

US EPA ARCHIVE DOCUMENT

**EPA-APPROVED NEW MEXICO
STATUTORY AND REGULATORY
REQUIREMENTS
APPLICABLE TO THE
HAZARDOUS WASTE MANAGEMENT
PROGRAM**



DECEMBER 2010

**EPA APPROVED NEW MEXICO STATUTORY REQUIREMENTS
APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM
December 2010**

**New Mexico Statutes, Annotated, Hazardous Waste Act, Chapter 74, Article 4,
(2000 Replacement Pamphlet), Sections 74-4-1, *et seq.* unless otherwise indicated.**

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**NEW MEXICO
STATUTES
1978**

ANNOTATED

**Chapter 74
Environmental Improvement
Pamphlet 120**



2000 REPLACEMENT PAMPHLET

This pamphlet includes laws enacted through the Second Special Session of the Forty-Fourth Legislature (2000 (2nd S.S.)) and annotations through 2000-NMSC-011, 2000-NMCA-030, 120 S. Ct. 865, 199 F.3d 424, 76 F. Supp. 2d 1374, 190 F.R.D. 215, and 242 Bankr. 920.

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74-3-13. Emergencies.

In the event of an emergency, the director may order the impounding of sources of radiation in the possession of any person who is not equipped to comply with or fails to comply with the provisions of the Radiation Protection Act [74-3-1 to 74-3-16 NMSA 1978] or any rule or regulation promulgated thereunder.

History: 1953 Comp., § 12-9-9.2, enacted by Laws 1977, ch. 343, § 13.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur 2d Pollution Control §§ 2012, 2050

74-3-14. Fluoroscopic or X-ray machines for shoe fitting; hand-held fluoroscopes; operation or maintenance prohibited.

A. No shoe-fitting device or shoe-fitting machine which uses fluoroscopic, X-ray or radiation principles shall be operated or maintained within the state.

B. No hand-held fluoroscope shall be operated or maintained within the state.

History: 1953 Comp., § 12-9-10, enacted by Laws 1971, ch. 284, § 10; 1977, ch. 343, § 14.

74-3-15. Agreement status authorized.

The board and the agency, through the governor, may enter into an agreement with the nuclear regulatory commission, as provided in the Atomic Energy Act of 1954, as amended, providing for discontinuance of the regulatory authority of the nuclear regulatory commission and acceptance of that authority by the board and agency. For the duration of such an agreement, the board shall have authority to regulate the radioactive materials covered by the agreement for the protection of the public health and safety and the environment from radiation hazards.

History: 1953 Comp., § 12-9-11, enacted by Laws 1971, ch. 284, § 11; 1977, ch. 343, § 15.

Cross references. — As to definitions of "board," "agency" and "nuclear regulatory commission," see

74-3-4 NMSA 1978 and notes thereto

Atomic Energy Act. — For the Atomic Energy Act of 1954, referred to in the first sentence, see 42 USC § 2011 et seq

74-3-16. Discrimination.

No person or employer shall discharge or in any manner discriminate against any employee [employee] except for good cause shown because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to the Radiation Protection Act [74-3-1 to 74-3-16 NMSA 1978] or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or others of any right afforded by that act or any rule, regulation or order adopted thereunder.

History: 1953 Comp., § 12-9-12, enacted by Laws 1977, ch. 343, § 16.

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74-4-1. Short title.

Chapter 74, Article 4 NMSA 1978 may be cited as the "Hazardous Waste Act".

History: 1953 Comp., § 12-9B-1, enacted by Laws 1977, ch. 313, § 1; 1983, ch. 302, § 1.

Cross references. — For Voluntary Remediation Act, see Chapter 74, Article 4G NMSA 1978.

An implied private right of action does not exist under this section and a negligence per se claim may not be predicated on a violation of this section *Schwartzman, Inc. v. Atchison, T. & S F Ry*, 857 F Supp. 838 (D.N.M. 1994)

Law reviews. — For article, "Rights of New Mexico Municipalities Regarding the Siting and Operation of Privately Owned Landfills," see 21 N.M.L. Rev. 149 (1990).

