordance with the
9 provisions of the Per Diem and Mileage Act. [~~At least~~] One
10 member appointed by the governor shall be a member of a New
11 Mexico Indian tribe or pueblo. One member appointed by the
12 governor shall be employed in an industry regulated under the
13 Water Quality Act and one member shall represent
14 environmental interests. No more than two of the public
15 members appointed by the governor shall be from the same
16 political party.

17 B. A member of the commission shall not receive, or
18 shall not have received during the previous two years, a
19 significant portion of the member's income directly or
20 indirectly from permit holders or applicants for a permit. A
21 member of the commission shall, upon the acceptance of the
22 member's appointment and prior to the performance of any of
23 the member's duties, file a statement of disclosure with the
24 secretary of state disclosing any amount of money or other
25 valuable consideration, and its source, the value of which is

.183544.2

underscored material = new
[bracketed material] = delete

1 in excess of ten percent of the member's gross personal
2 income in each of the preceding two years, that the member
3 received directly or indirectly from permit holders or
4 applicants for permits required under the Water Quality Act.

5 A member of the commission shall not participate in the
6 consideration of an appeal if the subject of the appeal is an
7 application filed or a permit held by an entity that either
8 employs the commission member or from which the commission
9 member received more than ten percent of the member's gross
10 personal income in either of the preceding two years.

11 C. The commission shall elect a chair and other
12 necessary officers and shall keep a record of its
13 proceedings.

14 D. A majority of the commission constitutes a
15 quorum for the transaction of business, but no action of the
16 commission is valid unless concurred in by six or more
17 members present at a meeting.

18 E. The commission is the state water pollution
19 control agency for this state for all purposes of the federal
20 act and the wellhead protection and sole source aquifer
21 programs of the federal Safe Drinking Water Act of 1974 and
22 may take all action necessary and appropriate to secure to
23 this state, its political subdivisions or interstate agencies
24 the benefits of that act and those programs.

25 F. The commission is administratively attached, as

.183544.2

underscored material = new
[bracketed material] = delete

1 defined in the Executive Reorganization Act, to the
2 department [~~of environment~~]."

3 SECTION 107. Section 74-6-4 NMSA 1978 (being Laws 1967,
4 Chapter 190, Section 4, as amended) is amended to read:

5 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The
6 commission:

7 A. may accept and supervise the administration of
8 loans and grants from the federal government and from other
9 sources, public or private, which loans and grants shall not
10 be expended for other than the purposes for which provided;

11 B. shall adopt a comprehensive water quality
12 management program and develop a continuing planning process;

13 ~~[C. shall not adopt or promulgate a standard or~~
14 ~~regulation that exceeds a grant of rulemaking authority~~
15 ~~listed in the statutory section of the Water Quality Act~~
16 ~~authorizing the standard or regulation;~~

17 ~~D.]~~ C. shall adopt water quality standards for
18 surface and ground waters of the state based on credible
19 scientific data and other evidence appropriate under the
20 Water Quality Act. The standards shall include narrative
21 standards and as appropriate, the designated uses of the
22 waters and the water quality criteria necessary to protect
23 such uses. The standards shall at a minimum protect the
24 public health or welfare, enhance the quality of water and
25 serve the purposes of the Water Quality Act. In making

.183544.2

underscored material = new
[bracketed material] = delete

1 standards, the commission shall give weight it deems
2 appropriate to all facts and circumstances, including the use
3 and value of the water for water supplies, propagation of
4 fish and wildlife, recreational purposes and agricultural,
5 industrial and other purposes;

6 ~~[E. shall adopt, promulgate and publish regulations~~
7 ~~to prevent or abate water pollution in the state or in any~~
8 ~~specific geographic area, aquifer or watershed of the state~~
9 ~~or in any part thereof, or for any class of waters, and to~~
10 ~~govern the disposal of septage and sludge and the use of~~
11 ~~sludge for various beneficial purposes. The regulations~~
12 ~~governing the disposal of septage and sludge may include the~~
13 ~~use of tracking and permitting systems or other reasonable~~
14 ~~means necessary to assure that septage and sludge are~~
15 ~~designated for disposal in, and arrive at, disposal~~
16 ~~facilities, other than facilities on the premises where the~~
17 ~~septage and sludge is generated, for which a permit or other~~
18 ~~authorization has been issued pursuant to the federal act or~~
19 ~~the Water Quality Act. Regulations may specify a standard of~~
20 ~~performance for new sources that reflects the greatest~~
21 ~~reduction in the concentration of water contaminants that the~~
22 ~~commission determines to be achievable through application of~~
23 ~~the best available demonstrated control technology,~~
24 ~~processes, operating methods or other alternatives, including~~
25 ~~where practicable a standard permitting no discharge of~~

.183544.2

underscored material = new
[bracketed material] = delete

1 ~~pollutants. In making regulations, the commission shall give~~
2 ~~weight it deems appropriate to all relevant facts and~~
3 ~~circumstances, including:~~

4 ~~(1) character and degree of injury to or~~
5 ~~interference with health, welfare, environment and property;~~

6 ~~(2) the public interest, including the social~~
7 ~~and economic value of the sources of water contaminants;~~

8 ~~(3) technical practicability and economic~~
9 ~~reasonableness of reducing or eliminating water contaminants~~
10 ~~from the sources involved and previous experience with~~
11 ~~equipment and methods available to control the water~~
12 ~~contaminants involved;~~

13 ~~(4) successive uses, including but not limited~~
14 ~~to domestic, commercial, industrial, pastoral, agricultural,~~
15 ~~wildlife and recreational uses;~~

16 ~~(5) feasibility of a user or a subsequent user~~
17 ~~treating the water before a subsequent use;~~

18 ~~(6) property rights and accustomed uses; and~~

19 ~~(7) federal water quality requirements;~~

20 ~~F.]~~ D. shall assign responsibility for
21 administering ~~[its]~~ the department's regulations relating to
22 the Water Quality Act to constituent agencies so as to assure
23 adequate coverage and prevent duplication of effort. To this
24 end, the commission may make such classification of waters
25 and sources of water contaminants as will facilitate the

.183544.2

underscored material = new
[bracketed material] = delete

1 assignment of administrative responsibilities to constituent
2 agencies. The commission shall also hear and decide disputes
3 between constituent agencies as to jurisdiction concerning
4 any matters within the purpose of the Water Quality Act. In
5 assigning responsibilities to constituent agencies, the
6 commission shall give priority to the primary interests of
7 the constituent agencies. The department [~~of environment~~]
8 shall provide technical services, including certification of
9 permits pursuant to the federal act, and shall maintain a
10 repository of the scientific data required by this act;

11 [~~G.~~] E. may enter into or authorize constituent
12 agencies to enter into agreements with the federal government
13 or other state governments for purposes consistent with the
14 Water Quality Act and receive and allocate to constituent
15 agencies funds made available to the commission;

16 [~~H.~~] F. may grant an individual variance from any
17 regulation of the [~~commission~~] department whenever it is
18 found that compliance with the regulation will impose an
19 unreasonable burden upon any lawful business, occupation or
20 activity. The commission may only grant a variance
21 conditioned upon a person effecting a particular abatement of
22 water pollution within a reasonable period of time. Any
23 variance shall be granted for the period of time specified by
24 the commission. The [~~commission~~] department shall adopt
25 regulations specifying the procedure under which variances

.183544.2

underscored material = new
[bracketed material] = delete

1 may be sought, which regulations shall provide for the
2 holding of a public hearing before any variance may be
3 granted; and

4 ~~I. may adopt regulations to require the filing~~
5 ~~with it or a constituent agency of proposed plans and~~
6 ~~specifications for the construction and operation of new~~
7 ~~sewer systems, treatment works or sewerage systems or~~
8 ~~extensions, modifications of or additions to new or existing~~
9 ~~sewer systems, treatment works or sewerage systems. Filing~~
10 ~~with and approval by the federal housing administration of~~
11 ~~plans for an extension to an existing or construction of a~~
12 ~~new sewerage system intended to serve a subdivision solely~~
13 ~~residential in nature shall be deemed compliance with all~~
14 ~~provisions of this subsection;~~

15 ~~J. may adopt regulations requiring notice to it or~~
16 ~~a constituent agency of intent to introduce or allow the~~
17 ~~introduction of water contaminants into waters of the state;~~

18 ~~K. shall specify in regulations the measures to be~~
19 ~~taken to prevent water pollution and to monitor water~~
20 ~~quality. The commission may adopt regulations for particular~~
21 ~~industries. The commission shall adopt regulations for the~~
22 ~~dairy industry and the copper industry. The commission shall~~
23 ~~consider, in addition to the factors listed in Subsection E~~
24 ~~of this section, the best available scientific information.~~
25 ~~The regulations may include variations in requirements based~~

.183544.2

underscored material = new
[bracketed material] = delete

1 ~~on site-specific factors, such as depth and distance to~~
2 ~~ground water and geological and hydrological conditions. The~~
3 ~~constituent agency shall establish an advisory committee~~
4 ~~composed of persons with knowledge and expertise particular~~
5 ~~to the industry category and other interested stakeholders to~~
6 ~~advise the constituent agency on appropriate regulations to~~
7 ~~be proposed for adoption by the commission. The regulations~~
8 ~~shall be developed and adopted in accordance with a schedule~~
9 ~~approved by the commission. The schedule shall incorporate~~
10 ~~an opportunity for public input and stakeholder negotiations;~~

11 ~~L. may adopt regulations establishing pretreatment~~
12 ~~standards that prohibit or control the introduction into~~
13 ~~publicly owned sewerage systems of water contaminants that~~
14 ~~are not susceptible to treatment by the treatment works or~~
15 ~~that would interfere with the operation of the treatment~~
16 ~~works;~~

17 ~~M. shall not require a permit respecting the use of~~
18 ~~water in irrigated agriculture, except in the case of the~~
19 ~~employment of a specific practice in connection with such~~
20 ~~irrigation that documentation or actual case history has~~
21 ~~shown to be hazardous to public health or the environment;~~

22 ~~N. shall not require a permit for applying less~~
23 ~~than two hundred fifty gallons per day of private residential~~
24 ~~gray water originating from a residence for the resident's~~
25 ~~household gardening, composting or landscape irrigation if:~~

.183544.2

underscored material = new
[bracketed material] = delete

1 ~~(1) a constructed gray water distribution~~
2 ~~system provides for overflow into the sewer system or on-site~~
3 ~~wastewater treatment and disposal system;~~

4 ~~(2) a gray water storage tank is covered to~~
5 ~~restrict access and to eliminate habitat for mosquitos or~~
6 ~~other vectors;~~

7 ~~(3) a gray water system is sited outside of a~~
8 ~~floodway;~~

9 ~~(4) gray water is vertically separated at~~
10 ~~least five feet above the ground water table;~~

11 ~~(5) gray water pressure piping is clearly~~
12 ~~identified as a nonpotable water conduit;~~

13 ~~(6) gray water is used on the site where it is~~
14 ~~generated and does not run off the property lines;~~

15 ~~(7) gray water is applied in a manner that~~
16 ~~minimizes the potential for contact with people or domestic~~
17 ~~pets;~~

18 ~~(8) ponding is prohibited, application of gray~~
19 ~~water is managed to minimize standing water on the surface~~
20 ~~and to ensure that the hydraulic capacity of the soil is not~~
21 ~~exceeded;~~

22 ~~(9) gray water is not sprayed;~~

23 ~~(10) gray water is not discharged to a~~
24 ~~watercourse; and~~

25 ~~(11) gray water use within municipalities or~~

underscored material = new
[bracketed material] = delete

1 ~~counties complies with all applicable municipal or county~~
2 ~~ordinances enacted pursuant to Chapter 3, Article 53 NMSA~~
3 ~~1978; and~~

4 ~~0.]~~ G. shall coordinate application procedures and
5 funding cycles for loans and grants from the federal
6 government and from other sources, public or private, with
7 the local government division of the department of finance
8 and administration pursuant to the New Mexico Community
9 Assistance Act."

10 **SECTION 108.** Section 74-6-5 NMSA 1978 (being Laws 1973,
11 Chapter 326, Section 4, as amended) is amended to read:

12 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO
13 COMMISSION.--

14 A. By regulation, the [~~commission~~] department may
15 require persons to obtain from a constituent agency
16 designated by the commission a permit for the discharge of
17 any water contaminant or for the disposal or reuse of septage
18 or sludge.

19 B. The [~~commission~~] department shall adopt
20 regulations establishing procedures for certifying federal
21 water quality permits.

22 C. Prior to the issuance of a permit, the
23 constituent agency may require the submission of plans,
24 specifications and other relevant information that it deems
25 necessary.

.183544.2

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

1 D. The [~~commission~~] department shall by regulation
2 set the dates upon which applications for permits shall be
3 filed and designate the time periods within which the
4 constituent agency shall, after the filing of an
5 administratively complete application for a permit, either
6 grant the permit, grant the permit subject to conditions or
7 deny the permit. The constituent agency has the burden of
8 showing that each condition is reasonable and necessary to
9 ensure compliance with the Water Quality Act and applicable
10 regulations, considering site-specific conditions. After
11 regulations have been adopted for a particular industry,
12 permits for facilities in that industry shall be subject to
13 conditions contained in the regulations. Additional
14 conditions on a final permit may be imposed if the applicant
15 is provided with an opportunity to review and provide
16 comments in writing on the draft permit conditions and to
17 receive a written explanation of the reasons for the
18 conditions from the constituent agency.

19 E. The constituent agency shall deny any
20 application for a permit or deny the certification of a
21 federal water quality permit if:

22 (1) the effluent would not meet applicable
23 state or federal effluent regulations, standards of
24 performance or limitations;

25 (2) any provision of the Water Quality Act

1 would be violated;

2 (3) the discharge would cause or contribute to
3 water contaminant levels in excess of any state or federal
4 standard. Determination of the discharge's effect on ground
5 water shall be measured at any place of withdrawal of water
6 for present or reasonably foreseeable future use.

7 Determination of the discharge's effect on surface waters
8 shall be measured at the point of discharge; or

9 (4) the applicant has, within the ten years
10 immediately preceding the date of submission of the permit
11 application:

12 (a) knowingly misrepresented a material
13 fact in an application for a permit;

14 (b) refused or failed to disclose any
15 information required under the Water Quality Act;

16 (c) been convicted of a felony or other
17 crime involving moral turpitude;

18 (d) been convicted of a felony in any
19 court for any crime defined by state or federal law as being
20 a restraint of trade, price-fixing, bribery or fraud;

21 (e) exhibited a history of willful
22 disregard for environmental laws of any state or the United
23 States; or

24 (f) had an environmental permit revoked or
25 permanently suspended for cause under any environmental laws

.183544.2

underscoring material = new
[bracketed material] = delete

1 of any state or the United States.

2 F. The [~~commission~~] department shall by regulation
3 develop procedures that ensure that the public, affected
4 governmental agencies and any other state whose water may be
5 affected shall receive notice of each application for
6 issuance, renewal or modification of a permit. Public notice
7 shall include:

8 (1) for issuance or modification of a permit:

9 (a) notice by mail to adjacent and nearby
10 landowners; local, state and federal governments; land grant
11 organizations; ditch associations; and Indian nations, tribes
12 or pueblos;

13 (b) posting at a place conspicuous to the
14 public and near the discharge or proposed discharge site; and

15 (c) a display advertisement in English and
16 Spanish in a newspaper of general circulation in the location
17 of the discharge or proposed discharge; provided, however,
18 that the advertisement shall not be displayed in the
19 classified or legal advertisement sections; and

20 (2) for issuance of renewals of permits:

21 (a) notice by mail to the interested
22 public, municipalities, counties, land grant organizations,
23 ditch associations and Indian nations, tribes or pueblos; and

24 (b) a display advertisement in English and
25 Spanish in a newspaper of general circulation in the location

.183544.2

underscored material = new
[bracketed material] = delete

1 of the discharge; provided, however, that the advertisement
2 shall not be displayed in the classified or legal
3 advertisement sections.

4 G. No ruling shall be made on any application for a
5 permit without opportunity for a public hearing at which all
6 interested persons shall be given a reasonable chance to
7 submit evidence, data, views or arguments orally or in
8 writing and to examine witnesses testifying at the hearing.
9 The hearing shall be recorded. Any person submitting
10 evidence, data, views or arguments shall be subject to
11 examination at the hearing.

12 H. The [~~commission~~] department may adopt
13 regulations for the operation and maintenance of the
14 permitted facility, including requirements, as may be
15 necessary or desirable, that relate to continuity of
16 operation, personnel training and financial responsibility,
17 including financial responsibility for corrective action.

18 I. Permits shall be issued for fixed terms not to
19 exceed five years, except that for new discharges, the term
20 of the permit shall commence on the date the discharge
21 begins, but in no event shall the term of the permit exceed
22 seven years from the date the permit was issued.

23 J. By regulation, the [~~commission~~] department may
24 impose reasonable conditions upon permits requiring
25 permittees to:

.183544.2

underscored material = new
[bracketed material] = delete

1 (1) install, use and maintain effluent
2 monitoring devices;

3 (2) sample effluents and receiving waters for
4 any known or suspected water contaminants in accordance with
5 methods and at locations and intervals as may be prescribed
6 by the commission;

7 (3) establish and maintain records of the
8 nature and amounts of effluents and the performance of
9 effluent control devices;

10 (4) provide any other information relating to
11 the discharge or direct or indirect release of water
12 contaminants; and

13 (5) notify a constituent agency of the
14 introduction of new water contaminants from a new source and
15 of a substantial change in volume or character of water
16 contaminants being introduced from sources in existence at
17 the time of the issuance of the permit.

18 K. The [~~commission~~] department shall provide by
19 regulation a schedule of fees for permits, not exceeding the
20 estimated cost of investigation and issuance, modification
21 and renewal of permits. Fees collected pursuant to this
22 section shall be deposited in the water quality management
23 fund.

24 L. The issuance of a permit does not relieve any
25 person from the responsibility of complying with the

.183544.2

underscored material = new
[bracketed material] = delete

1 provisions of the Water Quality Act, any applicable
2 regulations or water quality standards of the commission,
3 department or any applicable federal laws, regulations or
4 standards.

5 M. A permit may be terminated or modified by the
6 constituent agency that issued the permit prior to its date
7 of expiration for any of the following causes:

8 (1) violation of any condition of the permit;

9 (2) obtaining the permit by misrepresentation
10 or failure to disclose fully all relevant facts;

11 (3) violation of any provisions of the Water
12 Quality Act or any applicable regulations, standard of
13 performance or water quality standards;

14 (4) violation of any applicable state or
15 federal effluent regulations or limitations; or

16 (5) change in any condition that requires
17 either a temporary or permanent reduction or elimination of
18 the permitted discharge.

19 N. If the constituent agency denies, terminates or
20 modifies a permit or grants a permit subject to condition,
21 the constituent agency shall notify the applicant or
22 permittee by certified mail of the action taken and the
23 reasons. Notice shall also be given by mail to persons who
24 participated in the permitting action.

