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SENATE BILL 8

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

INTRODUCED BY

Peter Wirth and Linda M. Lopez
and Nathan P. Small and Christine Chandler

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL
ACT TO ALLOW THE PROMULGATION OF RULES MORE STRINGENT THAN
FEDERAL REGULATIONS; AMENDING THE HAZARDOUS WASTE ACT TO ALLOW
THE PROMULGATION OF RULES MORE STRINGENT THAN FEDERAL
REGULATIONS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 74-2-5 NMSA 1978 (being Laws 1967,
Chapter 277, Section 5, as amended) is amended to read:

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

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

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

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

5 (a) rules prescribing air standards
6 within the geographic area of the environmental improvement
7 board's jurisdiction or the local board's jurisdiction or any
8 part thereof; and

9 (b) standards of performance that limit
10 carbon dioxide emissions to no more than one thousand one
11 hundred pounds per megawatt-hour on and after January 1, 2023
12 for a new or existing source that is an electric generating
13 facility with an original installed capacity exceeding three
14 hundred megawatts and that uses coal as a fuel source; 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 environmental improvement board's
19 jurisdiction or the local board's jurisdiction or any part
20 thereof.

21 C. If the environmental improvement board or the
22 local board determines that emissions from sources within the
23 environmental improvement board's jurisdiction or the local
24 board's jurisdiction cause or contribute to ozone
25 concentrations in excess of ninety-five percent of a national

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1 ambient air quality standard for ozone, the environmental
2 improvement board or the local board shall adopt a plan,
3 including rules, to control emissions of oxides of nitrogen and
4 volatile organic compounds to provide for attainment and
5 maintenance of the standard. Rules adopted pursuant to this
6 subsection shall be limited to sources of emissions within the
7 area of the state where the ozone concentrations exceed
8 ninety-five percent of the national ambient air quality
9 standard.

10 ~~[G.]~~ D. Rules adopted by the environmental
11 improvement board or the local board may:

12 (1) include rules to protect visibility in
13 mandatory class I areas to prevent significant deterioration of
14 air quality and to achieve national ambient air quality
15 standards in nonattainment areas; provided that [~~such~~
16 ~~regulations: (a)] the rules shall be [~~no more stringent than~~
17 ~~but~~] at least as stringent as required by the federal act and
18 federal regulations pertaining to visibility protection in
19 mandatory class I areas, pertaining to prevention of
20 significant deterioration and pertaining to nonattainment areas
21 [~~and~~~~

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

24 (2) prescribe standards of performance for
25 sources and emission standards for hazardous air pollutants

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1 that ~~[except as provided in this subsection and in Subparagraph~~
2 ~~(b) of Paragraph (1) of Subsection B of this section: (a)]~~

3 shall be ~~[no more stringent than but]~~ at least as stringent as
4 required by federal standards of performance ~~[and~~

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

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

11 (4) include ~~[regulations]~~ rules requiring the
12 installation of control technology for mercury emissions that
13 removes the greater of what is achievable with best available
14 control technology or ninety percent of the mercury from the
15 input fuel for all coal-fired power plants, except for coal-
16 fired power plants constructed and generating electric power
17 and energy before July 1, 2007;

18 (5) require notice to the department or the
19 local agency of the intent to introduce or permit the
20 introduction of an air contaminant into the air within the
21 geographical area of the environmental improvement board's
22 jurisdiction or the local board's jurisdiction; and

23 (6) require any person emitting any air
24 contaminant to:

25 (a) install, use and maintain emission

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1 monitoring devices;

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

5 (c) establish and maintain records of
6 the nature and amount of emissions;

7 (d) submit reports regarding the nature
8 and amounts of emissions and the performance of emission
9 control devices; and

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

12 [~~D.~~] E. Any [~~regulation~~] rule adopted pursuant to
13 this section shall be consistent with federal law, if any,
14 relating to control of motor vehicle emissions.

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

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

21 (2) the public interest, including the social
22 and economic value of the sources and subjects of air
23 contaminants; and

24 (3) technical practicability and economic
25 reasonableness of reducing or eliminating air contaminants from

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1 the sources involved and previous experience with equipment and
2 methods available to control the air contaminants involved."