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Liability of parent or successor corporation, or corporate shareholders, in action pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS §§ 9601-9675), 121 A.L.R. Fed. 173

Liability of local government under § 107(a) of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USCS § 9607(a)), 133 A.L.R. Fed. 293

What constitutes "hazardous waste" subject to regulation under Resource Conservation and Recovery Act (42 USCS §§ 6901 et seq.), 135 A.L.R. Fed. 197

Indemnification or release agreement as covering liability under § 107 (A) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607 (a)), 139 A.L.R. Fed. 123

Application of Statute of Limitations (42 USCS § 9613 (g)(2)) in action under § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607) for recovery of costs for removal or remedial action, 142 A.L.R. Fed. 115.

Application of Statutes of Limitations (42 USCS § 9613 (g)) in action under § 113(f) of Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) (42 USCS § 9613(f)) for contribution for response costs or damages, 143 A.L.R. Fed. 591

Construction and application of Statute of Limitations (42 USCS § 9613(g)(1)) for action under § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607) for Natural Resource Damages, 144 A.L.R. Fed. 285.

Equitable considerations in allocating response costs to owner or occupant of previously contaminated facility in action pursuant to § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCA § 9613(f)), 148 A.L.R. Fed. 203.

Supreme Court's views as to validity, construction and application of Comprehensive Environmental

Response, Compensation, and Liability Act
 ((CERCLA) (42 U.S.C.A. § 9601 et seq.)), 157 A.L.R.
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74-4-2. Purpose.

The purpose of the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] is to help ensure the maintenance of the quality of the state's environment; to confer optimum health, safety, comfort and economic and social well-being on its inhabitants; and to protect the proper utilization of its lands.

History: 1953 Comp., § 12-9B-2, enacted by
 Laws 1977, ch. 313, § 2.

74-4-3. Definitions.

As used in the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978]:

- A. "board" means the environmental improvement board;
- B. "director" or "secretary" means the secretary of environment;
- C. "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;
- D. "division" or "department" means the department of environment;
- E. "federal agency" means any department, agency or other instrumentality of the federal government and any independent agency or establishment of that government, including any government corporation and the government printing office;
- F. "generator" means any person producing hazardous waste;
- G. "hazardous agricultural waste" means hazardous waste generated as part of his licensed activity by any person licensed pursuant to the Pesticide Control Act or any hazardous waste designated as hazardous agricultural waste by the board, but does not include animal excrement in connection with farm, ranch or feedlot operations;
- H. "hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;
- I. "hazardous waste" means any solid waste or combination of solid wastes which because of their quantity, concentration or physical, chemical or infectious characteristics may:
 - (1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. "Hazardous waste" does not include any of the following, until the board determines that they are subject to Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy, any fly ash waste, bottom ash waste, slag waste, flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore or cement kiln dust waste;
- J. "manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during transportation from point of generation to point of disposal, treatment or storage;

K. "person" means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

L. "regulated substance" means:

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

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

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

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

O. "tank installer" means any individual who installs or repairs an underground storage tank;

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

Q. "treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous; and

R. "underground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The term does not include any:

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

(2) septic tank;

(3) pipeline facility, including gathering lines that are regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or that is an intrastate pipeline facility regulated under state laws comparable to either act;

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

(5) storm water or wastewater collection system;

(6) flow-through process tank;

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

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

(9) pipes connected to any tank that is described in Paragraphs (1) through (8) of this subsection.

History: 1953 Comp., § 12-9B-3, enacted by Laws 1977, ch. 313, § 3; 1981 (1st S.S.), ch. 8, § 2; 1987, ch. 179, § 1; 1989, ch. 322, § 1; 1991, ch. 25, § 33; 1992, ch. 43, § 1.

The 1991 amendment, effective March 29, 1991, rewrote Subsection B, which read "director" means the director of the division"; substituted "department of environment" for "environmental improvement division of the health and environment department" in Subsection D; inserted "of 1976" following "Recovery Act" in the second sentence in Paragraph (2) of Subsection I and in Paragraph (1) of Subsection L; and substituted "42 U.S.C. 6901" for "42 U.S.C. 6921" in the second sentence in Paragraph (2) of Subsection I.

The 1992 amendment, effective March 6, 1992, substituted "secretary of environment" for "secretary of the department" in Subsection B, inserted "or department" in Subsection D, and made minor stylistic changes throughout the section.