25 O. A person who participated in a permitting action

.183544.2

1 before a constituent agency or a person affected by a
2 certification of a federal permit and who is adversely
3 affected by such permitting action or certification may file
4 a petition for review before the commission. Unless a timely
5 petition for review is made, the decision of the constituent
6 agency shall be final and not subject to judicial review.

7 The petition shall:

8 (1) be made in writing to the commission
9 within thirty days from the date notice is given of the
10 constituent agency's action;

11 (2) include a statement of the issues to be
12 raised and the relief sought; and

13 (3) be provided to all other persons
14 submitting evidence, data, views or arguments in the
15 proceeding before the constituent agency.

16 P. If a timely petition for review is made, the
17 commission shall consider the petition within ninety days
18 after receipt of the petition. The commission shall notify
19 the petitioner and the applicant or permittee, if other than
20 the petitioner, by certified mail of the date, time and place
21 of the review. If the petitioner is not the applicant or
22 permittee, the applicant or permittee shall be a party to the
23 proceeding. The commission shall ensure that the public
24 receives notice of the date, time and place of the review.

25 Q. The commission shall review the record compiled

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

1 before the constituent agency, including the transcript of
2 any public hearing held on the application or draft permit,
3 and shall allow any party to submit arguments. The
4 commission may designate a hearing officer to review the
5 record and the arguments of the parties and recommend a
6 decision to the commission. The commission shall consider
7 and weigh only the evidence contained in the record before
8 the constituent agency and the recommended decision of the
9 hearing officer, if any, and shall not be bound by the
10 factual findings or legal conclusions of the constituent
11 agency. Based on the review of the evidence, the arguments
12 of the parties and recommendations of the hearing officer,
13 the commission shall sustain, modify or reverse the action of
14 the constituent agency. The commission shall enter ultimate
15 findings of fact and conclusions of law and keep a record of
16 the review.

17 R. Prior to the date set for review, if a party
18 shows to the satisfaction of the commission that there was no
19 reasonable opportunity to submit comment or evidence on an
20 issue being challenged, the commission shall order that
21 additional comment or evidence be taken by the constituent
22 agency. Based on the additional evidence, the constituent
23 agency may revise the decision and shall promptly file with
24 the commission the additional evidence received and action
25 taken. The commission shall consider the additional evidence

.183544.2

underscored material = new
[bracketed material] = delete

1 within ninety days after receipt of the additional evidence
2 and shall notify the petitioner and the applicant or
3 permittee, if other than the petitioner, of the date, time
4 and place of the review.

5 S. The commission shall notify the petitioner and
6 all other participants in the review proceeding of the action
7 taken by the commission and the reasons for that action."

8 SECTION 109. Section 74-6-5.1 NMSA 1978 (being Laws
9 1993, Chapter 291, Section 12) is amended to read:

10 "74-6-5.1. DISCLOSURE STATEMENTS.--

11 A. The [~~commission~~] department by regulation may
12 require every applicant for a permit to dispose or use
13 septage or sludge, or within a source category designated by
14 the [~~commission~~] department, to file with the appropriate
15 constituent agency a disclosure statement. The disclosure
16 statement shall be submitted on a form developed by the
17 [~~commission~~] department and the department of public safety.
18 The [~~commission~~] department in cooperation with the
19 department of public safety shall determine the information
20 to be contained in the disclosure statement. The disclosure
21 statement shall be submitted to the constituent agency at the
22 same time that the applicant files an application for a
23 permit pursuant to Section 74-6-5 NMSA 1978. The
24 [~~commission~~] department shall adopt regulations designating
25 additional categories of sources subject to the disclosure

.183544.2

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

1 requirements of this section as it deems appropriate and
2 necessary to carry out the purposes of this section.

3 B. Upon a request by the constituent agency, the
4 department of public safety shall prepare and transmit to the
5 constituent agency an investigative report on the applicant
6 within ninety days after the department of public safety
7 receives an administratively complete disclosure statement
8 prepared by the applicant for a permit. The investigative
9 report shall be based in part upon the disclosure statement.
10 The ninety-day deadline for preparing the investigative
11 report may be extended by the constituent agency for a
12 reasonable period of time for good cause. The department of
13 public safety in preparing the investigative report may
14 request and receive criminal history information from any
15 other law enforcement agency or organization. The
16 constituent agency may also request information regarding a
17 person who will be or could reasonably be expected to be
18 involved in management activities of the permitted facility
19 or a person who has a controlling interest in a permitted
20 facility. The information received from a law enforcement
21 agency shall be kept confidential by the department of public
22 safety to the extent that confidentiality is imposed by the
23 law enforcement agency as a condition for providing the
24 information to the constituent agency or the commission.

25 C. All persons required to file a disclosure

.183544.2

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

1 statement shall provide any assistance or information
2 requested by the constituent agency or the department of
3 public safety and shall cooperate in any inquiry or
4 investigation conducted by the department of public safety.
5 If a person required to file a disclosure statement refuses
6 to comply with a formal request to answer an inquiry or
7 produce information, evidence or testimony, the application
8 of the applicant or the permit of the permittee shall be
9 denied or terminated by the constituent agency.

10 D. If the information required to be included in
11 the disclosure statement changes or if additional information
12 should be added after the filing of the disclosure statement,
13 the person required to file the disclosure statement shall
14 provide the information to the constituent agency in writing
15 within thirty days after the change or addition. Failure to
16 provide the information within thirty days shall constitute
17 the basis for the termination of a permit or denial of an
18 application for a permit. Prior to terminating a permit or
19 denying an application for a permit, the constituent agency
20 shall notify the permittee or applicant of the constituent
21 agency's intent to terminate a permit or deny an application
22 and the constituent agency shall give the permittee or
23 applicant fourteen days from the date of notice to
24 satisfactorily explain why the information was not provided
25 within the thirty-day period. The constituent agency shall

.183544.2

underscored material = new
[bracketed material] = delete

1 consider the explanation of the permittee or applicant when
2 determining whether to terminate the permit or deny the
3 application for a permit.

4 E. No person shall be required to submit the
5 disclosure statement required by this section if:

6 (1) the application is for a facility owned
7 and operated by the state, a political subdivision of the
8 state or an agency of the federal government or for the
9 permitted disposal or use of septage or sludge on the
10 premises where the sludge or septage is generated;

11 (2) the person has submitted a disclosure
12 statement pursuant to this section within the previous year
13 and no changes have occurred that would require disclosure
14 [~~under~~] as provided in Subsection D of this section; or

15 (3) the person is a corporation or an officer,
16 director or shareholder of that corporation and that
17 corporation:

18 (a) has on file and in effect with the
19 federal securities and exchange commission a registration
20 statement required by Section 5, Chapter 38, Title 1 of the
21 Securities Act of 1933, as amended;

22 (b) submits to the constituent agency with
23 the application for a permit evidence of the registration
24 described in Subparagraph (a) of this [~~subsection~~] paragraph
25 and a copy of the corporation's most recent annual form 10-k

.183544.2

underscored material = new
[bracketed material] = delete

1 or an equivalent report; and

2 (c) submits to the constituent agency on
3 the anniversary date of the issuance of the permit evidence
4 of registration described in Subparagraph (a) of this
5 ~~[subsection]~~ paragraph and a copy of the corporation's most
6 recent annual form 10-k or an equivalent report.

7 F. Permit decisions made pursuant to this section
8 shall be subject to the procedures established in Section
9 74-6-5 NMSA 1978, including notice and appeals."

10 SECTION 110. Section 74-6-5.2 NMSA 1978 (being Laws
11 1993, Chapter 100, Section 4) is amended to read:

12 "74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--
13 There is created in the state treasury the "water quality
14 management fund" to be administered by the department [~~of~~
15 ~~environment~~]. All fees collected pursuant to the regulations
16 adopted by the [~~commission under Subsection H~~] department as
17 provided in Subsections J and K of Section 74-6-5 NMSA 1978
18 shall be deposited in the fund. Money in the fund is
19 appropriated to the department [~~of environment~~] for the
20 purpose of administering the regulations adopted by the
21 [~~commission~~] department pursuant to Section 74-6-5 NMSA 1978.
22 Disbursements from the fund shall be made upon warrants drawn
23 by the secretary of finance and administration pursuant to
24 vouchers signed by the secretary of environment."

25 SECTION 111. Section 74-6-6 NMSA 1978 (being Laws 1967,

.183544.2

underscored material = new
[bracketed material] = delete

1 Chapter 190, Section 5, as amended) is amended to read:

2 "74-6-6. ADOPTION OF REGULATIONS AND STANDARDS--NOTICE
3 AND HEARING.--

4 A. No regulation or water quality standard or
5 amendment or repeal thereof shall be adopted until after a
6 public hearing.

7 B. Any person may petition in writing to have the
8 commission or department adopt, amend or repeal a regulation
9 or water quality standard. The commission or department
10 shall determine whether to hold a hearing within ninety days
11 of submission of the petition. The denial of such a petition
12 shall not be subject to judicial review.

13 C. Hearings on regulations or water quality
14 standards of statewide application shall be held in Santa Fe.
15 Hearings on regulations or standards that are not of
16 statewide application may be held within the area that is
17 substantially affected by the regulation or standard. At
18 least thirty days prior to the hearing date, notice of the
19 hearing shall be published in the New Mexico register and a
20 newspaper of general circulation in the area affected and
21 mailed to all persons who have made a written request to the
22 commission or department for advance notice of hearings and
23 who have provided the commission or department with a mailing
24 address. The notice shall state the subject, the time and
25 the place of the hearing and the manner in which interested

.183544.2

underscored material = new
[bracketed material] = delete

1 persons may present their views. The notice shall also state
2 where interested persons may secure copies of any proposed
3 regulation or water quality standard.

4 D. At the hearing, the commission or department
5 shall allow all interested persons reasonable opportunity to
6 submit data, views or arguments orally or in writing and to
7 examine witnesses testifying at the hearing. The commission
8 or department may designate a hearing officer to take
9 evidence in the hearing. Any person heard or represented at
10 the hearing shall be given written notice of the action of
11 the commission or department.

12 E. No regulation or water quality standard or
13 amendment or repeal thereof adopted by the commission or
14 department shall become effective until thirty days after its
15 filing in accordance with the provisions of the State Rules
16 Act."

17 SECTION 112. Section 74-6-7 NMSA 1978 (being Laws 1967,
18 Chapter 190, Section 6, as amended) is amended to read:

19 "74-6-7. ADMINISTRATIVE ACTION--JUDICIAL REVIEW.--

20 A. Except as otherwise provided in the Water
21 Quality Act, a person who is adversely affected by a
22 regulation adopted by the [~~commission~~] department or by a
23 compliance order approved by the commission or who
24 participated in a permitting action or appeal of a
25 certification before the commission and who is adversely

.183544.2

underscored material = new
[bracketed material] = delete

1 affected by such action may appeal to the court of appeals
2 for further relief. All such appeals shall be upon the
3 record made before the department or commission and shall be
4 taken to the court of appeals within thirty days after the
5 regulation, compliance order, permitting action or
6 certification that is being appealed occurred. If an appeal
7 of a regulation is made, [~~then~~] the date of the department's
8 or commission's action shall be the date of the filing of the
9 regulation under the State Rules Act.

10 B. Upon appeal, the court of appeals shall set
11 aside the department's or commission's action only if it is
12 found to be:

13 (1) arbitrary, capricious or an abuse of
14 discretion;

15 (2) not supported by substantial evidence in
16 the record; or

17 (3) otherwise not in accordance with law.

18 C. After a hearing and a showing of good cause by
19 the appellant, a stay of the action being appealed may be
20 granted pending the outcome of the judicial review. The stay
21 of the action may be granted by the department or commission
22 or by the court of appeals if the department or commission
23 denies a stay within ninety days after receipt of the
24 application."

25 SECTION 113. Section 74-6-9 NMSA 1978 (being Laws 1967,

.183544.2

underscored material = new
[bracketed material] = delete

1 Chapter 190, Section 8, as amended) is amended to read:

2 "74-6-9. POWERS OF CONSTITUENT AGENCIES.--Each
3 constituent agency may:

4 A. receive and expend funds appropriated, donated
5 or allocated to the constituent agency for purposes
6 consistent with the Water Quality Act;

7 B. develop facts and make studies and
8 investigations and require the production of documents
9 necessary to carry out the responsibilities assigned to the
10 constituent agency. The result of any investigation shall be
11 reduced to writing and a copy furnished to the commission and
12 department and to the owner or occupant of the premises
13 investigated;

14 C. report to the commission, to the department and
15 to other constituent agencies water pollution conditions that
16 are believed to require action where the circumstances are
17 such that the responsibility appears to be outside the
18 responsibility assigned to the agency making the report;

19 D. make every reasonable effort to obtain voluntary
20 cooperation in the prevention or abatement of water
21 pollution;

22 E. upon presentation of proper credentials, enter
23 at reasonable times upon or through any premises in which a
24 water contaminant source is located or in which are located
25 any records required to be maintained by regulations of the

.183544.2

underscored material = new
[bracketed material] = delete

1 federal government or the [~~commission~~] department; provided
2 that entry into any private residence without the permission
3 of the owner shall be only by order of the district court for
4 the county in which the residence is located and that, in
5 connection with any entry provided for in this subsection,
6 the constituent agency or the department may:

7 (1) have access to and reproduce for [~~their~~]
8 its use any copy of the records;

9 (2) inspect any treatment works, monitoring
10 equipment or methods required to be installed by regulations
11 of the federal government or the [~~commission~~] department; and

12 (3) sample any effluents, water contaminant or
13 receiving waters;

14 F. on the same basis as any other person, recommend
15 and propose regulations and standards for promulgation by the
16 commission or department; and

17 G. on the same basis as any other person, present
18 data, views or arguments and examine witnesses and otherwise
19 participate at all hearings conducted by the commission,
20 department or any other administrative agency with
21 responsibility in the areas of environmental management,
22 public health or consumer protection, but shall not be given
23 any special status over any other party; provided that the
24 participation by a constituent agency in a hearing shall not
25 require the recusal or disqualification of the commissioner

.183544.2

underscored material = new
[bracketed material] = delete

1 representing that constituent agency."

2 SECTION 114. Section 74-6-10 NMSA 1978 (being Laws
3 1967, Chapter 190, Section 9, as amended) is amended to read:

4 "74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--
5 PENALTIES--ASSURANCE OF DISCONTINUANCE.--

6 A. Whenever, on the basis of any information, a
7 constituent agency determines that a person violated or is
8 violating a requirement, regulation or water quality standard
9 adopted pursuant to the Water Quality Act or a condition of a
10 permit issued pursuant to that act, the constituent agency
11 may:

12 (1) issue a compliance order requiring
13 compliance immediately or within a specified time period or
14 issue a compliance order assessing a civil penalty, or both;
15 or

16 (2) commence a civil action in district court
17 for appropriate relief, including injunctive relief.

18 B. A compliance order issued pursuant to Paragraph
19 (1) of Subsection A of this section may include a suspension
20 or termination of the permit allegedly violated.

21 C. A compliance order shall state with reasonable
22 specificity the nature of the violation. Any penalty
23 assessed in the compliance order shall not exceed:

24 (1) fifteen thousand dollars (\$15,000) per day
25 of noncompliance with the provisions in Section 74-6-5 NMSA

.183544.2

underscored material = new
[bracketed material] = delete

1 1978, including a regulation adopted or a permit issued
2 pursuant to that section; or

3 (2) ten thousand dollars (\$10,000) per day for
4 each violation of a provision of the Water Quality Act other
5 than the provisions in Section 74-6-5 NMSA 1978 or of a
6 regulation or water quality standard adopted pursuant to the
7 Water Quality Act.

8 D. In assessing a penalty authorized by this
9 section, the constituent agency shall take into account the
10 seriousness of the violation, any good faith efforts to
11 comply with the applicable requirements and other relevant
12 factors.

13 E. For purposes of this section, a single
14 operational event that leads to simultaneous violations of
15 more than one standard shall be treated as a single
16 violation.

17 F. If a person fails to take corrective actions
18 within the time specified in a compliance order, the
19 constituent agency may:

20 (1) assess a civil penalty of not more than
21 twenty-five thousand dollars (\$25,000) for each day of
22 continued noncompliance with the compliance order; and

23 (2) suspend or terminate the permit violated
24 by the person.

25 G. ~~Any~~ A compliance order issued by a constituent

.183544.2

underscored material = new
[bracketed material] = delete

1 agency pursuant to this section shall become final unless, no
2 later than thirty days after the compliance order is served,
3 [~~any~~] a person named in the compliance order submits a
4 written request to the commission for a public hearing. The
5 commission shall conduct a public hearing within ninety days
6 after receipt of a request.

7 H. The commission may appoint an independent
8 hearing officer to preside over [~~any~~] a public hearing held
9 pursuant to Subsection [~~F~~] G of this section. The hearing
10 officer shall:

11 (1) make and preserve a complete record of the
12 proceedings; and

13 (2) forward to the commission a report that
14 includes recommendations if recommendations are requested by
15 the commission.

16 I. The commission shall consider the findings of
17 the independent hearing officer, and based on the evidence
18 presented at the hearing, the commission shall make a final
19 decision regarding the compliance order.

20 J. In connection with any proceeding [~~under~~]
21 provided for in this section, the commission may:

22 (1) adopt rules for discovery procedures; and

23 (2) issue subpoenas for the attendance and
24 testimony of witnesses and for relevant papers, books and
25 documents.

.183544.2

underscored material = new
[bracketed material] = delete

1 K. Penalties collected pursuant to this section
2 shall be deposited in the general fund.

3 L. As an additional means of enforcing the Water
4 Quality Act or any regulation or standard of the commission
5 or department, the commission may accept an assurance of
6 discontinuance of any act or practice deemed in violation of
7 the Water Quality Act, or any regulation or standard adopted
8 pursuant to that act, from any person engaging in, or who has
9 engaged in, such act or practice, signed and acknowledged by
10 the [~~chairman~~] chair of the commission and the party
11 affected. Any such assurance shall specify a time limit
12 during which the discontinuance is to be accomplished."

13 SECTION 115. Section 74-6-12 NMSA 1978 (being Laws
14 1967, Chapter 190, Section 11, as amended) is amended to
15 read:

16 "74-6-12. LIMITATIONS.--

17 A. The Water Quality Act does not grant to the
18 commission, to the department or to any other entity the
19 power to take away or modify the property rights in water,
20 nor is it the intention of the Water Quality Act to take away
21 or modify such rights.