3 SECTION 2. Section 74-4-4 NMSA 1978 (being Laws 1977,
4 Chapter 313, Section 4, as amended) is amended to read:

5 "74-4-4. DUTIES AND POWERS OF THE BOARD.--

6 A. The board shall adopt rules for the management
7 of hazardous waste, as may be necessary to protect public
8 health and the environment, that are equivalent to and [~~no~~
9 more] at least as stringent [~~than~~] as federal regulations
10 adopted by the federal environmental protection agency pursuant
11 to the federal Resource Conservation and Recovery Act of 1976,
12 as amended:

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

24 (2) establishing standards applicable to
25 generators identified or listed under this subsection,

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1 including requirements for:

2 (a) furnishing information on the
3 location and description of the generator's facility and on the
4 production or energy recovery activity occurring at that
5 facility;

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

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

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

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

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

22 (g) submission of reports to the
23 secretary at such times as the secretary deems necessary,
24 setting out the quantities of hazardous waste identified or
25 listed pursuant to the Hazardous Waste Act that the generator

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1 has generated during a particular time period and the
2 disposition of all hazardous waste reported, the efforts
3 undertaken during a particular time period to reduce the volume
4 and toxicity of waste generated and the changes in volume and
5 toxicity of waste actually achieved during a particular time
6 period in comparison with previous time periods; and

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

20 (3) establishing standards applicable to
21 transporters of hazardous waste identified or listed under this
22 subsection or of fuel produced from any such hazardous waste or
23 of fuel from such waste and any other material, as may be
24 necessary to protect human health and the environment,
25 including ~~[but not limited to]~~ requirements for:

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1 (a) recordkeeping concerning the
2 hazardous waste transported and its source and delivery points;

3 (b) transportation of the hazardous
4 waste 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
18 the location and general description of the facility; and

19 (b) furnishing the information
20 describing the production or energy recovery activity carried
21 out at the 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 or

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1 listed under this section, distinguishing, where appropriate,
2 between new facilities and facilities in existence on the date
3 of promulgation, including requirements for:

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

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

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

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

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

22 (f) maintenance and operation of the
23 facilities and requiring any additional qualifications as to
24 ownership, continuity of operation, training for personnel and
25 financial responsibility, including financial responsibility

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1 for corrective action, as may be necessary or desirable;

2 (g) compliance with the requirements of
3 Paragraph (6) of this subsection respecting permits for
4 treatment, storage or disposal;

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

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

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1 hazardous waste treatment, storage or disposal services where
2 the entity can provide assurance of financial responsibility
3 and continuity of operation consistent with the degree and
4 duration of risks associated with the treatment, storage or
5 disposal of specified hazardous waste;

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

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

19 (8) defining major and minor modifications;
20 and

21 (9) establishing procedures for the inspection
22 of facilities for the treatment, storage and disposal of
23 hazardous waste that govern the minimum frequency and manner of
24 the inspections, the manner in which records of the inspections
25 shall be maintained and the manner in which reports of the

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1 inspections shall be filed; provided, however, that inspections
2 of permitted facilities shall occur no less often than every
3 two years.

4 B. The board shall adopt rules:

5 (1) concerning hazardous substance incidents;
6 and

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

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

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

21 E. Rules adopted pursuant to this section shall
22 include:

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

25 (2) requirements for financial responsibility;

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- 1 (3) standards for inventory control;
- 2 (4) standards for the detection of leaks from
- 3 and the integrity-testing and monitoring of storage tanks;
- 4 (5) standards for the closure and dismantling
- 5 of storage tanks;
- 6 (6) requirements for recordkeeping;
- 7 (7) requirements for the reporting,
- 8 containment and remediation of all leaks from any storage
- 9 tanks; and
- 10 (8) criteria and procedures for classifying a
- 11 storage tank facility as ineligible, and reclassifying a
- 12 storage tank facility as eligible, for the delivery, deposit,
- 13 acceptance or sale of petroleum products.

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

22 G. The criteria and procedures adopted by the board
23 pursuant to this section may allow the department to classify a
24 storage tank facility as ineligible for delivery, deposit,
25 acceptance or sale of petroleum products when the owner or

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1 operator has failed to comply with a written warning within a
2 reasonable period of time and the warning concerns:

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

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

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

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

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

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

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1 system; or

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

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

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

21 ~~[L.]~~ K. In the event the board wishes to adopt
22 rules that are identical with regulations adopted by an agency
23 of the federal government, the board, after notice and hearing,
24 may adopt such rules by reference to the federal regulations
25 without setting forth the provisions of the federal

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regulations."

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

SECTION 4. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2021.