Pesticide Control Act. — See 76-4-1 NMSA 1978 and notes thereto

Resource Conservation and Recovery Act. — Subtitle C of the Resource Conservation and Recovery Act, referred to in Subsection I(2) and L(1), appears as 42 U.S.C. § 6921 et seq.

Comprehensive Environmental Response, Compensation and Liability Act. — Section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, referred to in Subsection L (1), appears as 42 U.S.C. § 9601 (14)

Water Pollution Control Act. — Section 402 of the federal Water Pollution Control Act, referred to in Subsection M, appears as 33 U.S.C. § 1342.

Atomic Energy Act of 1954. — The Atomic Energy Act of 1954, referred to in Subsection M, appears as 42 U.S.C. § 2011 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Determination whether substance is "hazardous substance" within meaning of § 101(14) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9601(14)), 118 A.L.R. Fed. 293.

Establishing "release or threatened release" of hazardous substance from facility for purposes of liability pursuant to § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607), 120 A.L.R. Fed. 1

What constitutes "hazardous waste" subject to regulation under Resource Conservation and Recovery Act (42 USCS §§ 6901 et seq.), 135 A.L.R. Fed. 197

What constitutes "disposal" for purposes of owner or operator liability under § 107(a)(2) of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USCS § 9607(a)(2)), 136 A.L.R. Fed. 117.

What constitutes "facility" within meaning of § 101(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCA § 9601(9)), 147 A.L.R. Fed. 469.

74-4-3.1. Application of act.

Nothing in the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] shall be construed to apply to any activity or substance which is subject to the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act, as amended, (42 U.S.C. 300f et seq.) or the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011 et seq.) except to the extent that such application or regulation is not inconsistent with the requirements of such acts; nor shall the Hazardous Waste Act apply to the treatment, storage or disposal of wastes under a permit issued pursuant to the Surface Mining Act [Chapter 69, Article 25A NMSA 1978] or the federal Surface Mining Control and Reclamation Act of 1977, as amended, or to any farmer disposing of waste pesticides from his own use, provided he triple rinses each emptied pesticide container and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

History: 1978 Comp., § 74-4-3.1, enacted by Laws 1981 (1st S.S.), ch. 8, § 3.

Federal Water Pollution Control Act. — The Federal Water Pollution Control Act, referred to near the beginning of this section, has been superseded by the Water Pollution Control Act, which appears as 33 U.S.C. § 1251 et seq.

Surface Mining Control and Reclamation Act. — The federal Surface Mining Control and Reclamation Act of 1977, referred to in this section, appears as 30 U.S.C. § 1201 et seq.

74-4-3.2. Repealed.

Repeals. — Laws 1989, ch. 4, § 1 repeals 74-4-3.2 NMSA 1978, as enacted by Laws 1987, ch. 179, § 2, relating to application of Hazardous Waste Act to the

waste isolation pilot plant, effective February 23, 1989. For provisions of former section, see 1987 Supplement.

~~74-4-3.3. Hazardous wastes of other states.~~

In addition to the meaning of hazardous waste as defined in Section 74-4-3 NMSA 1978, the term "hazardous waste" as used in the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] may include any material imported into the state of New Mexico for the purpose of disposal which is defined or classified as hazardous waste in the state of origin.

History: 1978 Comp., § 74-4-3.3, enacted by Laws 1989, ch. 255, § 1.

74-4-4. Duties and powers of the board.

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

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

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

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

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

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

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

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

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

(g) submission of reports to the secretary at such times as the secretary deems necessary, setting out the quantities of hazardous waste identified or listed pursuant to the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] that the generator has generated during a particular time period and the disposition of all hazardous waste reported, the efforts undertaken during a particular time period to reduce the volume and toxicity of waste generated and the changes in volume and toxicity of waste actually achieved during a particular time period in comparison with previous time periods; and

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

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

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

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

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

~~(d) transportation of all the hazardous waste only to the hazardous waste treatment, storage or disposal facilities that the shipper designates on the manifest form to be a facility holding a permit issued pursuant to the Hazardous Waste Act or the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.;~~