22 B. The Water Quality Act does not apply to [~~any~~] an
23 activity or condition subject to the authority of the
24 [~~environmental improvement board~~] department pursuant to the
25 Hazardous Waste Act, the Ground Water Protection Act or the

.183544.2

underscored material = new
[bracketed material] = delete

1 Solid Waste Act except to abate water pollution or to control
2 the disposal or use of septage and sludge.

3 C. The Water Quality Act does not authorize the
4 [~~commission~~] department to adopt any regulation with respect
5 to any condition or quality of water if the water pollution
6 and its effects are confined entirely within the boundaries
7 of property within which the water pollution occurs when the
8 water does not combine with other waters.

9 D. The Water Quality Act does not grant to the
10 commission or department any jurisdiction or authority
11 affecting the relation between employers and employees with
12 respect to or arising out of any condition [~~of water~~] or
13 quality of water.

14 E. The Water Quality Act does not supersede or
15 limit the applicability of any law relating to industrial
16 health, safety or sanitation.

17 F. Except as required by federal law, in the
18 adoption of regulations and water quality standards and in an
19 action for enforcement of the Water Quality Act and
20 regulations adopted pursuant to that act, reasonable
21 degradation of water quality resulting from beneficial use
22 shall be allowed. Such degradation shall not result in
23 impairment of water quality to the extent that water quality
24 standards are exceeded.

25 G. The Water Quality Act does not apply to [~~any~~] an

.183544.2

underscored material = new
[bracketed material] = delete

1 activity or condition subject to the authority of the oil
2 conservation commission pursuant to provisions of the Oil and
3 Gas Act, Section 70-2-12 NMSA 1978 and other laws conferring
4 power on the oil conservation commission to prevent or abate
5 water pollution.

6 H. When changes in dissolved oxygen, temperature,
7 dissolved solids, sediment or turbidity in a water of the
8 state is attributable to natural causes or to the reasonable
9 operation of irrigation and flood control facilities that are
10 not subject to federal or state water pollution control
11 permitting, numerical standards for temperature, dissolved
12 solids content, dissolved oxygen, sediment or turbidity
13 adopted under the Water Quality Act do not apply.
14 "Reasonable operation", as used in this subsection, shall be
15 defined by regulation of the [~~commission~~] department."

16 SECTION 116. Section 74-6-15 NMSA 1978 (being Laws
17 1993, Chapter 291, Section 13) is amended to read:

18 "74-6-15. CONFIDENTIAL INFORMATION--PENALTIES.--

19 A. Records, reports or information obtained by the
20 commission, the department or a constituent agency pursuant
21 to the Water Quality Act shall be generally available to the
22 public. All ambient water quality data and all effluent data
23 obtained by the commission, the department or a constituent
24 agency shall be available to the public. Records, reports or
25 information or particular parts of the records, reports or

.183544.2

underscored material = new
[bracketed material] = delete

1 information shall be held confidential if a person can
2 demonstrate to the commission, the department or constituent
3 agency that the records, reports or information or particular
4 parts of the records, reports or information, if made public,
5 would divulge confidential business records or methods or
6 processes entitled to protection as trade secrets; except
7 that the record, report or information may be disclosed:

8 (1) to officers, employees or authorized
9 representatives of the commission, the department or a
10 constituent agency concerned with carrying out the purposes
11 and provisions of the Water Quality Act;

12 (2) to officers, employees or authorized
13 representatives of the United States government; or

14 (3) when relevant in any proceeding pursuant
15 to the Water Quality Act or the federal act.

16 B. The [~~commission~~] department shall promulgate
17 regulations to implement the provisions of this section,
18 including regulations specifying business records entitled to
19 protection as confidential.

20 C. An officer, employee or authorized
21 representative of the commission, the department or a
22 constituent agency who knowingly or willfully publishes,
23 divulges, discloses or makes known any information that is
24 required to be considered confidential pursuant to this
25 section shall be fined not more than one thousand dollars

.183544.2

underscoring material = new
[bracketed material] = delete

1 (\$1,000) or [~~imprisonment of~~] imprisoned for not more than
2 one year, or both."

3 SECTION 117. Section 74-6A-4 NMSA 1978 (being Laws
4 1991, Chapter 172, Section 4, as amended) is amended to read:

5 "74-6A-4. WASTEWATER FACILITY CONSTRUCTION LOAN FUND
6 CREATED--ADMINISTRATION.--

7 A. There is created in the state treasury a
8 revolving loan fund to be known as the "wastewater facility
9 construction loan fund", which shall be administered by the
10 division as agent for the commission and operated as a
11 separate account. The [~~commission~~] division is authorized to
12 establish procedures and adopt regulations as required to
13 administer the fund in accordance with the Clean Water Act
14 and state law. Any regulations relating to the issuance of
15 bonds and the expenditure of proceeds of bond issues shall be
16 approved by the board. The commission shall, whenever
17 possible, coordinate application procedures and funding
18 cycles with the New Mexico Community Assistance Act.

19 B. The following shall be deposited directly in the
20 fund:

21 (1) grants from the federal government or its
22 agencies allotted to the state for capitalization of the
23 fund;

24 (2) funds as appropriated by the legislature
25 to implement the provisions of the Wastewater Facility

.183544.2

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

1 Construction Loan Act or to provide state matching funds that
2 are required by the terms of any federal grant under the
3 Clean Water Act;

4 (3) loan principal, interest and penalty
5 payments if required by the terms of any federal grant under
6 the Clean Water Act;

7 (4) money transferred from the account as
8 needed to fulfill requirements of the Clean Water Act; and

9 (5) any other public or private money
10 dedicated to the fund.

11 C. Money in the fund is appropriated for
12 expenditure by the commission in a manner consistent with the
13 terms and conditions of the federal capitalization grants and
14 the Clean Water Act and may be used:

15 (1) to provide loans for the construction or
16 rehabilitation of wastewater facilities;

17 (2) to purchase, refund or refinance
18 obligations incurred by local authorities in the state for
19 wastewater facilities where the obligations were incurred and
20 construction commenced after March 7, 1985;

21 (3) to guarantee, or purchase insurance for,
22 obligations of local authorities to improve credit market
23 access or reduce interest rates;

24 (4) to provide a source of revenue or security
25 for the payments of principal and interest on bonds

.183544.2

underscored material = new
[bracketed material] = delete

1 recommended by the commission and issued by the board if the
2 proceeds of the bonds are deposited in the fund to the extent
3 provided in the terms of the federal grant;

4 (5) to provide loan guarantees for similar
5 revolving funds established by local authorities;

6 (6) to fund the administrative expenses of the
7 board, the commission and the division necessary to implement
8 the provisions of the Wastewater Facility Construction Loan
9 Act, including but not limited to costs of servicing loans
10 and issuing bonds, fund start-up costs, financial management
11 and legal consulting fees and reimbursement costs for support
12 services from other state agencies; and

13 (7) to fund other programs for which the
14 federal government authorizes use of wastewater grants or to
15 provide for any other expenditure consistent with the Clean
16 Water Act grant program and state law.

17 D. Pursuant to regulations adopted by the
18 [~~commission~~] division, the division may impose and collect an
19 administrative fee from each local authority that receives
20 financial assistance from the fund, which fee shall not
21 exceed five percent of the total loan amount and which shall
22 be deposited in the clean water administrative fund.

23 E. Money not currently needed for the operation of
24 the fund or otherwise dedicated may be invested according to
25 the provisions of Chapter 6, Article 10 NMSA 1978, and all

.183544.2

underscored material = new
[bracketed material] = delete

1 interest earned on such investments shall be credited to the
2 fund. Money remaining in the fund at the end of any fiscal
3 year shall not revert to the general fund but shall accrue to
4 the credit of the fund.

5 F. Acting as agent for the commission, the division
6 shall maintain full authority for the operation of the fund
7 in accordance with applicable federal and state law,
8 including but not limited to preparing the annual intended
9 use plan and ensuring that loan recipients are on the state
10 priority list or otherwise satisfy Clean Water Act
11 requirements.

12 G. The division shall establish fiscal controls and
13 accounting procedures that are sufficient to ensure proper
14 accounting for fund payments, disbursements and balances and
15 shall provide an annual report and an annual independent
16 audit on the fund to the governor and to the United States
17 environmental protection agency as required by the Clean
18 Water Act."

19 SECTION 118. Section 74-6A-8 NMSA 1978 (being Laws
20 1991, Chapter 172, Section 6) is amended to read:

21 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

22 A. Financial assistance shall be provided only to
23 local authorities that:

24 (1) meet the requirements for financial
25 capability set by the division to assure sufficient revenues

.183544.2

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

1 to operate and maintain the wastewater facility for its
2 useful life and to repay the financial assistance;

3 (2) agree to operate and maintain the
4 wastewater facility so that the facility will function
5 properly over its structural and material design life;

6 (3) agree to maintain separate project
7 accounts, to maintain project accounts properly in accordance
8 with generally accepted governmental accounting standards and
9 to conduct an audit of the project's financial records;

10 (4) provide a written assurance, signed by an
11 attorney, that the local authority has or will acquire proper
12 title, easements and rights of way to the property upon or
13 through which the wastewater facility proposed for funding is
14 to be constructed or extended;

15 (5) require the contractor of the wastewater
16 facility construction project to post a performance and
17 payment bond in accordance with the requirements of Section
18 13-4-18 NMSA 1978 and its subsequent amendments and successor
19 provisions;

20 (6) provide a written notice of completion and
21 start of operation of the wastewater facility;

22 (7) appear on the priority list of the fund,
23 regardless of rank on such list; and

24 (8) provide such information to the division
25 ~~[as required by the commission]~~ in order to comply with the

.183544.2

underscored material = new
[bracketed material] = delete

1 provisions of the Clean Water Act and state law.

2 B. Loans shall be made only to local authorities
3 that establish one or more dedicated sources of revenue to
4 repay the money received from the commission and to provide
5 for operation, maintenance and equipment replacement
6 expenses. A local authority, any existing statute to the
7 contrary notwithstanding, may do any of the following:

8 (1) obligate itself to pay to the commission
9 at periodic intervals a sum sufficient to provide all or any
10 part of bond debt service with respect to the bonds
11 recommended by the commission and issued by the board to fund
12 the loan for the wastewater facility project of the local
13 authority and pay over the debt service to the account of the
14 wastewater facility project for deposit to the fund;

15 (2) fulfill any obligation to pay the
16 commission by the issuance of bonds, notes or other
17 obligations in accordance with the laws authorizing issuance
18 of local authority obligations; provided, however, that
19 notwithstanding the provisions of [~~Sections~~] Section 4-54-3
20 or 6-15-5 NMSA 1978 or other statute or law requiring the
21 public sale of local authority obligations, such obligations
22 may be sold at private sale to the commission at the price
23 and upon the terms and conditions the local authority shall
24 determine;

25 (3) levy, collect and pay over to the

.183544.2

underscored material = new
[bracketed material] = delete

1 commission and obligate itself to continue to levy, collect
2 and pay over to the commission the proceeds of one or more of
3 the following:

4 (a) sewer or waste disposal service fees
5 or charges;

6 (b) licenses, permits, taxes and fees;

7 (c) special assessments on the property
8 served or benefited by the wastewater facility project; [~~and~~]
9 or

10 (d) other revenue available to the local
11 authority;

12 (4) undertake and obligate itself to pay its
13 contractual obligation to the commission solely from the
14 proceeds from any of the sources specified in Paragraph (3)
15 of this subsection or, in accordance with the laws
16 authorizing issuance of local authority obligations, impose
17 upon itself a general obligation pledge to the commission
18 additionally secured by a pledge of any of the sources
19 specified in Paragraph (3) of this subsection; [~~and~~] or

20 (5) enter into agreements, perform acts and
21 delegate functions and duties as its governing body shall
22 determine is necessary or desirable to enable the division as
23 agent for the commission to fund a loan to the local
24 authority to aid it in the construction or acquisition of a
25 wastewater facility project.

.183544.2

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

1 C. Each loan made by the division as agent for the
2 commission shall provide that repayment of the loan shall
3 begin not later than one year after completion of
4 construction of the wastewater facility project for which the
5 loan was made and shall be repaid in full no later than
6 twenty years after completion of the construction. All
7 principal and interest on loan payments shall be deposited in
8 the fund.

9 D. Financial assistance shall be made with an
10 annual interest rate to be five percent or less as determined
11 by the commission.

12 E. A zero-percent interest rate may be approved by
13 the division when the following conditions have been met by
14 the local authority:

15 (1) the local authority's average user cost is
16 at least fifteen dollars (\$15.00) per month or a higher
17 amount as determined by the commission; and

18 (2) the local authority's median household
19 income is less than three-fourths of the statewide
20 nonmetropolitan median household income.

21 F. A local authority may use the proceeds from
22 financial assistance received under the Wastewater Facility
23 Construction Loan Act to provide a local match or any other
24 nonfederal share of a wastewater facility construction
25 project as allowed pursuant to the Clean Water Act.

.183544.2

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

1 G. Financial assistance received pursuant to the
2 Wastewater Facility Construction Loan Act shall not be used
3 by a local authority on any wastewater facility project
4 constructed in fulfillment or partial fulfillment of
5 requirements made of a subdivider under the provisions of the
6 Land Subdivision Act or the New Mexico Subdivision Act.

7 H. Financial assistance shall be made only to local
8 authorities that employ or contract with a registered
9 professional engineer to provide and be responsible for
10 engineering services on the wastewater facility project.
11 Such services include but are not limited to an engineering
12 report, construction contract documents, supervision of
13 construction and start-up services.

14 I. Financial assistance shall be made only for
15 eligible items. For financial assistance composed entirely
16 of state funds, eligible items include but are not limited to
17 the costs of engineering feasibility reports, contracted
18 engineering design, inspection of construction, special
19 engineering services, start-up services, contracted
20 construction, materials purchased or equipment leased for
21 force account construction, land or acquisition of existing
22 facilities, but eligible items do not include the costs of
23 water rights and local authority administrative costs. For
24 financial assistance made from federal funds, eligible items
25 are those identified pursuant to the Clean Water Act.

.183544.2

underscored material = new
[bracketed material] = delete

1 J. In the event of default by the local authority,
2 the commission may enforce its rights by suit or mandamus or
3 may utilize all other available remedies under state law."

4 SECTION 119. Section 74-6A-9 NMSA 1978 (being Laws
5 1991, Chapter 172, Section 7) is amended to read:

6 "74-6A-9. COMMISSION--DIVISION--POWERS.--

7 A. In administering the Wastewater Facility
8 Construction Loan Act, the commission shall have the
9 following powers, which may be implemented by the division,
10 in addition to those specified in the Water Quality Act:

11 (1) to provide financial assistance to local
12 authorities to finance all or part of a wastewater facility,
13 including all forms of assistance for which the fund may be
14 used pursuant to the Wastewater Facility Construction Loan
15 Act;

16 (2) to adopt [~~recommending~~] resolutions
17 recommending that the board issue bonds or refunding bonds
18 pursuant to the provisions of the Wastewater Facility
19 Construction Loan Act;

20 (3) to execute agreements concerning state
21 contributions to the fund made pursuant to the Clean Water
22 Act, including obligating the commission to pay a portion of
23 the estimated reasonable cost of a wastewater facility of a
24 local authority as may be required to meet the water quality
25 goals of the Clean Water Act and the state;

.183544.2

underscoring material = new
[bracketed material] = delete

1 (4) to foreclose upon, attach or condemn any
2 wastewater facility, property or interest in the facility
3 pledged, mortgaged or otherwise available as security for a
4 project financed in whole or in part pursuant to the
5 Wastewater Facility Construction Loan Act in the event of a
6 default by a local authority;

7 (5) to acquire and hold title to or leasehold
8 interest in real and personal property and to sell, convey or
9 lease that property for the purpose of satisfying a default
10 or enforcing the provisions of a loan agreement;

11 (6) through its agent the division, to manage
12 the fund, to grant and administer financial assistance to
13 local authorities and to apply for and accept grants,
14 including but not limited to capitalization grant awards made
15 to the state in accordance with the Clean Water Act and the
16 Wastewater Facility Construction Loan Act;

17 (7) to appoint and employ attorneys, financial
18 advisors, underwriters and other experts and agents and
19 employees as the business of the commission may require;

20 (8) to sue or be sued and to prosecute and
21 defend, at law or in equity, in any court having jurisdiction
22 over the subject matter and the parties to the matter;

23 (9) to collect application, origination and
24 administrative fees from the local authority, the total of
25 which for any loan shall not exceed four percent of the value

.183544.2

underscored material = new
[bracketed material] = delete

1 of the loan requested or authorized; and

2 ~~[(10) to adopt regulations necessary and~~
3 ~~appropriate to implement the provisions of the Wastewater~~
4 ~~Facility Construction Loan Act; and~~

5 ~~(11)]~~ (10) to have and exercise all the rights
6 and powers necessary, incidental to or implied from the
7 specific powers enumerated in this section.

8 B. Specific powers enumerated in this section shall
9 not limit any power necessary or appropriate to carry out the
10 purposes and intent of the Wastewater Facility Construction
11 Loan Act.

12 C. The commission shall use accounting, audit and
13 fiscal procedures conforming to generally accepted government
14 accounting standards and shall otherwise prepare audits and
15 budgets in accordance with state law. The fiscal year of the
16 commission shall coincide with the fiscal year of the state.

17 D. The commission shall deliver an annual report
18 during the first week of each regular session of the
19 legislature on the status of the wastewater facility
20 construction loan program and the fund to the governor and
21 legislature.

22 E. The division may adopt regulations necessary and
23 appropriate to implement the provisions of the Wastewater
24 Facility Construction Loan Act."

25 SECTION 120. Section 74-6A-14 NMSA 1978 (being Laws

.183544.2

underscored material = new
[bracketed material] = delete

1 1991, Chapter 172, Section 12) is amended to read:

2 "74-6A-14. VALIDATION.--All outstanding securities of
3 the state and of all local authorities, all loan or other
4 agreements entered into between the state or the division and
5 any local authority, all regulations promulgated by the
6 [~~commission~~] division and all acts and proceedings taken by
7 or on behalf of the state or any local authority with respect
8 to the financing of wastewater facilities are [~~hereby~~]
9 validated, ratified, approved and confirmed. To the extent
10 necessary to carry out its purposes, the commission shall
11 treat any bonds, obligations or agreements of the state or
12 the division that were entered into prior to [~~the effective~~
13 ~~date hereof~~] April 4, 1991 for the purpose of effecting the
14 provisions of the Wastewater Facility Construction Loan Act
15 or the Clean Water Act as if such bonds, obligations or
16 agreements were those recommended by the commission and
17 issued by the board."