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

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

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

~~(5) establishing performance standards as may be necessary to protect human health and the environment applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this section, distinguishing, where appropriate, between new facilities and facilities in existence on the date of promulgation, including but not limited to requirements for:~~

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

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

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

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

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

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

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

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

~~(i) the taking of corrective action beyond a facility's boundaries where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Regulations adopted and promulgated under this subparagraph shall take effect immediately and shall apply to all facilities operating under permits issued under Paragraph (6) of this subsection and to all landfills, surface impoundments and waste~~

~~pile units, including any new units, replacements of existing units or lateral expansions of existing units, that receive hazardous waste after July 26, 1982. No private entity shall be precluded by reason of criteria established under Subparagraph (f) of this paragraph from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where the entity can provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste;~~

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

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

(8) defining major and minor modifications; and

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

B. The board shall adopt regulations:

(1) concerning hazardous substance incidents; and

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

C. The board shall adopt regulations concerning underground storage tanks as may be necessary to protect public health and the environment that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended, and that shall include:

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

(2) requirements for financial responsibility;

(3) standards for inventory control;

(4) standards for the detection of leaks from and the integrity testing and monitoring of underground storage tanks;

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

(6) requirements for record-keeping; and

(7) requirements for the reporting, containment and remediation of all leaks from any underground storage tanks.

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

E. In the event the board wishes to adopt regulations that are identical with regulations adopted by an agency of the federal government, the board, after notice and hearing, may adopt such regulations by reference to the federal regulations without setting forth the provisions of the federal regulations.

~~History: 1953 Comp., § 12-9B-4, enacted by Laws 1977, ch. 313, § 4; 1981 (1st S.S.), ch. 8, § 4; 1987, ch. 179, § 3; 1989, ch. 322, § 2; 1992, ch. 43, § 2; 1993, ch. 127, § 1.~~

~~Cross references. — For definition of "department," see 74-4-3 NMSA 1978.~~

~~The 1992 amendment, effective March 6, 1992, substituted "secretary" for "director" in Subsections A(2)(g), A(5)(c), and in the first sentence of Subsection A(5)(i); inserted "adopted and" in the second sentence of Subsection A(5)(i); substituted "owning or operating or both" for "owning and operating" in Subsection A(6); rewrote Subsection A(7); added present Subsection A(8); redesignated former Subsection A(8) as present Subsection A(9); substituted "department" for "division" in Subsection B(2); and made minor stylistic changes throughout the section.~~

~~The 1993 amendment, effective June 18, 1993, inserted "as may be necessary to protect public health and the environment, that are" in the introductory language in Subsection A; inserted "as may be necessary to protect public health and the environment" in the introductory language in Subsection C; added present Subsection D and redesignated former Subsection D as present Subsection E.~~

~~Resource Conservation and Recovery Act. — The Resource Conservation and Recovery Act of 1976, referred to in several places in this section, appears as 42 U.S.C. § 6901 et seq.~~

~~No excuse from compliance where insuffi-~~

~~cient funds in corrective action fund. — The owner or operator of an underground storage tank which has experienced a release is not excused from compliance with corrective action requirements by reason of the insufficiency or unavailability of monies in the corrective action fund to meet the costs of corrective action. 1991 Op. Att'y Gen. No. 91-08.~~

~~Federal sovereign immunity waived. — Resource Conservation and Recovery Act (42 U.S.C. § 6961) waived federal sovereign immunity from certain state imposed permit conditions addressing the presence of radionuclides in the disposal of hazardous waste at the Los Alamos National Laboratory where the conditions imposed by the permit to incinerate hazardous waste at the laboratory implemented objective, preexisting state standard that was capable of uniform application and was considered a "requirement" under Resource Conservation and Recovery Act. United States v. New Mexico, 32 F.3d 494 (10th Cir. 1994).~~

~~Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control § 4.~~

~~State or local regulation of transportation of hazardous materials as pre-empted by Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), 78 A.L.R. Fed. 289.~~

~~What constitutes "hazardous waste" subject to regulation under Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), 135 A.L.R. Fed. 197.~~

74-4-4.1. Hazardous agricultural waste; duties and responsibilities of the department of agriculture.

A. The department of agriculture shall be responsible for the enforcement of all board regulations adopted pursuant to the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] regarding generators of hazardous agricultural waste. The division shall enforce those board regulations pertaining to transporters, treaters, storers and disposers of hazardous agricultural waste.