18 SECTION 121. Section 74-6B-3 NMSA 1978 (being Laws
19 1990, Chapter 124, Section 3, as amended) is amended to read:

20 "74-6B-3. DEFINITIONS.--As used in the Ground Water
21 Protection Act:

22 A. "above ground storage tank" means a single tank
23 or a combination of tanks, including underground pipes
24 connected thereto, that are used to contain petroleum,
25 including crude oil or any fraction thereof that is liquid at

.183544.2

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

1 standard conditions of temperature and pressure of sixty
2 degrees Fahrenheit and fourteen and seven-tenths pounds per
3 square inch absolute, and the volume of which is more than
4 ninety percent above the surface of the ground. The term
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 are regulated under the federal Natural Gas
10 Pipeline Safety Act of 1968 or the federal Hazardous Liquid
11 Pipeline Safety Act of 1979 or that is an intrastate pipeline
12 facility regulated 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 oil field service industry
21 operations;

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

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

.183544.2

underscored material = new
[bracketed material] = delete

1 or

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

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

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

13 D. "department" means the department of
14 environment;

15 E. "operator" means any person in control of or
16 having responsibility for the daily operation of a storage
17 tank;

18 F. "owner":

19 (1) means:

20 (a) in the case of a storage tank in use
21 or brought into use on or after November 8, 1984, a person
22 who owns a storage tank used for storage, use or dispensing
23 of regulated substances; and

24 (b) in the case of a storage tank in use
25 before November 8, 1984 but no longer in use after that date,

.183544.2

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

1 a person who owned the tank immediately before the
2 discontinuation of its use; and

3 (2) excludes, for purposes of tank
4 registration requirements only, a person who:

5 (a) had an underground storage tank taken
6 out of operation on or before January 1, 1974;

7 (b) had an underground storage tank taken
8 out of operation after January 1, 1974 and removed from the
9 ground prior to November 8, 1984; or

10 (c) had an above ground storage tank taken
11 out of operation on or before July 1, 2001;

12 G. "person" means an individual or any legal
13 entity, including all governmental entities;

14 H. "regulated substance" means:

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

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

25 I. "release" means a spilling, leaking, emitting,

.183544.2

1 discharging, escaping, leaching or disposing from a storage
2 tank into ground water, surface water or subsurface soils in
3 amounts exceeding twenty-five gallons;

4 J. "secretary" means the secretary of environment;

5 K. "site" means a place where there is or was at a
6 previous time one or more storage tanks and may include areas
7 contiguous to the actual location or previous location of the
8 tanks;

9 L. "storage tank" means an above ground storage
10 tank or an underground storage tank; and

11 M. "underground storage tank" means a single tank
12 or combination of tanks, including underground pipes
13 connected thereto, that ~~are~~ is used to contain an
14 accumulation of regulated substances and the volume of which,
15 including the volume of the underground pipes connected
16 thereto, is ten percent or more beneath the surface of the
17 ground. The term does not include any:

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

21 (2) septic tank;

22 (3) pipeline facility, including gathering
23 lines, regulated under the federal Natural Gas Pipeline
24 Safety Act of 1968 or the federal Hazardous Liquid Pipeline
25 Safety Act of 1979 or that is an intrastate pipeline facility

underscored material = new
[bracketed material] = delete

1 regulated under state laws comparable to either act;

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~~]
16 department after finding that the type of tank is adequately
17 regulated under 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 SECTION 122. Section 74-6B-7 NMSA 1978 (being Laws
21 1990, Chapter 124, Section 7, as amended) is amended to read:

22 "74-6B-7. CORRECTIVE ACTION FUND CREATED--AUTHORIZATION
23 FOR EXPENDITURES.--

24 A. There is created the "corrective action fund".
25 The fund is intended to provide for financial assurance

.183544.2

underscored material = new
[bracketed material] = delete

1 coverage and shall be used by the department to the extent
2 that revenues are available to take corrective action in
3 response to a release, to pay for the costs of a minimum site
4 assessment in excess of ten thousand dollars (\$10,000), to
5 pay the state's share of federal leaking underground storage
6 tank trust fund cleanup costs as required by the federal
7 Resource Conservation and Recovery Act of 1976 and to make
8 payments to or on behalf of owners and operators for
9 corrective action taken in accordance with Section 74-6B-13
10 NMSA 1978. The legislature may appropriate up to thirty
11 percent of the annual distribution to the fund pursuant to
12 Section 7-1-6.25 NMSA 1978 to the department to match federal
13 funds, for underground contamination cleanup and to address
14 water needs. The owner or operator of a site shall not use
15 the corrective action fund as evidence of financial assurance
16 to satisfy claims of third parties.

17 B. The [~~board after recommendations from the~~
18 ~~storage tank committee~~] department shall adopt rules for
19 establishing priorities for corrective action at sites
20 contaminated by storage tanks. The priorities for corrective
21 action shall be based on public health, safety and welfare
22 and environmental concerns. In adopting rules pursuant to
23 this subsection, the [~~board~~] department shall follow the
24 procedures of Section 74-4-5 NMSA 1978. The provisions of
25 that section relating to all other matters in connection with

.183544.2

underscoring material = new
[bracketed material] = delete

1 the adoption of rules shall apply. The department shall
2 establish priority lists of sites in accordance with the
3 rules adopted by the ~~[board]~~ department.

4 C. The department shall make expenditures from the
5 corrective action fund in accordance with rules adopted by
6 the ~~[board or the]~~ secretary for corrective action taken by
7 the state, owners or operators at sites contaminated by
8 storage tanks; provided that:

9 (1) payments may be made only for corrective
10 action taken by persons qualified by the department to
11 perform the work pursuant to rules adopted by the ~~[board]~~
12 department;

13 (2) no expenditures from the fund shall be
14 paid to or on behalf of an owner or operator for corrective
15 action, other than a minimum site assessment or sampling, if
16 the corrective action is conducted by a person that is a
17 subsidiary or parent of or that is otherwise affiliated with
18 the owner or operator;

19 (3) expenditures shall be made by the
20 department to perform corrective action, to pay for the costs
21 of minimum site assessment in excess of ten thousand dollars
22 (\$10,000) or to make payments to or on behalf of an owner or
23 operator in accordance with Section 74-6B-13 NMSA 1978;

24 (4) any corrective action taken shall be taken
25 at sites in the order of priority appearing on the priority

underscored material = new
[bracketed material] = delete

1 lists, unless an emergency threat to public health, safety
2 and welfare or to the environment exists;

3 (5) when available revenues are limited and
4 the fund can no longer be approved as a financial
5 responsibility mechanism, priorities for expenditures from
6 the fund shall also be based on financial need as determined
7 by rules adopted by the [~~board~~] department; and

8 (6) corrective action involving remediation
9 shall follow a competitive bidding procedure based on
10 technical merit and cost effectiveness.

11 D. No expenditure from the corrective action fund
12 shall be authorized for corrective action at sites owned or
13 operated by the United States or any agency or
14 instrumentality thereof.

15 E. Nothing in this section authorizes payments for
16 the repair or replacement of a storage tank or equipment.

17 F. Nothing in this section authorizes payments or
18 commitments for payments in excess of the funds available.

19 G. The [~~board~~] department, by rule, may provide for
20 a specific amount to be reserved in the fund for emergencies.
21 The amount reserved may be expended by the department only
22 for corrective action necessary when an emergency threat to
23 public health, safety and welfare or to the environment
24 exists.

25 H. Within sixty days after receipt of notification

.183544.2

underscoring material = new
[bracketed material] = delete

1 that the corrective action fund has become incapable of
2 paying for assured corrective actions, the owner or operator
3 shall obtain alternative financial assurance acceptable to
4 the department."

5 SECTION 123. Section 74-6B-8 NMSA 1978 (being Laws
6 1990, Chapter 124, Section 8, as amended) is amended to read:

7 "74-6B-8. LIABILITY--COST RECOVERY.--

8 A. An owner or operator of a storage tank from
9 which a release has occurred shall be strictly liable for the
10 owner's, operator's and department's cost of taking
11 corrective action at the site.

12 B. An owner or operator otherwise liable under
13 Subsection A of this section shall not be liable for
14 expenditures from the state corrective action fund associated
15 with corrective action at the site if ~~[he]~~ the owner or
16 operator has proved to the department that ~~[he has complied~~
17 ~~with the following]~~:

- 18 (1) the owner or operator:
- 19 (a) is in substantial compliance with all
20 of the requirements and provisions of rules adopted by the
21 ~~[board]~~ department to fulfill the requirements of Paragraphs
22 (1) through (7) of Subsection C of Section 74-4-4 NMSA 1978;
- 23 (b) has paid all storage tank fees
24 required by Sections 74-4-4.4 and 74-6B-9 NMSA 1978;
- 25 (c) has conducted a minimum site

.183544.2

underscored material = new
[bracketed material] = delete

1 assessment in accordance with rules of the [~~board~~] department
2 and, if contamination is found, has taken action to prevent
3 continuing contamination; and

4 (d) has cooperated in good faith with the
5 department and has granted access to the department for
6 investigation, cleanup and monitoring; and

7 (2) for sites where storage tanks were removed
8 or properly abandoned prior to March 7, 1990, the owner or
9 [~~the~~] operator:

10 (a) has paid all storage tank fees
11 required by Section 74-4-4.4 NMSA 1978 and a two-hundred-
12 dollar (\$200) fee per site;

13 (b) has conducted a minimum site
14 assessment in accordance with rules of the [~~board~~]
15 department; and

16 (c) has cooperated in good faith with the
17 department and has granted access to the department for
18 investigation, cleanup and monitoring.

19 C. In the event that the department determines that
20 an owner or operator has not complied with the requirements
21 of Subsection B of this section, the department may bring an
22 action in district court against the owner or operator to
23 recover expenditures from the corrective action fund incurred
24 by the department in taking corrective action at the site.

25 In addition, the department may bring an action in district

.183544.2

underscored material = new
[bracketed material] = delete

1 court to recover any expenditures made of federal funds from
2 the federal leaking underground storage tank trust fund in
3 taking corrective action. These expenditures made from the
4 corrective action fund and from federal funds include [~~but~~
5 ~~are not limited to~~] costs of investigating a release and
6 undertaking corrective action, administrative costs and
7 reasonable attorney fees. Expenditures recovered under this
8 section, except for any recovered federal funds, shall be
9 deposited into the corrective action fund.

10 D. The department has a right of subrogation to any
11 insurance policies in existence at the time of the release to
12 the extent of any rights the owner or operator of a site may
13 have had under that policy and has a right of subrogation
14 against any third party who caused or contributed to the
15 release. The right of subrogation shall apply regardless of
16 any defenses available to the owner or operator under
17 Subsection B of this section. The right of subrogation shall
18 apply to sites where corrective action is taken by owners or
19 operators under Section 74-6B-13 NMSA 1978 as well as to
20 sites where corrective action is taken by the state."

21 SECTION 124. Section 74-6B-13 NMSA 1978 (being Laws
22 1992, Chapter 64, Section 10, as amended) is amended to read:

23 "74-6B-13. PAYMENT PROGRAM.--

24 A. Unless provided otherwise in this section, all
25 costs in excess of ten thousand dollars (\$10,000) that are

.183544.2

underscored material = new
[bracketed material] = delete

1 necessary to perform a minimum site assessment in accordance
2 with the rules of the [~~board~~] department shall be paid from
3 the corrective action fund.

4 B. Payment of the cost of corrective action,
5 including the cost of a minimum site assessment, shall be
6 made by the department following application and proper
7 documentation of the costs and in accordance with rules
8 adopted by the secretary establishing eligible and ineligible
9 costs. Ineligible costs include attorney fees, repair or
10 upgrade of storage tanks, loss of revenue and costs of
11 monitoring a contractor.

12 C. The department shall adopt rules to provide for
13 payments from the corrective action fund, to the extent that
14 money is available in the fund, to persons who cannot afford
15 to pay all or a portion of the initial ten-thousand-dollar
16 (\$10,000) cost of a minimum site assessment otherwise
17 required in this section. The department shall develop a
18 financial assistance means test, including a sliding scale of
19 financial relief as the department deems appropriate, that
20 allows some or all of the minimum site assessment costs to be
21 paid from the corrective action fund.

22 D. All department determinations concerning the
23 manner of payment, compliance and cost eligibility shall be
24 made in accordance with department rules.

25 E. If the owner or operator is in compliance with

.183544.2

underscored material = new
[bracketed material] = delete

1 the requirements of Subsection B of Section 74-6B-8 NMSA
2 1978, payment of costs from the corrective action fund shall
3 occur not later than sixty days after the submission of the
4 application and proper documentation of costs by the owner or
5 operator, except as provided in Section 74-6B-14 NMSA 1978.

6 F. Before any payment is made for a corrective
7 action pursuant to this section to or on behalf of an owner
8 or operator, payment shall first be made to reimburse the
9 federal leaking underground storage tank trust fund for any
10 costs incurred for that corrective action.

11 G. Counties and municipalities are exempt from the
12 requirements to pay any portion of the initial ten thousand
13 dollars (\$10,000) of a minimum site assessment."

14 SECTION 125. A new section of the Ground Water
15 Protection Act is enacted to read:

16 "[NEW MATERIAL] BOARD DUTIES.--The board shall assist
17 the department in carrying out the objectives of the Ground
18 Water Protection Act, including advising the department on
19 the adoption and implementation of regulations adopted
20 pursuant to that act and other duties as determined by the
21 department."

22 SECTION 126. Section 74-7-1 NMSA 1978 (being Laws 1983,
23 Chapter 29, Section 1) is amended to read:

24 "74-7-1. SHORT TITLE.--~~[This act]~~ Chapter 74, Article 7
25 NMSA 1978 may be cited as the "Environmental Compliance

.183544.2

underscored material = new
[bracketed material] = delete

1 Act".

2 SECTION 127. Section 74-7-3 NMSA 1978 (being Laws 1983,
3 Chapter 29, Section 3) is amended to read:

4 "74-7-3. DEFINITIONS.--As used in the Environmental
5 Compliance Act:

6 ~~[A. "board" means the environmental improvement~~
7 ~~board;~~

8 ~~B.]~~ A. "director" means the director of the
9 division;

10 ~~[C.]~~ B. "division" means the ~~[environmental~~
11 ~~improvement division of the health and environment]~~
12 department of environment;

13 ~~[D.]~~ C. "environmental audit" means a systematic
14 assessment, analysis and evaluation by a regulated entity of
15 its compliance with environmental laws and regulations
16 administered by the ~~[board and the]~~ division, applicable to
17 its operation; and

18 ~~[E.]~~ D. "regulated entity" means any person,
19 partnership, corporation, firm, association, governmental or
20 other entity organized and engaging in any business or
21 activity in the state ~~[which]~~ that deals with or has an
22 impact on the environment of this state or ~~[which]~~ that must
23 by law comply with federal or state environmental protection
24 regulations."

25 SECTION 128. Section 74-7-5 NMSA 1978 (being Laws 1983,
.183544.2

underscored material = new
[bracketed material] = delete

1 Chapter 29, Section 5) is amended to read:

2 "74-7-5. ADOPTION OF REGULATIONS--NOTICE AND HEARING--
3 APPEAL.--

4 A. No regulations shall be adopted pursuant to the
5 Environmental Compliance Act until after a public hearing by
6 the [~~board~~] division. As used in this section, "regulation"
7 includes any amendment or repeal thereof. Hearings on
8 regulations shall be held pertaining to that environmental
9 area [~~which~~] that is substantially affected by the
10 regulation. In making a regulation, the [~~board~~] division
11 shall give the weight it deems appropriate to all relevant
12 facts and circumstances presented at the hearing, including
13 but not limited to:

14 (1) the protection of the health and welfare
15 of both the general public and the individual worker and the
16 maintenance of the delicate ecological balance;

17 (2) the necessity for and technical
18 practicability and economic reasonableness of taking action
19 with respect to environmental auditing programs;

20 (3) the need to protect private proprietary
21 processes;

22 (4) the level of management support within the
23 specific regulated entity for the environmental auditing
24 program;

25 (5) a regulated entity's established

.183544.2

underscored material = new
[bracketed material] = delete

1 procedures to ensure compliance and correction of any
2 environmental standards that are violated; and

3 (6) compliance with the requirements of the
4 following federal laws and their associated standards,
5 regulations and state implementing directives:

6 (a) the National Environmental Policy Act
7 of 1969;

8 (b) the Federal Water Pollution Control
9 Act;

10 (c) the Safe Drinking Water Act of 1974;

11 (d) the Resource Conservation and Recovery
12 Act of 1976;

13 (e) the Used Oil Recycling Act of 1980;

14 (f) the Clean Air Act;

15 (g) the Toxic Substances Control Act;

16 (h) the Occupational Safety and Health Act
17 of 1970;

18 (i) the Noise Control Act of 1972;

19 (j) the Hazardous Materials Transportation
20 Act; and

21 (k) the Comprehensive Environmental
22 Response, Compensation, and Liability Act of 1980.

23 B. Notice of the hearing shall be given at least
24 thirty days prior to the hearing date and shall state the
25 subject, time and place of the hearing and the manner in

.183544.2

underscored material = new
[bracketed material] = delete

1 which interested persons may present their views. The notice
2 shall state where interested persons may secure copies of any
3 proposed regulation. The notice shall be published in a
4 newspaper of general circulation in the area affected.

5 Reasonable effort shall be made to give notice to all persons
6 who have made a written request to the ~~[board]~~ division for
7 advance notice of hearings.

8 C. At the hearing, the ~~[board]~~ division shall allow
9 all interested persons reasonable opportunity to submit data,
10 views or arguments, orally or in writing, pertaining to the
11 feasibility of conducting environmental audits.

12 D. No regulation or amendment or repeal thereof
13 adopted by the ~~[board]~~ division shall become effective until
14 thirty days after its filing pursuant to the State Rules Act.

15 E. Any person who is affected by a regulation
16 adopted by the ~~[board]~~ division may appeal to the court of
17 appeals for further relief. All appeals shall be upon the
18 transcript made at the hearing and shall be taken to the
19 court of appeals within thirty days after filing of the
20 regulation pursuant to the State Rules Act."

21 SECTION 129. Section 74-7-6 NMSA 1978 (being Laws 1983,
22 Chapter 29, Section 6) is amended to read:

23 "74-7-6. DIVISION--DUTIES.--The division shall
24 ~~[establish guidelines for regulated entities concerning~~
25 ~~environmental auditing programs pursuant to the rules and~~

.183544.2

underscored material = new
[bracketed material] = delete

1 ~~regulations adopted in compliance with the Environmental~~
2 ~~Compliance Act]:~~

3 A. develop and maintain regulations and standards
4 regarding environmental auditing programs; and

5 B. promulgate other regulations as necessary to
6 carry out the provisions of the Environmental Compliance
7 Act."

8 SECTION 130. Section 74-7-8 NMSA 1978 (being Laws 1983,
9 Chapter 29, Section 8) is amended to read:

10 "74-7-8. [~~BOARD AND~~] DIVISION--INCENTIVES.--Regulated
11 entities shall be allowed a reasonable time as determined by
12 the division to correct any potential problem areas
13 identified in the environmental auditing process. The [~~board~~
14 ~~and~~] division shall develop incentives to encourage regulated
15 entities to participate in the Environmental Compliance Act."

16 SECTION 131. Section 74-8-1 NMSA 1978 (being Laws 1989,
17 Chapter 279, Section 1, as amended) is amended to read:

18 "74-8-1. SOLID WASTE INCINERATION PROHIBITED.--No solid
19 waste shall be disposed of by incineration in New Mexico
20 until the [~~environmental improvement board~~] department of
21 environment adopts regulations under the provisions of
22 Section 74-2-5.2 NMSA 1978. As used in this section:

23 A. "solid waste" means solid waste as defined in
24 the Solid Waste Act; and

25 B. "incineration" means the process of reducing

underscored material = new
[bracketed material] = delete

1 combustible solid waste designed to achieve complete
2 combustion by means of a device or chamber."

3 SECTION 132. Section 74-8-2 NMSA 1978 (being Laws 1989,
4 Chapter 279, Section 2) is amended to read:

5 "74-8-2. DISPOSAL OF INCINERATOR ASH PROHIBITED.--No
6 bottom, fly or combined ash from any incinerator located
7 inside or outside New Mexico shall be disposed of at any
8 solid waste landfill in New Mexico until such time as the
9 [~~environmental improvement board~~] department of environment
10 adopts regulations [~~proposed by the environmental improvement~~
11 ~~division of the health and environment department~~] addressing
12 such disposal. These regulations shall prescribe that
13 incinerator ash be managed as solid, special or hazardous
14 waste."

15 SECTION 133. Section 74-9-1 NMSA 1978 (being Laws 1990,
16 Chapter 99, Section 1) is amended to read:

17 "74-9-1. SHORT TITLE.--[~~Sections 1 through 42 and 72~~
18 ~~and 73 of this act~~] Chapter 74, Article 9 NMSA 1978 may be
19 cited as the "Solid Waste Act"."

20 SECTION 134. Section 74-9-3 NMSA 1978 (being Laws 1990,
21 Chapter 99, Section 3) is amended to read:

22 "74-9-3. DEFINITIONS.--As used in the Solid Waste Act:

23 A. "agricultural" means all methods of production
24 and management of livestock, crops, vegetation and soil.

25 This includes, but is not limited to, raising, harvesting and

.183544.2

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

1 marketing. It also includes, but is not limited to, the
2 activities of feeding, housing and maintaining animals such
3 as cattle, dairy cows, sheep, goats, hogs, horses and
4 poultry;

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

7 C. "commercial hauler" means any person
8 transporting solid waste for hire by whatever means for the
9 purpose of disposing of the solid waste in a solid waste
10 facility, except that the term does not include an individual
11 transporting solid waste generated on or from ~~[his]~~ the
12 person's residential premises for the purpose of disposing of
13 it in a solid waste facility;

14 D. "construction and demolition debris" means
15 materials generally considered to be not water soluble and
16 nonhazardous in nature, including, but not limited to, steel,
17 glass, brick, concrete, asphalt roofing materials, pipe,
18 gypsum wallboard and lumber from the construction or
19 destruction of a structure as part of a construction or
20 demolition project, and includes rocks, soil, tree remains,
21 trees and other vegetative matter that normally results from
22 land clearing or land development operations for a
23 construction project, but if construction and demolition
24 debris is mixed with any other types of solid waste, whether
25 or not originating from the construction project, it loses

.183544.2

underscored material = new
[bracketed material] = delete

1 its classification as construction and demolition debris;

2 E. "densified-refuse-derived fuel" means a product
3 resulting from the processing of mixed municipal solid waste
4 in a manner that produces a fuel suitable for combustion in
5 existing or new solid-fuel-fired boilers;

6 F. "director" means the director of the
7 [~~environmental improvement~~] division [~~of the health and~~
8 ~~environment department~~];

9 G. "division" means the environmental improvement
10 division of the [~~health and environment~~] department of
11 environment;

12 H. "municipality" means any incorporated city, town
13 or village, whether incorporated under general act, special
14 act or special charter, incorporated counties and H class
15 counties;

16 I. "person" means an individual or any entity,
17 including federal, state and local governmental entities,
18 however organized;

19 J. "plan" or "state plan" means the solid waste
20 management plan required to be developed under Section [~~4 of~~
21 ~~the Solid Waste Act~~] 74-9-4 NMSA 1978;

22 K. "program" or "state program" means the
23 comprehensive solid waste management program described in
24 Section [~~12 of the Solid Waste Act~~] 74-9-12 NMSA 1978;

25 L. "recyclable materials" means materials that

.183544.2

1 would otherwise become solid waste if not recycled and that
2 can be collected, separated or processed and placed in use in
3 the form of raw materials, products or densified-refuse-
4 derived fuels;

5 M. "recycling" means any process by which
6 recyclable materials are collected, separated or processed
7 and reused or returned to use in the form of raw materials or
8 products;

9 N. "solid waste" means any garbage, refuse, sludge
10 from a waste treatment plant, water supply treatment plant or
11 air pollution control facility and other discarded material,
12 including solid, liquid, semisolid or contained gaseous
13 material resulting from industrial, commercial, mining and
14 agricultural operations and from community activities.

15 "Solid waste" does not include:

16 (1) drilling fluids, produced waters and other
17 nondomestic wastes associated with the exploration,
18 development or production, transportation, storage, treatment
19 or refinement of crude oil, natural gas, carbon dioxide gas
20 or geothermal energy;

21 (2) fly ash waste, bottom ash waste, slag
22 waste and flue gas emission control waste generated primarily
23 from the combustion of coal or other fossil fuels and wastes
24 produced in conjunction with the combustion of fossil fuels
25 that are necessarily associated with the production of energy

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

1 and that traditionally have been and actually are mixed with
2 and are disposed of or treated at the same time with fly ash,
3 bottom ash, boiler slag or flue gas emission control wastes
4 from coal combustion;

5 (3) waste from the extraction, beneficiation
6 and processing of ores and minerals, including phosphate rock
7 and overburden from the mining of uranium ore, coal, copper,
8 molybdenum and other ores and minerals;

9 (4) agricultural waste, including, but not
10 limited to, manures and crop residues returned to the soil as
11 fertilizer or soil conditioner;

12 (5) cement kiln dust waste;

13 (6) sand and gravel;

14 (7) solid or dissolved material in domestic
15 sewage or solid or dissolved materials in irrigation return
16 flows or industrial discharges that are point sources subject
17 to permits under Section 402 of the Federal Water Pollution
18 Control Act, 33 U.S.C. Section 1342 or source, special
19 nuclear or byproduct material as defined by the federal
20 Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq.;

21 (8) densified-refuse-derived fuel; or

22 (9) any material regulated by Subtitle C of
23 the federal Resource Conservation and Recovery Act of 1976,
24 substances regulated by the federal Toxic Substances Control
25 Act or low-level radioactive waste;

.183544.2

underscored material = new
[bracketed material] = delete

1 O. "solid waste district" means a geographical area
2 designated by the ~~[board]~~ division as a solid waste district
3 under Section ~~[11 of the Solid Waste Act]~~ 74-9-11 NMSA 1978;

4 P. "solid waste facility" means any public or
5 private system, facility, location, improvements on the land,
6 structures or other appurtenances or methods used for
7 processing, transformation, recycling or disposal of solid
8 waste, including landfill disposal facilities, transfer
9 stations, resource recovery facilities, incinerators and
10 other similar facilities not specified, but does not include
11 equipment specifically approved by order of the director to
12 render medical waste noninfectious or a facility ~~[which]~~ that
13 is permitted pursuant to the provisions of the Hazardous
14 Waste Act and does not apply to a facility fueled by a
15 densified-refuse-derived fuel that accepts no other solid
16 waste;

17 Q. "source reduction" means any action that causes
18 a net reduction in the generation, volume or toxicity of
19 solid waste;

20 R. "special waste" means solid waste that has
21 unique handling, transportation or disposal requirements to
22 assure protection of the environment and the public health
23 and safety;

24 S. "transformation" means incineration, pyrolysis,
25 distillation, gasification or biological conversion other

.183544.2

underscored material = new
[bracketed material] = delete

1 than composting; and

2 T. "yard refuse" means vegetative matter resulting
3 from landscaping, land maintenance and land clearing
4 operations."

5 SECTION 135. Section 74-9-5 NMSA 1978 (being Laws 1990,
6 Chapter 99, Section 5) is amended to read:

7 "74-9-5. PLAN--EFFECT.--The plan approved by the
8 [~~board~~] division shall be effective thirty days after its
9 approval and shall be filed under the provisions of Section
10 14-4-4 NMSA 1978. Consistency with the plan shall be
11 required:

12 A. of any regulation adopted by the [~~board~~]
13 division under the provisions of the Solid Waste Act;

14 B. in any action taken by the director under
15 authority contained in the Solid Waste Act; and

16 C. as a condition of approval of any application by
17 a county or municipality for a grant under the provisions of
18 the Solid Waste Act."

19 SECTION 136. Section 74-9-7 NMSA 1978 (being Laws 1990,
20 Chapter 99, Section 7, as amended by Laws 1991, Chapter 185,
21 Section 1 and also by Laws 1991, Chapter 194, Section 2) is
22 amended to read:

23 "74-9-7. PLAN--INFORMATION REQUIRED FROM COUNTIES AND
24 MUNICIPALITIES.--

25 A. As a basis for developing and preparing the

.183544.2

underscored material = new
[bracketed material] = delete

1 plan, the director shall request and shall use information
2 from each county and municipality or combinations of counties
3 and municipalities as further authorized under the provisions
4 of this section.

5 B. The director shall prepare and distribute to
6 each county and municipality guidelines to assist [~~it~~] them
7 in the preparation of the plan information submittals. These
8 guidelines shall be distributed no later than October 1,
9 1990. The guidelines shall include requirements for
10 submittal of:

11 (1) documentation that demonstrates that the
12 submitting county or municipality considered combining with
13 one or more other counties or municipalities, or both, to
14 form a district for solid waste planning and local
15 implementation of program elements for which the county's or
16 municipality's participation is required under the provisions
17 of the Solid Waste Act; and

18 (2) information to be furnished by counties or
19 municipalities for their respective jurisdictions that
20 corresponds generally to the provisions of Section 74-9-6
21 NMSA 1978.

22 C. If a county or municipality indicates in its
23 submission that it has developed through a joint powers
24 agreement or otherwise a plan for formation of a solid waste
25 district with one or more other participating counties or

.183544.2

underscored material = new
[bracketed material] = delete

1 municipalities, that proposed district shall be recommended
2 to the [~~board by the director~~] division for designation under
3 Section 74-9-11 NMSA 1978.

4 D. In developing the information to be submitted to
5 the director, each county and municipality shall provide:

6 (1) for the maximum public participation in
7 the process that is possible within time constraints and
8 available resources; and

9 (2) for obtaining information from
10 representatives of the private sector involved in solid waste
11 management.

12 E. The information submitted to the director shall
13 include a description of methods used by the county or
14 municipality to achieve the participation required under
15 Subsection D of this section.

16 F. If a county or municipality or any combination
17 of counties or municipalities designates in a plan
18 information submittal a proposed county, municipal or
19 regional landfill disposal [~~sites~~] site and the [~~sites~~
20 ~~comply~~] site complies with applicable substantive permitting
21 requirements established by the Solid Waste Act and
22 regulations adopted pursuant to that act, the [~~designations~~]
23 designation shall be binding upon the director unless [~~he~~]
24 the director applies for and receives from the [~~board~~]
25 secretary authorization to change [~~a~~] the designation.

.183544.2

underscored material = new
[bracketed material] = delete

1 G. Counties and municipalities shall furnish the
2 documentation and information described in Subsection B of
3 this section no later than July 1, 1992.

4 H. Failure by a county or municipality to furnish
5 information that is required by the director, giving due
6 regard to the particular demographic, geographic, economic
7 and other appropriate characteristics of the county or
8 municipality, may render it ineligible to be a recipient of
9 any grants authorized under the provisions of the Solid Waste
10 Act and established by regulations adopted by the [~~board~~
11 division]."

12 SECTION 137. Section 74-9-8 NMSA 1978 (being Laws 1990,
13 Chapter 99, Section 8, as amended by Laws 1991, Chapter 185,
14 Section 2 and also by Laws 1991, Chapter 194, Section 3) is
15 amended to read:

16 "74-9-8. BOARD ADOPTION OF INITIAL REGULATIONS.--

17 A. No later than December 31, 1991, the board shall
18 adopt initial regulations under the authority of this section
19 to:

20 [~~A.~~] (1) implement, administer and enforce a
21 program for the cost-effective and environmentally safe
22 siting, construction, operation, maintenance, closure and
23 post-closure care of solid waste facilities, including
24 financial responsibility requirements for solid waste
25 facility owners and operators and also including requirements

.183544.2

underscoring material = new
[bracketed material] = delete

1 that assure that the relative interests of the applicant,
2 other owners of property likely to be affected and the
3 general public will be considered prior to the issuance of a
4 permit for a solid waste facility;

5 [B-] (2) define the solid wastes that are
6 considered special wastes;

7 [G-] (3) establish specific requirements for
8 the detoxification and disposal of special wastes;

9 [D-] (4) establish classifications of solid
10 waste facilities and define what types of solid waste may be
11 processed or disposed of in each classification;

12 [E-] (5) establish performance standards for
13 the construction and operation of solid waste facilities that
14 will assure protection of ground water quality from
15 degradation by contaminants from solid waste facilities
16 consistent with the provisions of the Water Quality Act and
17 the regulations and standards established under that act by
18 the water quality control commission, provided such
19 regulations shall not allow permitting of any active solid
20 waste facility larger than five hundred acres;

21 [F-] (6) establish performance standards for
22 transformation facilities that will assure protection of the
23 state's environment;

24 [G-] (7) establish requirements and procedures
25 for the granting or denial of an application to modify a

.183544.2

underscored material = new
[bracketed material] = delete

1 solid waste facility permit under Section 74-9-25 NMSA 1978;

2 [H.] (8) establish requirements and procedures
3 for commercial haulers to minimize littering and otherwise
4 prevent degradation of the environment;

5 [F.] (9) establish an applicant fee schedule
6 for processing permit applications that is based on costs of
7 application review incurred by the division and also costs
8 incurred for investigations of applicants by state
9 departments and agencies other than the division, which
10 regulation shall provide for the reimbursement of these costs
11 to the division or other department or agency from the fees
12 charged and shall also limit the fee to be not greater than
13 ten thousand dollars (\$10,000);

14 [J.] (10) establish requirements and
15 procedures for a person to obtain a variance from the
16 application of a substantive regulation to the person if the
17 person files a written application for a variance with the
18 director and demonstrates to the director's satisfaction
19 that:

20 [~~1~~] (a) application of the regulation
21 would result in an arbitrary and unreasonable taking of the
22 applicant's property or would impose an undue economic burden
23 upon any lawful business, occupation or activity; and

24 [~~2~~] (b) granting the variance will not
25 result in any condition injurious to human health, safety or

.183544.2

underscored material = new
[bracketed material] = delete

1 welfare or the environment;

2 [~~K-~~] (11) assure that no variance will be
3 granted under the provisions of [~~Subsection J~~] Paragraph (10)
4 of this [~~section~~] subsection until the director has
5 considered the relative interests of the applicant, other
6 owners of property likely to be affected and the general
7 public and that any variance or renewal of a variance shall
8 be granted for time periods and under conditions consistent
9 with reasons for the [~~various~~] variance but within the
10 following limitations:

11 [~~(1)~~] (a) if the variance is granted on
12 the grounds that there are no practicable means known or
13 available for the adequate prevention of degradation of the
14 environment or the risk to the public health, safety or
15 welfare, it shall continue only until the necessary means for
16 the prevention of the degradation or risk become known and
17 available; or

18 [~~(2)~~] (b) if the variance is granted on
19 the grounds that it is justified to relieve or prevent
20 hardship of a kind other than that provided for in [~~Paragraph~~
21 ~~(1)~~] Subparagraph (a) of this [~~subsection~~] paragraph, it
22 shall not be granted for more than one year;

23 [~~H-~~] (12) establish a list of solid wastes
24 that shall not be transferred, disposed of or transformed in
25 a solid waste facility and prohibit the disposal or

.183544.2

underscored material = new
[bracketed material] = delete

1 transformation of those solid wastes in solid waste
2 facilities;

3 [M-] (13) establish recordkeeping procedures
4 for solid waste transfer, landfill disposal and
5 transformation facilities that shall include requirements for
6 recording the type, amount and origin of solid waste
7 transferred, disposed of or transformed at the facility and
8 that require operators of landfill disposal, solid waste
9 transfer and transformation facilities within the state to:

10 [~~(1)~~] (a) maintain records in a form
11 required by the division and file them with the division
12 indicating the type, amount, origin and location in a
13 landfill disposal facility of solid waste accepted by the
14 facility;

15 [~~(2)~~] (b) maintain copies of the records
16 required under [~~Paragraph (1)~~] Subparagraph (a) of this
17 [~~subsection~~] paragraph after closure in a manner and for the
18 length of time prescribed by the division; and

19 [~~(3)~~] (c) make all required records
20 available for inspection by the division and the general
21 public during normal business hours; and

22 [N-] (14) require the division to establish a
23 solid waste facility operator certification program.

24 B. Beginning July 1, 2011, the division shall
25 assume the duties of the board under the Solid Waste Act.

underscored material = new
[bracketed material] = delete

1 All rules of the board relating to solid waste management
2 shall remain in force unless the division repeals or amends
3 them."

4 SECTION 138. Section 74-9-9 NMSA 1978 (being Laws 1990,
5 Chapter 99, Section 9) is amended to read:

6 "74-9-9. [~~BOARD~~] DIVISION REVIEW AND MODIFICATION OF
7 INITIAL REGULATIONS AFTER APPROVAL OF PLAN.--After approval
8 of the plan, the [~~board~~] division shall review the initial
9 solid waste regulations adopted under Section [~~8 of the Solid~~
10 ~~Waste Act~~] 74-9-8 NMSA 1978 and make any modifications
11 necessary to make the regulations consistent with the plan."

12 SECTION 139. Section 74-9-10 NMSA 1978 (being Laws
13 1990, Chapter 99, Section 10) is amended to read:

14 "74-9-10. BOARD ADOPTION OF REGULATIONS FOR SOURCE
15 REDUCTION AND RECYCLING PROGRAMS.--After its approval of the
16 plan, the board shall adopt regulations to establish source
17 reduction and recycling programs consistent with the source
18 reduction and recycling element of the plan and designed to
19 meet the schedule for goal achievement provided in Subsection
20 J of Section [~~6 of the Solid Waste Act~~] 74-9-6 NMSA 1978.
21 Beginning July 1, 2011, the division shall assume the duties
22 of the board under the Solid Waste Act. All rules of the
23 board relating to solid waste management shall remain in
24 force unless the division repeals or amends them."