B. In the exercise of the responsibility prescribed in Subsection A of this section, the department of agriculture shall have the same authority as that delegated to the division, including the director.

C. In the adoption of regulations pertaining to hazardous agricultural waste, the board shall make a reasonable effort to consult with the department of agriculture prior to the adoption of the regulations. The department of agriculture shall serve as the technical consultant to the board on matters concerning hazardous agricultural waste.

~~History: 1978 Comp., § 74-4-4.1, enacted by Laws 1981 (1st S.S.), ch. 8, § 5; 1989, ch. 322, § 3.~~

~~Am. Jur. 2d, A.L.R. and C.J.S. references. — Common-law strict liability in tort of prior landowner or lessee to subsequent owner for contamination of land with hazardous waste resulting from prior owner's or lessee's abnormally dangerous or ultrahazardous activity, 13 A.L.R.5th 600.~~

~~Recovery of punitive damages for injuries resulting from transport, handling, and storage of toxic or hazardous substances, 39 A.L.R.5th 763.~~

~~State or local regulation of transportation of hazardous materials as pre-empted by Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), 78 A.L.R. Fed. 289.~~

74-4-4.2. Permits; issuance; denial; modification; suspension; revocation.

A. Each application for a permit pursuant to the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] shall contain information as may be required pursuant to Section 74-4-4.7 NMSA 1978 or pursuant to regulations promulgated by the board, including information with respect to:

~~(1) estimates with respect to the composition, quantity and concentration of any hazardous waste identified or listed under Subsection A of Section 74-4-4 NMSA 1978 or combinations of any hazardous waste and other solid waste proposed to be disposed of, treated, transported or stored and the time, frequency or rate at which the waste is proposed to be disposed of, treated, transported or stored; and~~

(2) the site where hazardous waste or the products of treatment of hazardous waste will be disposed of, treated, transported to or stored.

B. Hazardous waste permits issued after April 8, 1987 shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this section.

C. The division shall provide timely review on all permit applications. Upon a determination by the secretary that the applicant has met the requirements adopted pursuant to Section 74-4-4 NMSA 1978, the secretary may issue a permit or a permit subject to any conditions necessary to protect human health and the environment for the facility.

D. The secretary may deny any permit application or modify, suspend or revoke any permit issued pursuant to the Hazardous Waste Act if the applicant or permittee has:

(1) knowingly and willfully misrepresented a material fact in the application for a permit;

(2) refused to disclose the information required under the provisions of Section 74-4-4.7 NMSA 1978;

(3) been convicted in any court, within ten years immediately preceding the date of submission of the permit application, of:

(a) a felony or other crime involving moral turpitude; or

(b) a crime defined by state or federal statutes as involving or being in restraint of trade, price-fixing, bribery or fraud;

(4) exhibited a history of willful disregard for environmental laws of any state or the United States;

(5) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States; or

(6) violated any provision of the Hazardous Waste Act, any regulation adopted and promulgated pursuant to that act or any condition of a permit issued under that act.

E. In making a finding under Subsection D of this section, the secretary may consider aggravating and mitigating factors.

F. If an applicant or permittee whose permit is being considered for denial or revocation, respectively, on any basis provided by Subsection D of this section has submitted an action plan that has been approved in writing by the secretary, and plan approval includes a period of operation under a conditional permit that will allow the applicant or permittee a reasonable opportunity to demonstrate its rehabilitation, the secretary may issue a conditional permit for a reasonable period of time. In approving an action plan intended to demonstrate rehabilitation, the secretary may consider:

(1) implementation by the applicant or permittee of formal policies;

(2) training programs and management control to minimize and prevent the occurrence of future violations;

(3) installation by the applicant or permittee of internal environmental auditing programs;

(4) the applicant's release or the permittee's release subsequent to serving a period of incarceration or paying a fine, or both after conviction of any crime listed in Subsection D of this section; and

(5) any other factors the secretary deems relevant.