25 SECTION 140. Section 74-9-11 NMSA 1978 (being Laws

underscored material = new
[bracketed material] = delete

1 1990, Chapter 99, Section 11) is amended to read:

2 "74-9-11. ESTABLISHMENT OF INITIAL SOLID WASTE
3 DISTRICTS--REQUIREMENTS--CHANGING BOUNDARIES.--

4 A. After its approval of the plan, the board shall
5 adopt regulations to establish the initial solid waste
6 districts. The districts shall include and be identical with
7 any districts recommended under the provisions of Section [7
8 ~~of the Solid Waste Act~~] 74-9-7 NMSA 1978. In establishing
9 districts, the board shall take into account all relevant
10 factors, including:

11 (1) the impact of solid waste disposal on
12 land, water and other resources;

13 (2) the financial impact on counties and
14 municipalities of constructing and upgrading landfill
15 disposal facilities;

16 (3) the risks to the environment and to the
17 public health, safety and welfare associated with solid
18 waste;

19 (4) the costs and risks of the transportation
20 of solid waste;

21 (5) existing county and municipal boundaries
22 in the state and commercial, industrial, transportation and
23 population centers both within the state and those that
24 include areas within and outside of the state; and

25 (6) consideration of existing landfill

.183544.2

underscored material = new
[bracketed material] = delete

1 disposal agreements, service areas, facilities and collection
2 systems.

3 B. The board shall district the whole state, and
4 solid waste district boundaries shall be contiguous within
5 the state. Boundaries may cross state lines. The boundaries
6 of a district shall not be altered without ~~[board]~~ division
7 approval. Any person may petition the ~~[board]~~ division for
8 realignment of district boundaries. The ~~[board]~~ division
9 shall act on any petition for realignment of district
10 boundaries within six months of the submission of the
11 petition.

12 C. The boundaries of a solid waste district need
13 not be county or municipal boundaries. Counties and
14 municipalities may be divided by district boundaries with
15 each part in a different district as long as the districts
16 are contiguous.

17 D. Beginning July 1, 2011, the division shall
18 assume the duties of the board under the Solid Waste Act.
19 The regulations of the board establishing solid waste
20 districts under the provisions of this section shall remain
21 in force unless the division repeals or amends them."

22 SECTION 141. Section 74-9-14 NMSA 1978 (being Laws
23 1990, Chapter 99, Section 14, as amended) is amended to read:

24 "74-9-14. DIVISION--POWERS AND DUTIES.--The division is
25 responsible for the enforcement and implementation of the

.183544.2

underscoring material = new
[bracketed material] = delete

1 ~~[regulations adopted by the board pursuant to the]~~ Solid
2 Waste Act. In addition to its other powers and duties under
3 the Solid Waste Act and other laws, the division, through its
4 director and in accordance with ~~[his]~~ the director's
5 delegation of authority, shall:

6 A. develop and implement, in consultation with
7 local governments, the private sector and members of the
8 public, the comprehensive solid waste management program
9 defined in Section 74-9-12 NMSA 1978 and update the program
10 at least every three years;

11 B. provide technical assistance on solid waste
12 management matters to counties, municipalities and other
13 persons and cooperate with appropriate federal agencies and
14 private organizations in carrying out the provisions of the
15 Solid Waste Act;

16 C. promote the planning and application of source
17 reduction, recycling and solid waste facility siting systems
18 that preserve and enhance the quality of the air, water and
19 other natural resources of the state;

20 D. assist in and encourage, where appropriate, the
21 development of regional solid waste management;

22 E. provide the economic development department with
23 technical assistance to enable it to encourage and support
24 the development within the state of commercial enterprises
25 that:

.183544.2

underscored material = new
[bracketed material] = delete

- 1 (1) produce a minimum of solid waste;
2 (2) engage in source reduction and recycling
3 activities; or
4 (3) promote market activity and develop
5 products made of recycled materials;

6 F. using the state institutions of higher
7 education, solid waste management personnel from local
8 governments, the private sector and other organizations,
9 conduct research, and solicit public input in the research
10 process, on alternative, economically feasible, cost-
11 effective and environmentally safe solid waste management
12 methods;

13 G. develop information, in consultation with the
14 economic development department, [~~state highway and~~
15 department of transportation [~~department~~] and any other
16 appropriate state agencies, on markets and strategies for
17 market development and expansion for recyclable materials;
18 maintain a directory of recycling businesses operating in the
19 state; and serve as a coordinator to match recycled materials
20 with markets;

21 H. in cooperation and coordination with the general
22 services department, develop and manage a program of grants
23 for source reduction and recycling programs;

24 I. cooperate with the [~~state highway and~~
25 department of transportation [~~department~~] and private

.183544.2

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

1 organizations engaged in beautification programs in the
2 development of a litter control program;

3 J. ~~[advise the board about]~~ examine ground water
4 protection devices, air quality monitoring devices and other
5 devices or measures that may be required as a result of solid
6 waste management operations;

7 K. increase public education and public awareness
8 of solid waste issues by developing and promoting statewide
9 programs of litter control, recycling, source reduction and
10 proper methods of solid waste management;

11 L. encourage public participation in rulemaking
12 processes regarding solid waste management;

13 M. determine monitoring requirements for solid
14 waste facilities;

15 N. contract with private sector entities or the
16 state institutions of higher education for implementation of
17 appropriate parts of the solid waste management program
18 described in Section 74-9-12 NMSA 1978;

19 O. enter into contracts appropriate and necessary
20 to fulfill its responsibilities under the Solid Waste Act;

21 P. receive funds and accept, receive and administer
22 grants or other funds or gifts from public or private
23 sources, including the state and federal governments, for the
24 purpose of carrying out the provisions of the Solid Waste
25 Act; and

.183544.2

underscored material = new
[bracketed material] = delete

1 Q. participate in interstate and national
2 initiatives to adopt uniform state laws when practicable and
3 to enter into compacts between the state and other states for
4 the improved management, recycling and source reduction of
5 solid waste."

6 SECTION 142. Section 74-9-22 NMSA 1978 (being Laws
7 1990, Chapter 99, Section 22, as amended) is amended to read:

8 "74-9-22. SOLID WASTE FACILITY PERMIT--NOTICE OF
9 APPLICATION.--Each application filed with the division for a
10 permit under the provisions of Section 74-9-20 NMSA 1978
11 shall include documentary proof that the applicant has
12 provided notice of the filing of the application to the
13 public and other affected individuals and entities. The
14 [~~board~~] department shall adopt a regulation specifying the
15 required content of the notice. The notice shall be:

16 A. provided by certified mail to the owners of
17 record, as shown by the most recent property tax schedule, of
18 all properties:

19 (1) within one hundred feet of the property on
20 which the facility is located or proposed to be located if
21 the facility is or will be in a class A or H class county or
22 a municipality with a population of more than two thousand
23 five hundred persons; or

24 (2) within one-half mile of the property on
25 which the facility is located or proposed to be located if

.183544.2

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

1 the facility is or will be in a county or municipality other
2 than those specified in Paragraph (1) of this subsection;

3 B. provided by certified mail to all municipalities
4 and counties in which the facility is or will be located and
5 to the governing body of any county, municipality, Indian
6 tribe or pueblo when the boundary of the territory of the
7 county, municipality, Indian tribe or pueblo is within a ten
8 mile radius of the property on which the facility is proposed
9 to be constructed, operated or closed;

10 C. published once in a newspaper of general
11 circulation in each county in which the property on which the
12 facility is proposed to be constructed, operated or closed is
13 located. This notice shall appear in either the classified
14 or legal advertisements section of the newspaper and at one
15 other place in the newspaper calculated to give the general
16 public the most effective notice and, when appropriate, shall
17 be printed in both English and Spanish; and

18 D. posted in at least four publicly accessible and
19 conspicuous places, including the proposed or existing
20 facility entrance on the property on which the facility is or
21 is proposed to be located."

22 SECTION 143. Section 74-9-24 NMSA 1978 (being Laws
23 1990, Chapter 99, Section 24, as amended) is amended to read:

24 "74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND
25 DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING

.183544.2

underscored material = new
[bracketed material] = delete

1 REQUIREMENT.--

2 A. The director, within one hundred eighty days
3 after the application is deemed complete and after a public
4 hearing, shall issue a permit, issue a permit with terms and
5 conditions or deny a permit application. The director may
6 deny a permit application on the basis of information in the
7 application or evidence presented at the hearing, or both, if
8 [he] the director makes a finding that granting the permit
9 would be contradictory to or in violation of the Solid Waste
10 Act or any regulation adopted [~~under it. He~~] pursuant to the
11 provisions of that act. The director may also deny a permit
12 application if the applicant fails to meet the financial
13 responsibility requirements established [~~by the board under~~]
14 pursuant to the provisions of Paragraph (1) of Subsection A
15 of Section 74-9-8 NMSA 1978 and Section 74-9-35 NMSA 1978.

16 B. The director may deny any permit application or
17 revoke a permit if [he] the director has reasonable cause to
18 believe that [~~any~~] a person required to be listed on the
19 application pursuant to Section 74-9-20 NMSA 1978 has:

- 20 (1) knowingly misrepresented a material fact
21 in application for a permit;
- 22 (2) refused to disclose or failed to disclose
23 the information required [~~under~~] pursuant to the provisions
24 of Section 74-9-21 NMSA 1978;
- 25 (3) been convicted of a felony or other crime

.183544.2

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

1 involving moral turpitude within ten years immediately
2 preceding the date of the submission of the permit
3 application;

4 (4) been convicted of a felony, within ten
5 years immediately preceding the date of the submission of the
6 permit application, in any court for any crime defined by
7 state or federal statutes as involving or being restraint of
8 trade, price-fixing, bribery or fraud;

9 (5) exhibited a history of willful disregard
10 for environmental laws of any state or the United States; or

11 (6) had any permit revoked or permanently
12 suspended for cause under the environmental laws of any state
13 or the United States.

14 C. In making a finding under Subsection B of this
15 section, the director may consider aggravating and mitigating
16 factors presented by any party at the hearing.

17 D. If an applicant whose permit is being considered
18 for denial or revocation on any basis provided in this
19 section has submitted an affirmative action plan that has
20 been approved in writing by the director and plan approval
21 includes a period of operation under a conditional permit or
22 license that will allow the applicant a reasonable
23 opportunity to affirmatively demonstrate its rehabilitation,
24 the director may issue a conditional license for a reasonable
25 period of time of operation. In approving an affirmative

.183544.2

underscored material = new
[bracketed material] = delete

1 action plan intended to affirmatively demonstrate
2 rehabilitation, the director may consider the following
3 factors: implementation by the applicant of formal policies;
4 training programs and management control to minimize and
5 prevent the occurrence of future violations; installation by
6 the applicant of internal environmental auditing programs;
7 the discharge of individuals convicted of any crimes set
8 forth in Subsection B of this section; and such other factors
9 as the director may deem relevant.

10 E. Within sixty days of the date of the closing of
11 the hearing on a permit application, the director shall
12 notify the applicant by certified mail of the issuance,
13 denial or issuance with conditions of a permit and the
14 reasons ~~[therefor]~~ for it. Any person who has made a written
15 request to the director to be notified of the action taken on
16 the application shall be given written notice of the
17 director's action.

18 F. No permit for the operation of a solid waste
19 facility shall be valid until the permit or a notice of the
20 permit and a legal description of the property on which the
21 facility is located are filed and recorded in the office of
22 the county clerk in each county in which the facility is
23 located.

24 G. Except as otherwise provided by law:

25 (1) each permit issued for a publicly owned

.183544.2

underscored material = new
[bracketed material] = delete

1 and publicly operated new or re-permitted existing landfill,
2 transfer station, recycling facility or composting facility
3 shall remain in effect throughout the active life of the
4 landfill, transfer station, recycling facility or composting
5 facility as described in the approved permit or for twenty
6 years, whichever is less. Each permit issued for a publicly
7 owned landfill, transfer station, recycling facility or
8 composting facility that is privately operated pursuant to a
9 contract of no more than four years duration entered into in
10 accordance with the state or local procurement code shall
11 remain in effect throughout the active life of the landfill,
12 transfer station, recycling facility or composting facility
13 as described in the approved permit or for twenty years,
14 whichever is less. Each time the contract is renewed, the
15 director shall review the contract to determine whether the
16 term of the permit shall be governed by this paragraph or
17 Paragraph (2) of this ~~[section]~~ subsection. Each permit
18 shall be reviewed by the department of environment at least
19 once every ten years. The review shall address the
20 operation, compliance history, financial assurance and
21 technical requirements for the landfill, transfer station,
22 recycling facility or composting facility. At the time of
23 the review there shall be public notice in the manner
24 prescribed by Section 74-9-22 NMSA 1978. If the secretary of
25 environment determines that there is significant public

.183544.2

underscored material = new
[bracketed material] = delete

1 interest, a nonadjudicatory hearing shall be held as part of
2 the review. The secretary may require appropriate
3 modifications of the permit, including modifications
4 necessary to make the permit terms and conditions consistent
5 with statutes, regulations or judicial decisions;

6 (2) each permit issued for a privately owned
7 new or repermited existing landfill, transfer station,
8 recycling facility or composting facility shall remain in
9 effect for ten years or for the active life of the facility,
10 whichever is less. Each permit issued for a publicly owned
11 landfill, transfer station, recycling facility or composting
12 facility that is leased to a private person or that is
13 operated by a private person pursuant to a contract of more
14 than four years duration shall remain in effect for ten years
15 or for the active life of the landfill or facility, whichever
16 is less. Each permit shall be reviewed at least every five
17 years by the department of environment. Interested parties
18 may petition the department for review, in addition to the
19 five-year review, provided that the director [~~shall have~~] has
20 discretion to determine whether there is good cause for such
21 an additional review. The review shall address the
22 operation, compliance history, financial assurance and
23 technical requirements for the landfill, transfer station,
24 recycling facility or composting facility. At the time of
25 the review there shall be public notice in the manner

.183544.2

underscored material = new
[bracketed material] = delete

1 prescribed by Section 74-9-22 NMSA 1978. If the secretary of
2 environment determines that there is significant public
3 interest, a nonadjudicatory hearing shall be held as part of
4 the review. The secretary may require appropriate
5 modifications of the permit, including modifications
6 necessary to make the permit terms and conditions consistent
7 with statutes, regulations or judicial decisions; and

8 (3) the term of permits for facilities not
9 specified by this subsection shall be governed by existing or
10 amended regulations adopted by the board.

11 H. The director shall issue separate special waste
12 permits for all solid waste facilities that transfer,
13 process, transform, recycle or dispose of special waste
14 pursuant to regulations adopted by the ~~[board]~~ division."

15 SECTION 144. Section 74-9-25 NMSA 1978 (being Laws
16 1990, Chapter 99, Section 25) is amended to read:

17 "74-9-25. APPLICATION FOR MODIFICATION OF A PERMIT--
18 REVIEW BY DIRECTOR AND ACTION PURSUANT TO REGULATIONS.--The
19 ~~[board]~~ division shall adopt regulations setting forth
20 procedures and requirements for the director's review and
21 action on a permittee's application to modify a permit."

22 SECTION 145. Section 74-9-29 NMSA 1978 (being Laws
23 1990, Chapter 99, Section 29) is amended to read:

24 "74-9-29. HEARING PROVISIONS FOR ADJUDICATORY
25 ACTIONS.--

underscored material = new
[bracketed material] = delete

1 A. The director shall adopt procedural regulations
2 to govern the procedures to be followed in hearings on
3 adjudicatory actions of the director. No adjudicatory
4 actions under the Solid Waste Act shall be taken until these
5 regulations are adopted. As a minimum, the procedural
6 regulations shall provide:

7 (1) for hearings to be public;
8 (2) requirements for prior notice of the
9 variance or exemption request hearings and the methods for
10 giving that notice, which shall be designed to inform
11 interested and affected persons of the nature of the action
12 to be considered and the date, time and place of the hearing;

13 (3) for maintenance of a list of persons that
14 desire to have notice of variance request hearings and
15 provisions for giving notice to those persons;

16 (4) a reasonable opportunity for all persons
17 desiring to be heard on a variance or exemption request or a
18 permit action to be heard without making the hearing process
19 unreasonably lengthy or cumbersome or burdening the record
20 with unnecessary repetition;

21 (5) procedures for discovery;

22 (6) assurance that procedural due process
23 requirements are satisfied;

24 (7) for the director to designate a hearing
25 officer to conduct a hearing and make a report and

underscored material = new
[bracketed material] = delete

1 recommendation to the director;

2 (8) for the maintenance of a record of the
3 hearing proceedings and assessment of the costs of any
4 transcription of testimony that is required for judicial
5 review purposes; and

6 (9) for the place of the hearing to be in
7 Santa Fe, and at other places the [~~board~~] division may
8 prescribe, for hearings on actions of general statewide
9 application, for hearings on actions of limited local
10 application to be held at a place in the area affected and
11 for enforcement actions to be heard in Santa Fe.

12 B. Actions taken by the director following a
13 hearing on adjudicatory actions shall be:

14 (1) written and shall state the reasons for
15 the action;

16 (2) made public when taken;

17 (3) communicated to all persons that have made
18 a written request for notification of the action taken; and

19 (4) taken within not more than thirty days
20 after the closing of the hearing or the date of submission of
21 a report by a hearing officer."

22 SECTION 146. Section 74-9-30 NMSA 1978 (being Laws
23 1990, Chapter 99, Section 30) is amended to read:

24 "74-9-30. JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS.--

25 A. Any person adversely affected by an

.183544.2

underscored material = new
[bracketed material] = delete

1 administrative action taken by the ~~[board or the]~~ director
2 may appeal the action to the court of appeals. The appeal
3 shall be on the record made at the hearing. To support ~~[his]~~
4 the appeal, the appellant shall make arrangements with the
5 division for a sufficient number of transcripts of the record
6 of the hearing on which the appeal is based. The appellant
7 shall pay for the preparation of the transcripts.

8 B. On appeal, the court of appeals shall set aside
9 the administrative action only if it is found to be:

10 (1) arbitrary, capricious or an abuse of
11 discretion;

12 (2) not supported by substantial evidence in
13 the record; or

14 (3) otherwise not in accordance with law."

15 SECTION 147. Section 74-9-31 NMSA 1978 (being Laws
16 1990, Chapter 99, Section 31, as amended) is amended to read:

17 "74-9-31. PROHIBITED ACTS.--

18 A. Except as provided in Laws 1990, Chapter 99,
19 Section 73 ~~[of the Solid Waste Act]~~ and Subsection B of this
20 section, ~~[no]~~ a person shall not:

21 (1) dispose of any solid waste in a place
22 other than a solid waste facility:

23 (a) having a permit issued under the Solid
24 Waste Act;

25 (b) having a permit for solid waste

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

1 disposal issued under the Environmental Improvement Act; or

2 (c) otherwise authorized to accept solid
3 waste for disposal or transformation under regulations
4 adopted by the ~~[board]~~ department of environment under the
5 Environmental Improvement Act;

6 (2) dispose of any solid waste in a solid
7 waste facility when a regulation of the ~~[board]~~ division
8 prohibits the disposal of that particular type of solid waste
9 in that facility;

10 (3) construct, operate or close a solid waste
11 facility unless the facility has a permit from the division
12 for the described action;

13 (4) modify a solid waste facility unless the
14 facility has applied for and received permission from the
15 director for the modification pursuant to regulations adopted
16 under Section 74-9-25 NMSA 1978; or

17 (5) dispose of any solid waste in this state
18 in a manner that harms the environment or endangers the
19 public health or safety.