G. Notwithstanding the provisions of Subsection D of this section:

(1) a research, development and demonstration permit may be terminated upon the determination by the secretary that termination is necessary to protect human health or the environment; and

~~(2) a permit may be modified at the request of the permittee for just cause as demonstrated by the permittee.~~

H. No ruling shall be made on permit issuance, major modification, suspension or revocation without an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing; provided, however, that the secretary may, pursuant to Section 74-4-10 NMSA 1978, order the immediate termination of a research development and demonstration permit whenever the secretary determines that termination is necessary to protect human health or the environment and may order the immediate suspension or revocation of a permit for a facility that has been ordered to take corrective action or other response measures for releases of hazardous waste into the environment.

I. The secretary shall hold a public hearing on a minor permit modification if the secretary determines that there is significant public interest in the minor modification.

J. The board shall provide a schedule of fees for businesses generating hazardous waste or seeking a permit for the management of hazardous waste, to be deposited to the credit of the hazardous waste fund, including but not limited to:

(1) a hazardous waste business fee applicable to any business engaged in a regulated hazardous waste activity, which shall be an annual flat fee based on the type of activity;

(2) a hazardous waste generation fee applicable to any business generating hazardous waste, which shall be based on the quantity of hazardous waste generated annually; however, when any material listed in Paragraph (2) of Subsection I of Section 74-4-3 NMSA 1978 is determined by the board to be subject to regulation under Subtitle C of the federal Resource Conservation and Recovery Act, the board may set a generation fee under this paragraph for that waste based on its volume, toxicity, mobility and economic impact on the regulated entity; and

(3) a hazardous waste permit application fee, not exceeding the estimated cost of investigating the application and issuing the permit, to be paid at the time the secretary notifies the applicant by certified mail that the application has been deemed administratively complete and a technical review is scheduled.

History: 1978 Comp., § 74-4-4.2, enacted by Laws 1981 (1st S.S.), ch. 8, § 6; 1987, ch. 179, § 4; 1989, ch. 322, § 4; 1992, ch. 43, § 3.

The 1992 amendment, effective March 6, 1992, substituted the present section catchline for "Permits; issuance and revocation; appeal"; inserted "pursuant to Section 74-4-4.7 NMSA 1978" in the introductory paragraph of Subsection A; twice substituted "secretary" for "director" in Subsection C; rewrote Subsection D; added present Subsections E, F, and G; redesignated former Subsection E as present Subsection H; inserted "major" near the beginning of Subsection H while substituting "secretary" for "division" near the middle of that subsection; added present Subsection I; redesignated former Subsection F as present Subsection J; substituted "secretary" for "director" in Subsection J(3); deleted former Subsections G and H, relating to appeal; and made minor stylistic changes throughout the section

Federal Resource Conservation and Recovery Act. — Subtitle C of the federal Resource Conservation and Recovery Act, referred to in Subsection J(2), appears as 42 U.S.C. § 6921.

Federal sovereign immunity waived. — Resource Conservation and Recovery Act (42 U.S.C. § 6961) waived federal sovereign immunity from certain state imposed permit conditions addressing the presence of radionuclides in the disposal of hazardous waste at the Los Alamos National Laboratory where the conditions imposed by the permit to incinerate hazardous waste at the laboratory implemented objective, preexisting state standard that was capable of uniform application and was considered a "requirement" under Resource Conservation and Recovery Act. *United States v. New Mexico*, 32 F.3d 494 (10th Cir. 1994).

74-4-4.3. Entry; availability of records.

A. For purposes of developing or assisting in the development of any regulations, conducting any study, taking any corrective action or enforcing the provisions of the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978], upon request of the director or his authorized representative:

~~(1) any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall furnish information relating to such hazardous wastes and permit the director or his authorized representatives:~~

~~(a) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are or have been generated, stored, treated, disposed of or transported from or where an underground storage tank is located; and~~

~~(b) to inspect and obtain samples from any person of any hazardous wastes and samples of any containers or labeling for the wastes; and~~

~~(2) any person who owns or operates an underground storage tank, or any tank subject to study under Section 9009 of the Resource Conservation and Recovery Act that is used for storing regulated substances, shall furnish information relating to such tanks, including their associated equipment and their contents, conduct monitoring or testing, permit the director or his authorized representative at all reasonable times to have access to and to copy all records relating to such tanks and permit the director or his authorized representative to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action or enforcing the provisions of the Hazardous Waste Act, the director or his authorized representative is authorized:~~