20 B. The provisions of Subsection A of this section
21 do not prohibit:

22 (1) a person who is a homeowner, residential
23 lessee or tenant or agricultural enterprise from disposing on
24 the property ~~[he]~~ the person owns, rents or leases solid
25 waste generated on that property;

.183544.2

underscored material = new
[bracketed material] = delete

1 (2) a person occupying property from disposing
2 of domestic solid waste generated on the property if the
3 property is located in a place that makes it not feasible to
4 dispose of the solid waste in a permitted solid waste
5 facility and the disposal of the solid waste does not harm
6 the environment or endanger the public health or safety and
7 does not violate any provision of the Solid Waste Act or any
8 regulation adopted under that act; or

9 (3) a person in possession of property from
10 disposing on that property construction and demolition debris
11 or yard refuse generated on the property if the disposition
12 of the solid waste does not violate any provision of the
13 Solid Waste Act or any regulation adopted under that act."

14 **SECTION 148.** Section 74-9-32 NMSA 1978 (being Laws
15 1990, Chapter 99, Section 32) is amended to read:

16 "74-9-32. EXEMPTIONS--REQUIREMENTS FOR GRANTING.--
17 Exemptions from the application of the provisions of the
18 Solid Waste Act may be applied for and shall be issued by the
19 [~~board~~] division, either for a single applicant or a group of
20 applicants having substantially identical grounds for the
21 issuance of the exemption, if the [~~board~~] division determines
22 after a hearing that the applicant or group of applicants is
23 subject to requirements or regulations under an applicable
24 federal or state law that imposes as stringent or more
25 stringent requirements for the applicant's or applicants'

.183544.2

underscored material = new
[bracketed material] = delete

1 management of its solid waste than the provisions of the
2 Solid Waste Act and regulations adopted under that act.
3 Exemptions issued under this section shall be reviewed for
4 renewal at time intervals determined by the ~~[board]~~ division
5 for each exemption, and the date for renewal shall be stated
6 in the exemption."

7 SECTION 149. Section 74-9-34 NMSA 1978 (being Laws
8 1990, Chapter 99, Section 34) is amended to read:

9 "74-9-34. LIABILITY--DEFENSES--INDEMNIFICATION.--

10 A. As used in this section:

11 (1) "generator" means the United States or a
12 state, including New Mexico, or any agency, department,
13 instrumentality, office, institution or political subdivision
14 of a state in which any solid waste disposed of in a solid
15 waste facility in New Mexico originated;

16 (2) "responsible party" means any person other
17 than a generator upon whom liability is imposed under
18 Subsection B of this section; and

19 (3) "costs" means the costs of removal or
20 remedial action incurred by this state or any of its counties
21 or municipalities because of a release or threatened release
22 of contaminants from a solid waste facility that results in
23 the incurring of those costs by the specified governmental
24 entity.

25 B. The following persons shall be strictly liable

.183544.2

underscored material = new
[bracketed material] = delete

1 for costs:

- 2 (1) the owner of the solid waste facility;
- 3 (2) the operator of the solid waste facility;
- 4 (3) any person:
 - 5 (a) having a permit issued under the Solid
 - 6 Waste Act;
 - 7 (b) having a permit for solid waste
 - 8 disposal issued under the Environmental Improvement Act; or
 - 9 (c) otherwise authorized to accept solid
 - 10 waste for disposal or transformation under regulations
 - 11 adopted by the ~~board~~ department of environment under the
 - 12 Environmental Improvement Act;
 - 13 (4) any person who, at the time of disposal of
 - 14 any solid waste in the solid waste facility, owned, operated
 - 15 or had a permit or registration certificate to operate the
 - 16 solid waste facility;
 - 17 (5) any person who by agreement or otherwise
 - 18 arranged for disposal or treatment or transportation for
 - 19 disposal or treatment of solid waste owned or possessed by
 - 20 that person and disposed of in the solid waste facility;
 - 21 (6) any person who accepted any solid waste
 - 22 for transport to the solid waste facility; and
 - 23 (7) any generator.

24 C. A person otherwise liable under Subsection B of
25 this section shall not be liable if ~~he~~ the person can

.183544.2

underscored material = new
[bracketed material] = delete

1 establish by a preponderance of the evidence that:

2 (1) the release of contaminants and the
3 damages resulting therefrom were caused solely by an act of
4 God or an act of war; or

5 (2) ~~he~~ the person is an owner who:

6 (a) at the time ~~he~~ the person acquired
7 the property, did not know and had no reason to know that the
8 property had been used for a solid waste facility;

9 (b) is a governmental entity that acquired
10 the property by escheat or through any other involuntary
11 transfer or acquisition or through the exercise of eminent
12 domain authority; or

13 (c) acquired the property by inheritance
14 or devise.

15 D. If any responsible party that is liable for a
16 release or threatened release fails without sufficient cause
17 to properly provide removal or remedial action upon order of
18 the director, that person shall be liable to the state or the
19 appropriate political subdivision for punitive damages in an
20 amount at least equal to, and not more than three times the
21 amount of, any costs incurred as a result of the failure to
22 take proper action. The director is authorized to commence a
23 civil action against any such person to recover the damages,
24 which shall be in addition to any costs recovered from the
25 person. Any amounts received by the state or the appropriate

.183544.2

underscored material = new
[bracketed material] = delete

1 political subdivision pursuant to this subsection shall be
2 deposited in the solid waste facility grant fund.

3 E. The court, in accordance with equitable
4 principles, shall apportion an award of costs or damages, or
5 both, among defendants found liable under this section.

6 F. No state agency or political subdivision shall
7 be liable under this section for costs or damages as a result
8 of its actions taken in response to an emergency created by
9 the release or threatened release by or from a solid waste
10 facility owned by another person.

11 G. No indemnification or similar agreement shall be
12 effective to transfer from the owner or operator of any solid
13 waste facility, or from any person who may be liable for a
14 release or threatened release under this section, to any
15 other person the liability imposed under this section.
16 Nothing in this subsection bars any agreement to insure, hold
17 harmless or indemnify a party to that agreement for any
18 liability under this section.

19 H. Nothing in this section bars or replaces any
20 cause of action available to any person that existed before
21 its enactment. The causes of action of this section are
22 supplemental to existing causes of action."

23 SECTION 150. Section 74-9-35 NMSA 1978 (being Laws
24 1990, Chapter 99, Section 35, as amended) is amended to read:

25 "74-9-35. FINANCIAL RESPONSIBILITY FOR SOLID WASTE

.183544.2

underscored material = new
[bracketed material] = delete

1 GENERATORS AND OPERATORS OF SOLID WASTE FACILITIES.--

2 A. The [~~board~~] division shall adopt regulations
3 establishing financial responsibility requirements. The
4 regulations shall be designed to assure that there are
5 adequate sources of funds to provide for:

6 (1) closure, post-closure inspection and
7 maintenance and environmental monitoring and control;

8 (2) removal and disposal of buildings, fences,
9 roads and other improvements;

10 (3) reclamation of affected or contaminated
11 lands and waters;

12 (4) construction of any solid waste cover or
13 containment system required as a condition of any solid waste
14 facility permit;

15 (5) stabilization, removal and off-site
16 treatment or disposal of any contaminated material that is
17 being stored or treated;

18 (6) decontamination, dismantling and removal
19 of any solid waste storage, treatment or disposal equipment;

20 (7) operation of any environmental monitoring
21 systems or pollution control systems that are required as a
22 condition of any solid waste facility permit or by order of
23 the director; and

24 (8) conducting, only for landfill disposal
25 facilities, periodic post-closure inspections of cover

.183544.2

underscored material = new
[bracketed material] = delete

1 systems, surface water diversion structures, monitor wells or
2 systems, pollutant detection and control systems and
3 performing maintenance activities to correct deficiencies
4 that are discovered.

5 B. Sources of funds provided to meet financial
6 responsibility requirements established in this section shall
7 be available during the operating life of the solid waste
8 facility and for a post-closure period to be set by the
9 ~~[board]~~ division.

10 C. The amount of any financial responsibility
11 requirement shall be established by the director in
12 accordance with procedures contained in regulations of the
13 ~~[board]~~ division, but shall not be less than an amount
14 sufficient to satisfy the purposes specified in Subsection A
15 of this section.

16 D. The acceptable methods of furnishing evidence of
17 financial responsibility shall be specified by the ~~[board]~~
18 division and shall include evidence of trust funds,
19 performance bonds, insurance and irrevocable letters of
20 credit in combination with other methods specified in this
21 section; provided that irrevocable letters of credit shall
22 not constitute more than fifty percent of the total financial
23 responsibility required. Methods for evidencing financial
24 responsibility for local governments shall include all
25 methods approved by the federal environmental protection

.183544.2

underscored material = new
[bracketed material] = delete

1 agency. Local government owners of solid waste facilities
2 may determine the method of evidencing financial
3 responsibility required of private operators under contract
4 or agreement with the local government. Such evidence of
5 financial assurance shall be approved by the director. All
6 documents evidencing financial assurances provided pursuant
7 to this section shall be payable to the New Mexico
8 governmental [~~entity or~~] entities that own or operate the
9 solid waste facility that is the subject of the financial
10 assurance. If no New Mexico governmental entity or
11 governmental entities own or operate the solid waste facility
12 that is the subject of the financial assurance, the financial
13 assurance shall provide for payment to the state of New
14 Mexico.

15 E. The United States, the state [~~of New Mexico~~] and
16 any agency, department, instrumentality, office or
17 institution of those governments shall not be required to
18 provide any financial assurances pursuant to this section.
19 This exemption shall not apply, however, to any private
20 person who contracts with the state [~~of New Mexico~~] or any
21 agency, department, instrumentality, office, institution or
22 political subdivision of the state [~~of New Mexico~~]."

23 SECTION 151. Section 74-9-39 NMSA 1978 (being Laws
24 1990, Chapter 99, Section 39, as amended) is amended to read:

25 "74-9-39. SOLID WASTE ASSESSMENT FEE.--

.183544.2

underscored material = new
[bracketed material] = delete

1 A. A solid waste assessment fee shall be imposed
2 upon the disposal of solid waste by a commercial hauler at
3 any solid waste facility if the solid waste was generated
4 outside the solid waste district in which the solid waste
5 facility is located. A commercial hauler disposing solid
6 waste from twin-plant industries having domestic operations
7 within a solid waste district shall be exempt from payment of
8 the solid waste assessment fee on the disposed solid waste if
9 the industries involved are required under Mexican law to
10 have the solid waste returned to the United States.

11 B. The board shall establish the initial solid
12 waste assessment fee. The fee established by the board shall
13 remain in effect until July 1, 1993. The division shall
14 prepare a recommended permanent fee structure and present it
15 to the first regular session of the forty-first legislature
16 for its consideration. In establishing the fee, the board
17 shall take into account all factors relevant to the cost of
18 disposal of the solid waste, including the following:

19 (1) the impact of solid waste disposal on air,
20 water, land and other resources;

21 (2) the effect of solid waste disposal on the
22 value of public and private property;

23 (3) the costs of protection of the public
24 health, safety, welfare and the environment associated with
25 the disposal of solid waste in the solid waste district;

.183544.2

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

1 (4) the costs of out-of-district inspection
2 and monitoring;

3 (5) the costs and risks of solid waste
4 transportation; and

5 (6) the administrative costs incurred by the
6 collecting governmental entity.

7 C. The fee imposed by this section shall be in
8 addition to all other fees and taxes levied by law and shall
9 be added to and constitute part of any other fee charged by
10 the operator or owner of the solid waste disposal facility.

11 D. The fee imposed by this section shall be paid by
12 the commercial hauler disposing of solid waste at a solid
13 waste facility and shall be collected by the operator of the
14 solid waste facility, held in trust in a separate account for
15 the benefit of the state and remitted to the taxation and
16 revenue department. Operators collecting fees under this
17 section may retain ten percent of the fee collected for
18 administrative purposes. The fee accrues at the time the
19 solid waste is disposed of in a solid waste facility. The
20 fee imposed by this section shall be administered as if it
21 was a tax, in accordance with the provisions of the Tax
22 Administration Act, and shall be remitted within thirty days
23 from the end of the month in which the fee is collected.

24 E. A commercial hauler shall not be required to pay
25 the solid waste assessment fee for disposal in a solid waste

.183544.2

underscored material = new
[bracketed material] = delete

1 facility of solid waste generated outside the district in
2 which the solid waste facility is located if:

3 (1) the solid waste was generated in a
4 commercial, industrial, transportation and population center
5 in which the commercial hauler provided solid waste disposal
6 service during the 1989 calendar year; and

7 (2) the solid waste is disposed of in a solid
8 waste district in which the commercial hauler disposed of
9 solid waste generated in that commercial, industrial,
10 transportation and population center during the 1989 calendar
11 year.

12 F. A distribution under the Tax Administration Act
13 of the net proceeds of the fees collected pursuant to this
14 section shall be made to the solid waste facility grant fund.

15 G. Any changes proposed by the division to the fee
16 established pursuant to this section shall be submitted to
17 the legislature."

18 SECTION 152. Section 74-9-40 NMSA 1978 (being Laws
19 1990, Chapter 99, Section 40) is amended to read:

20 "74-9-40. GRANTS PROGRAM--DUTIES OF DIVISION.--The
21 division shall:

22 A. establish a program to make grants to counties
23 and municipalities, individually or jointly, for the
24 establishment or modification of solid waste facilities or
25 for contracting for solid waste services in accordance with

.183544.2

underscored material = new
[bracketed material] = delete

1 the Solid Waste Act and regulations [~~of the board~~] pursuant
2 to that act; [~~and~~]

3 B. prepare an annual report to the governor and the
4 legislature on the grants program; and

5 C. award grants only to counties and municipalities
6 that meet the criteria established by the division."

7 SECTION 153. A new section of the Solid Waste Act is
8 enacted to read:

9 "[NEW MATERIAL] BOARD DUTIES--TRANSFER OF RULES.--

10 A. Beginning July 1, 2011, the division shall
11 assume the duties of the board and the board shall become
12 advisory to the division. All rules of the board shall
13 remain in force unless the division repeals or amends them.

14 B. The board shall assist the division in carrying
15 out the objectives of the Solid Waste Act, including advising
16 the division on the adoption and implementation of
17 regulations adopted pursuant to that act and other duties as
18 determined by the division."

19 SECTION 154. Section 74-13-1 NMSA 1978 (being Laws
20 2005, Chapter 171, Section 1) is amended to read:

21 "74-13-1. SHORT TITLE.--~~[Sections 1 through 20 of this~~
22 ~~act]~~ Chapter 74, Article 13 NMSA 1978 may be cited as the
23 "Recycling and Illegal Dumping Act"."

24 SECTION 155. Section 74-13-3 NMSA 1978 (being Laws
25 2005, Chapter 171, Section 3) is amended to read:

.183544.2

underscored material = new
[bracketed material] = delete

1 "74-13-3. DEFINITIONS.--As used in the Recycling and
2 Illegal Dumping Act:

3 A. "abatement" means to reduce in amount, degree or
4 intensity or to eliminate;

5 B. "agricultural use" means the beneficial use of
6 scrap tires in conjunction with the operations of a farm or
7 ranch that includes construction projects and aids in the
8 storage of feed;

9 C. "alliance" means the recycling and illegal
10 dumping alliance;

11 [~~D.~~] ~~"board" means the environmental improvement~~
12 ~~board;~~

13 ~~E.]~~ D. "civil engineering application" means the
14 use of scrap tires or other recycled material in conjunction
15 with other aggregate materials in engineering applications;

16 [~~F.]~~ E. "composting" means the process by which
17 biological decomposition of organic material is carried out
18 under controlled conditions and the process stabilizes the
19 organic fraction into a material that can be easily and
20 safely stored, handled and used in an environmentally
21 acceptable manner;

22 [~~G.]~~ F. "cooperative association" means a refuse
23 disposal district created pursuant to the Refuse Disposal
24 Act, a sanitation district created pursuant to the Water and
25 Sanitation District Act, a special district created pursuant

.183544.2

underscored material = new
[bracketed material] = delete

1 to the Special District Procedures Act or other associations
2 created pursuant to the Joint Powers Agreements Act or the
3 Solid Waste Authority Act;

4 [H.] G. "department" means the department of
5 environment;

6 [I.] H. "dispose" means to deposit scrap tires or
7 solid waste into or on any land or water;

8 [J.] I. "household" means any single and multiple
9 residence, hotel or motel, bunkhouse, ranger station, crew
10 quarters, campground, picnic ground or day-use recreation
11 area;

12 [K.] J. "illegal dumping" means disposal of trash,
13 scrap tires or any solid waste in a manner that violates the
14 Solid Waste Act or the Recycling and Illegal Dumping Act;

15 [L.] K. "illegal dumpsite" means a place where
16 illegal dumping has occurred except as stated in Subsection A
17 of Section [~~4 of the Recycling and Illegal Dumping Act~~]
18 74-13-4 NMSA 1978;

19 [M.] L. "market development" means activities to
20 expand or create markets for recyclable and reusable
21 materials;

22 [N.] M. "motor vehicle" means a vehicle or device
23 that is propelled by an internal combustion engine or
24 electric motor power that is used or may be used on the
25 public highways for the purpose of transporting persons or

.183544.2

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

1 property and includes any connected trailer or semitrailer;

2 [Q-] N. "processing" means techniques to change
3 physical, chemical or biological character or composition of
4 solid waste but does not include composting, transformation
5 or open burning;

6 [P-] O. "recycling" means any process by which
7 recyclable materials are collected, separated or processed
8 and reused or returned to use in the form of raw materials or
9 products;

10 [Q-] P. "reuse" means the return of a commodity
11 into the economic stream without a change to its original
12 form;

13 [R-] Q. "scrap tire" means a tire that is no longer
14 suitable for its originally intended purpose because of wear,
15 damage or defect;

16 [S-] R. "scrap tire baling" means the process by
17 which scrap tires are mechanically compressed and bound into
18 block form;

19 [T-] S. "scrap tire generator" means a person who
20 generates scrap tires, including retail tire dealers,
21 retreaders, scrap tire processors, automobile dealers,
22 automobile salvage yards, private company vehicle maintenance
23 shops, garages, service stations and city, county and state
24 government, but does not include persons who generate scrap
25 tires in a household or in agricultural operations;

.183544.2

underscored material = new
[bracketed material] = delete

1 ~~[U.]~~ T. "scrap tire hauler" means a person who
2 transports scrap tires for hire for the purpose of recycling,
3 disposal, transformation or use in a civil engineering
4 application;

5 ~~[V.]~~ U. "secretary" means the secretary of
6 environment;

7 ~~[W.]~~ V. "tire" means a continuous solid or
8 pneumatic rubber covering that encircles the wheel of a motor
9 vehicle;

10 ~~[X.]~~ W. "tire-derived fuel" means whole or chipped
11 tires that produce a low sulfur, high-heating-value fuel;

12 ~~[Y.]~~ X. "tire-derived product" means a usable
13 product produced from the processing of a scrap tire but does
14 not include baled tires;

15 ~~[Z.]~~ Y. "tire recycling" means a process in which
16 scrap tires are collected, stored, separated or reprocessed
17 for reuse as a different product or shredded into a form
18 suitable for use in rubberized asphalt or as raw material for
19 the manufacture of other products; and

20 ~~[AA.]~~ Z. "tire recycling facility" means a place
21 operated or maintained for tire recycling but does not
22 include:

23 (1) retail business premises where tires are
24 sold, if no more than five hundred loose scrap tires or two
25 thousand scrap tires, if left in a closed conveyance or

.183544.2

underscoring material = new
[bracketed material] = delete

1 enclosure, are kept on the premises at one time;

2 (2) the premises of a tire retreading
3 business, if no more than three thousand scrap tires are kept
4 on the premises at one time;

5 (3) premises where tires are removed from
6 motor vehicles in the ordinary course of business, if no more
7 than five hundred scrap tires are kept on the premises at one
8 time;

9 (4) a solid waste facility having a valid
10 permit or registration issued pursuant to the provisions of
11 the Solid Waste Act or regulations adopted pursuant to that
12 act or registration issued pursuant to the Environmental
13 Improvement Act; or

14 (5) a site where tires are stored or used for
15 agricultural uses."