~~(a) to enter at reasonable times any establishment or other place where an underground storage tank is located;~~

~~(b) to inspect or obtain samples from any person of any regulated substance in such tank;~~

~~(c) to conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water or ground water; and~~

~~(d) to take corrective action.~~

~~B. Any person owning property to which access is necessary in order to investigate or clean up a facility where hazardous waste is generated, stored, treated or disposed of, or where underground storage tanks are located, shall:~~

~~(1) permit the director or his authorized representative to obtain samples of soil or ground water, or both, at reasonable times; and~~

~~(2) provide access to such property for structures or equipment necessary to monitoring or cleanup of hazardous wastes or leaking from underground storage tanks; provided that:~~

~~(a) such structures or equipment do not unreasonably interfere with the owner's use of the property; or~~

~~(b) the owner is adequately compensated for activities which unreasonably interfere with his use or enjoyment of such property.~~

~~C. Each inspection shall be commenced and completed with reasonable promptness. If the director or his representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.~~

~~D. Any records, reports or information obtained by the division under this section shall be available to the public, except that upon a showing satisfactory to the division that records, reports or information, or a particular part thereof, to which the director or his authorized representatives have access under this section, if made public, would divulge information entitled to protection under Section 1905 of Title 18 of the United States Code, such information or particular portion thereof shall be considered confidential, except that such record, report, document or information may be disclosed to officers, employees or authorized representatives of the United States concerned with carrying out the Resource Conservation and Recovery Act, or when relevant in any proceedings under the Hazardous Waste Act.~~

~~E. Any person not subject to the provisions of Section 1905 of Title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than five thousand dollars (\$5,000) or to imprisonment not to exceed one year or both.~~

F. In submitting data under the Hazardous Waste Act, a person required to provide such data may:

(1) designate the data the person believes is entitled to protection under this subsection; and

(2) submit such designated data separately from other data submitted under the Hazardous Waste Act. A designation under this paragraph shall be made in writing and in such manner as the director may prescribe.

History: 1978 Comp., § 74-4-4.3, enacted by Laws 1981 (1st S.S.), ch. 8, § 7; 1987, ch. 179, § 5; 1989, ch. 322, § 5.

Resource Conservation and Recovery Act. — See 42 U.S.C. § 6901 et seq.

Areas subject to inspection. — Regardless of whether each specific part of the premises is subject to regulation, the statute clearly allows an inspection of all areas where the hazardous waste is being generated, whether it is in an enclosed facility or not *New Mexico Env'tl. Imp. Div. v. Climax Chem. Co.*, 105 N.M. 439, 733 P.2d 1322 (Ct. App. 1987).

Search warrant required in absence of consent. — In the event consent to enter and inspect

premises for compliance with this article is denied, an administrative search warrant is required *New Mexico Env'tl. Imp. Div. v. Climax Chem. Co.*, 105 N.M. 439, 733 P.2d 1322 (Ct. App. 1987).

Venue in action for search warrant. — An action by which the environmental improvement division sought an administrative warrant for inspection under this article was a transitory action and venue was controlled by 38-3-1A NMSA 1978, which allows an action to be brought in a county where the plaintiff resides. *New Mexico Env'tl. Imp. Div. v. Climax Chem. Co.*, 105 N.M. 439, 733 P.2d 1322 (Ct. App. 1987).

74-4-4.4. Underground storage tanks; registration; installer certification; fees.

A. By regulation, the board shall require an owner of an underground storage tank to register the tank with the division and impose reasonable conditions for registration including the submission of plans, specifications and other relevant information relating to the tank. For purposes of this subsection only, the term "owner" means: in the case of an underground storage tank in use on November 8, 1984 or brought into use after that date, any person who owns an underground storage tank used for storage, use, or dispensing of regulated substances; and in the case of an underground storage tank in use before November 8, 1984 but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use. The owner of a tank taken out of operation on or before January 1, 1974 shall not be required to notify under this subsection. The owner of a tank taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984 shall not be required to notify under this subsection. Evidence of current registration pursuant to this subsection shall be available for inspection at the site of the underground storage tank.