16 SECTION 156. Section 74-13-6 NMSA 1978 (being Laws
17 2005, Chapter 171, Section 6) is amended to read:

18 "74-13-6. ADMINISTRATION OF ACT.--The department is
19 responsible for the administration and enforcement of the
20 provisions of the Recycling and Illegal Dumping Act and of
21 all rules adopted [~~by the board~~] pursuant to the provisions
22 of that act. The department is delegated all authority
23 necessary and appropriate to carry out its responsibilities."

24 SECTION 157. Section 74-13-8 NMSA 1978 (being Laws
25 2005, Chapter 171, Section 8) is amended to read:

.183544.2

underscored material = new
[bracketed material] = delete

1 "74-13-8. RULES--AUTHORITY AND CONTENT.--The [~~board~~]
2 department shall adopt rules to implement the provisions of
3 the Recycling and Illegal Dumping Act. The rules shall be
4 adopted pursuant to the provisions of the Environmental
5 Improvement Act and shall include:

6 A. requirements and procedures for the issuance of
7 permits and registrations to tire recycling facilities, civil
8 engineering applications, scrap tire generators and scrap
9 tire haulers;

10 B. standards and requirements for tire recycling
11 and scrap tire storage and processing;

12 C. recordkeeping requirements for tire recycling
13 facilities, scrap tire haulers and scrap tire generators;

14 D. financial assurance criteria for tire recycling
15 facilities;

16 E. fire rules for storage of scrap tires and
17 tire-derived products that are consistent with the rules or
18 recommendations adopted by the state fire marshal;

19 F. criteria and procedures for making
20 disbursements pursuant to grant and loan programs authorized
21 from the recycling and illegal dumping fund;

22 G. requirements and procedures for contracting
23 with counties, municipalities, Indian nations, pueblos and
24 tribes, land grant communities and cooperative associations
25 for the abatement of illegal dumpsites and recycling;

.183544.2

underscored material = new
[bracketed material] = delete

1 H. requirements and procedures for a scrap tire
2 manifest system;

3 I. a fee schedule applicable to scrap tire haulers
4 and tire recycling facilities not exceeding the estimated
5 cost of investigating and issuing permits and registrations
6 and conducting regulatory oversight of permitted and
7 registered activities; and

8 J. a fee schedule applicable to scrap tire
9 generators not exceeding the estimated cost of conducting
10 regulatory oversight of scrap tire generators."

11 **SECTION 158.** Section 74-13-9 NMSA 1978 (being Laws
12 2005, Chapter 171, Section 9) is amended to read:

13 "74-13-9. SCRAP TIRE MANIFEST SYSTEM.--A scrap tire
14 generator [~~who~~] that transports or offers for transportation
15 scrap tires for offsite handling, altering, storage, disposal
16 or for any combination thereof shall complete a scrap tire
17 manifest pursuant to rules adopted by the [~~board~~] department.
18 Upon demand, the manifest for every generator whose scrap
19 tire load is transported shall be shown to an officer of the
20 motor transportation division of the department of public
21 safety, the New Mexico state police, a local law enforcement
22 officer or the secretary or the secretary's designee."

23 **SECTION 159.** Section 74-13-14 NMSA 1978 (being Laws
24 2005, Chapter 171, Section 14) is amended to read:

25 "74-13-14. ENFORCEMENT--FIELD CITATIONS.--

.183544.2

underscored material = new
[bracketed material] = delete

1 A. The [~~board~~] department shall implement a field
2 citation program by adopting rules establishing appropriate
3 minor violations for which field citations assessing civil
4 penalties not to exceed one thousand dollars (\$1,000) per day
5 of violation may be issued by local government authorities or
6 employees of the department as designated by the secretary.

7 B. A field citation issued pursuant to this
8 section shall be final unless the person named in the
9 citation files a written request for a public hearing with
10 the secretary no later than fifteen days after the date on
11 which the field citation is served on the person, in which
12 case the enforcement of the field citation shall be suspended
13 pending the issuance of a final order of the secretary after
14 a public hearing. The procedures for scheduling and
15 conducting a hearing on and for final disposition of a field
16 citation shall be the same as those provided for a compliance
17 order pursuant to the Recycling and Illegal Dumping Act.

18 C. Payment of a civil penalty required by a field
19 citation issued pursuant to this section shall not be a
20 defense to further enforcement by the department to correct a
21 continuing violation or to assess the maximum statutory
22 penalty pursuant to the provisions of the Recycling and
23 Illegal Dumping Act if the violation continues.

24 D. In determining the amount of a penalty to be
25 assessed pursuant to this section, the secretary or the

.183544.2

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

1 person issuing a field citation shall take into account the
2 seriousness of the violation, good-faith efforts of the
3 violator to comply with the applicable requirements of the
4 Recycling and Illegal Dumping Act or rules issued pursuant to
5 its provisions and other relevant factors.

6 E. In connection with a proceeding pursuant to
7 this section, the secretary may issue subpoenas for the
8 attendance and testimony of witnesses and the production of
9 relevant papers, books and documents and may adopt rules for
10 discovery."

11 SECTION 160. Section 74-13-17 NMSA 1978 (being Laws
12 2005, Chapter 171, Section 17) is amended to read:

13 "74-13-17. GRANTS--ELIGIBILITY--APPLICATIONS.--

14 A. A municipality, county, Indian nation, pueblo
15 or tribe, land grant community, cooperative association or
16 solid waste authority that meets eligibility requirements
17 established by the ~~[board]~~ department may apply for a grant
18 for providing funds to public landfills to offset the cost of
19 collecting or recycling of tires or submit a competitive bid
20 for a loan or contract for development costs or operating
21 costs to establish a recycling facility, purchase equipment,
22 perform marketing, purchase products produced by a recycling
23 facility, provide educational outreach, develop recycling
24 infrastructure, abate illegal dumpsites or contract with
25 vendors to promote recycling and to abate illegal dumpsites

.183544.2

underscored material = new
[bracketed material] = delete

1 consistent with provisions of the Recycling and Illegal
2 Dumping Act. The first priority for funding shall be
3 abatement of illegal scrap tire dumpsites and the recycling
4 of scrap tires.

5 B. A grant, loan or contract for processing shall
6 not be awarded pursuant to the Recycling and Illegal Dumping
7 Act to a person who receives less than ninety-five percent of
8 recyclable materials from sources in New Mexico.

9 C. Nothing in this section prohibits a
10 municipality, county, Indian nation, pueblo or tribe, land
11 grant community or cooperative association from contracting
12 for services to complete an abatement action.

13 D. At least two-thirds of budgeted grant money in
14 each fiscal year shall be allocated to tire abatement and
15 recycling programs, and one-third of budgeted grant money in
16 each fiscal year shall be allocated to abatement of illegal
17 dumping and recycling of other solid wastes."

18 SECTION 161. A new section of the Recycling and Illegal
19 Dumping Act is enacted to read:

20 "[NEW MATERIAL] ENVIRONMENTAL IMPROVEMENT BOARD
21 DUTIES--TRANSFER OF RULES.--

22 A. Beginning July 1, 2011, the department shall
23 assume the duties of the environmental improvement board and
24 the board shall become advisory to the department. All rules
25 of the board shall remain in force unless the department

.183544.2

underscored material = new
[bracketed material] = delete

1 repeals or amends them.

2 B. The environmental improvement board shall
3 assist the department in carrying out the objectives of the
4 Recycling and Illegal Dumping Act, including advising the
5 department on the adoption and implementation of rules
6 adopted pursuant to that act and other duties as determined
7 by the department."

8 SECTION 162. Section 76-4-1 NMSA 1978 (being Laws 1973,
9 Chapter 366, Section 1) is amended to read:

10 "76-4-1. SHORT TITLE.--~~[This act]~~ Chapter 76, Article 4
11 NMSA 1978 may be cited as the "Pesticide Control Act"."

12 SECTION 163. Section 76-4-9 NMSA 1978 (being Laws 1973,
13 Chapter 366, Section 9, as amended) is amended to read:

14 "76-4-9. DEPARTMENT TO ADMINISTER AND ENFORCE ACT--
15 BOARD TO ADOPT REGULATIONS--SCOPE OF REGULATIONS.--The
16 department shall administer and enforce the provisions of the
17 Pesticide Control Act and regulations promulgated by the
18 board.

19 A. The board may, after notice and public
20 hearing, adopt regulations for carrying out the purpose and
21 provisions of the Pesticide Control Act, including
22 regulations providing for:

23 (1) declaring as a pest any form of plant or
24 animal life or virus, other than ~~[man]~~ humans and other than
25 bacteria, viruses and other microorganisms on or in

.183544.2

underscored material = new
[bracketed material] = delete

1 [~~living man~~] humans or other living animals, [~~which~~] that is
2 injurious to health or the environment;

3 (2) designating certain pesticides to be
4 highly toxic to any animal, including [~~man~~] humans;

5 (3) determining standards for identifying
6 pesticides by color, taste, odor or form;

7 (4) the collection and examination of
8 devices or samples of pesticides for analysis;

9 (5) requiring pesticide applicators to
10 notify landowners of property adjoining the property to be
11 treated, or in the immediate vicinity thereof, of a proposed
12 application of a pesticide if such notice is necessary to
13 carry out the purpose of the Pesticide Control Act; and for a
14 hearing before the director of the department of any
15 objecting owner of property adjoining the property to be
16 treated before the application of the pesticide;

17 (6) the safe handling, transportation,
18 storage, display, distribution, use and disposal of
19 pesticides and their containers;

20 (7) establishing standards with respect to
21 the package, container or wrapping in which a pesticide is
22 distributed;

23 (8) restricting or prohibiting the use of
24 certain types of containers or packages for specific
25 pesticides. These restrictions may apply to type of

.183544.2

underscored material = new
[bracketed material] = delete

1 construction, strength and size or any combination [~~thereof~~]
2 to alleviate danger of spillage, breakage, misuse or any
3 other hazard to the public;

4 (9) procedures for making pesticide
5 recommendation;

6 (10) adopting a list of restricted use
7 pesticides for the state or for designated areas within the
8 state;

9 (11) regulating the time and conditions of
10 distribution, sale or use of the restricted use pesticides;

11 (12) requiring all persons issued licenses
12 to offer technical advice, to sell or to use restricted use
13 pesticides to maintain records as prescribed by the
14 department;

15 (13) certification of private applicators;

16 (14) label requirements of all pesticides
17 required to be registered under provisions of the Pesticide
18 Control Act;

19 (15) regulating the labeling of devices;

20 (16) procedures and techniques to be used in
21 sampling land, including agricultural products that are to be
22 consumed by [~~man~~] humans or animals, for pesticide residues;

23 (17) classifying pesticides for general use,
24 restricted use or both;

25 (18) prescribing methods to be used in the

.183544.2

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

1 application of pesticides where the department finds that
2 such regulations are necessary to carry out the purpose and
3 intent of the Pesticide Control Act. Such regulations may
4 relate to the time, manner, methods, materials and amounts
5 and concentrations in connection with the application of the
6 pesticides and may restrict or prohibit use of pesticides in
7 designated areas during specified periods of time and shall
8 encompass all reasonable factors [~~which~~] that the department
9 deems necessary to prevent damage or injury by drift or
10 misapplication to plants, including forage plants, or
11 adjacent or nearby lands; wildlife in the adjoining or nearby
12 areas; fish and other aquatic life in waters in reasonable
13 proximity to the area to be treated; and humans, animals or
14 beneficial insects. In issuing such regulations, the board
15 shall give consideration to pertinent research findings and
16 recommendations of other agencies of the state, the federal
17 government or other reliable sources;

18 (19) requiring any pesticide use dilution to
19 be colored or discolored if it determines that such
20 requirement is feasible and is necessary for the protection
21 of health and the environment;

22 (20) establishing good pesticide use and
23 handling practices for commercial pesticide applicators;

24 (21) establishing requirements for
25 supervision of [~~servicemen~~] servicers of structural pest

.183544.2

underscored material = new
[bracketed material] = delete

1 control applicators; and

2 (22) regulating false or misleading
3 advertisement in the sales or use of pesticides and devices.

4 B. The board shall adopt regulations that are
5 consistent with regulations of the [~~New Mexico environmental~~
6 ~~improvement board, the New Mexico water quality control~~
7 ~~commission~~] department of environment and the laws
8 administered by the regulations of the United States
9 environmental protection agency.

10 C. The department is authorized to specify the
11 quantities and concentrations of restricted use pesticides
12 that may be applied."

13 SECTION 164. TEMPORARY PROVISION--DUTIES OF THE
14 DEPARTMENT OF ENVIRONMENT AND ENVIRONMENTAL IMPROVEMENT BOARD
15 RELATING TO THE MEDICAL IMAGING AND RADIATION THERAPY HEALTH
16 AND SAFETY ACT.--Beginning July 1, 2011, the department of
17 health shall assume the duties of the department of
18 environment and the environmental improvement board relating
19 to the Medical Imaging and Radiation Therapy Health and
20 Safety Act. All rules of the department of environment and
21 the environmental improvement board relating to the Medical
22 Imaging and Radiation Therapy Health and Safety Act shall
23 remain in force unless the department of health repeals or
24 amends them.

25 SECTION 165. TEMPORARY PROVISION--RULEMAKING AUTHORITY

.183544.2

underscored material = new
[bracketed material] = delete

1 OF THE WATER QUALITY CONTROL COMMISSION.--Beginning July 1,
2 2011, the department of environment shall assume the
3 rulemaking authority of the water quality control commission.
4 All rules of the water quality control commission shall
5 remain in force unless the department of environment repeals
6 or amends them.

7 SECTION 166. TEMPORARY PROVISION--DUTIES OF THE
8 OCCUPATIONAL HEALTH AND SAFETY REVIEW COMMISSION.--Beginning
9 July 1, 2011, the department of environment shall assume the
10 duties of the occupational health and safety review
11 commission. All rules of the occupational health and safety
12 review commission shall remain in force unless the department
13 of environment repeals or amends them.

14 SECTION 167. TEMPORARY PROVISION--RULEMAKING AUTHORITY
15 OF THE ENVIRONMENTAL IMPROVEMENT BOARD.--Beginning July 1,
16 2011, the department of environment shall assume the
17 rulemaking authority of the environmental improvement board.
18 All rules of the environmental improvement board shall remain
19 in force unless the department of environment repeals or
20 amends them.

21 SECTION 168. TEMPORARY PROVISION--TRANSFER OF
22 FUNCTIONS, APPROPRIATIONS AND PROPERTY--CONTRACTUAL
23 OBLIGATIONS.--

24 A. On July 1, 2011, all functions,
25 appropriations, money, records, furniture, equipment and

.183544.2

1 other property of the department of environment and the
2 environmental improvement board relating to the Medical
3 Imaging and Radiation Therapy Health and Safety Act shall be
4 transferred to the department of health.

5 B. On July 1, 2011, all functions,
6 appropriations, money, records, furniture, equipment and
7 other property of the occupational health and safety review
8 commission shall be transferred to the department of
9 environment.

10 C. On July 1, 2011, all functions,
11 appropriations, money, records, furniture, equipment and
12 other property of the wastewater technical advisory committee
13 shall be transferred to the department of environment.

14 D. On July 1, 2011, contractual obligations of
15 the department of environment and the environmental
16 improvement board relating to the Medical Imaging and
17 Radiation Therapy Health and Safety Act are binding on the
18 department of health.

19 E. On July 1, 2011, contractual obligations of
20 the occupational health and safety review commission are
21 binding on the department of environment.

22 F. On July 1, 2011, contractual obligations of
23 the wastewater technical advisory committee and the
24 environmental improvement board are binding on the department
25 of environment.

underscored material = new
[bracketed material] = delete

1 G. On July 1, 2011, all references in law to the
2 occupational health and safety review commission shall be
3 deemed to be references to the department of environment.

4 H. On July 1, 2011, all references in law to the
5 wastewater technical advisory committee shall be deemed to be
6 references to the department of environment.

7 **SECTION 169. REPEAL.**---Sections 9-7A-12, 9-7A-14,
8 9-7A-15, 25-1-6, 50-9-9, 61-14E-6, 74-1-8, 74-1-8.1, 74-2-5,
9 74-6B-4, 74-7-4, 74-9-26 and 74-9-27 NMSA 1978 (being Laws
10 1991, Chapter 25, Section 12, Laws 1977, Chapter 253, Section
11 78, Laws 2003, Chapter 99, Section 1, Laws 1977, Chapter 309,
12 Section 6, Laws 1975, Chapter 290, Section 6, Laws 1983,
13 Chapter 317, Section 6, Laws 1971, Chapter 277, Section 11,
14 Laws 1982, Chapter 73, Section 23, Laws 1967, Chapter 277,
15 Section 5, Laws 1990, Chapter 124, Section 4, Laws 1983,
16 Chapter 29, Section 4 and Laws 1990, Chapter 99, Sections 26
17 and 27, as amended) are repealed.

18 **SECTION 172. EFFECTIVE DATE.**---The effective date of the
19 provisions of this act is July 1, 2011.