B. By regulation, the board shall require any person who, beginning thirty days after the United States environmental protection agency administrator prescribes the form of notice pursuant to Section 9002(a)(5) of the Resource Conservation and Recovery Act and for eighteen months thereafter, deposits a regulated substance into an underground storage tank to give notice of the registration requirements of Subsection A of this section to the owner and operator of the tank.

C. By regulation, the board may require tank installers to obtain certification from the division and develop procedures for certification which will ensure that underground storage tanks are installed and repaired in a manner which will not encourage or facilitate leaking. If the board requires certification, it shall be unlawful for a person to install or repair an underground storage tank unless he is a certified tank installer. In accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the division may suspend or revoke the certification for a tank installer upon grounds that he:

~~(1) exercised fraud, misrepresentation or deception in obtaining his certification;~~
 (2) exhibited gross incompetence in the installation or repair of an underground storage tank; or

(3) was derelict in the performance of a duty as a certified tank installer.

D. By regulation, the board shall provide a schedule of fees sufficient to defray the reasonable and necessary costs of:

(1) reviewing and acting upon applications for the registration of underground storage tanks;

(2) reviewing and acting upon applications for the certification of tank installers; and

(3) implementing and enforcing any provision of the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] applicable to underground storage tanks and tank installers including standards for the installation, operation and maintenance of underground storage tanks and for the certification of tank installers.

History: 1978 Comp., § 74-4-4.4, enacted by Laws 1987, ch. 179, § 6; 1989, ch. 322, § 6.

Cross references. — For hazardous waste emergency fund, see 74-4-8 NMSA 1978

Resource Conservation and Recovery Act. — Section 9002(a)(5) of the Resource Conservation and Recovery Act, referred to in Subsection B, appears as 42 U.S.C. § 6991a(a)(5).

74-4-4.5. Hazardous waste fund created; appropriation.

A. There is created in the state treasury the "hazardous waste fund" which shall be administered by the division. All balances in the fund are appropriated to the division for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.

B. All fees collected pursuant to Subsection F of Section 74-4-4.2 NMSA 1978 shall be transmitted to the state treasurer for credit to the hazardous waste fund.

History: 1978 Comp., § 74-4-4.5, enacted by Laws 1987, ch. 179, § 7; 1989, ch. 322, § 7; 1989, ch. 324, § 36; 1990, ch. 124, § 20.

74-4-4.6. Repealed.

Repeals. — Laws 1989, ch. 322, § 17 repeals 74-4-4.6 NMSA 1978, as enacted by Laws 1989, ch. 322, § 8, relating to creation of the underground

storage tank fund, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

74-4-4.7. Permit applicant disclosure.

A. Every applicant for a permit pursuant to the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] shall file a disclosure statement with the department with the information required by, and on a form developed by, the department in cooperation with the department of public safety, at the same time the applicant files the application for a permit with the secretary.

~~B. Upon the request of the secretary, the department of public safety shall prepare and transmit to the secretary an investigative report on the applicant based in part upon the disclosure statement. The report shall be prepared and transmitted within ninety days after the receipt of a copy of an applicant's disclosure statement from the department. Upon good cause, the ninety days may be extended for a reasonable period of time by the secretary.~~

C. In preparing the investigative report, the department of public safety may request and receive criminal history information on the applicant from the federal bureau of investigation or any other law enforcement agency or organization. While the investigative report is being prepared by the department of public safety, the secretary may also request information regarding any person who will be or could reasonably be expected to be involved in management activities of the hazardous waste facility or any person who has a

~~controlling interest in any permittee. The department of public safety shall maintain confidentiality regarding the information received from a law enforcement agency as may be imposed by that agency as a condition for providing that information to the department of public safety.~~

D. All persons required to file a disclosure shall provide any assistance or information requested by the department of public safety or the secretary and shall cooperate in any inquiry or investigation conducted by the department of public safety or any inquiry, investigation or hearing conducted by the secretary. Nothing in this section shall be construed to waive a person's constitutional right against self-incrimination.

E. If any of the information required to be included in the disclosure statement changes, or if any information is added after filing the statement, the person required to file it shall provide that information in writing to the secretary within thirty days after the change or addition. Failure to provide the information within thirty days may constitute the basis for the revocation of, or denial of an application for, any permit issued or applied for in accordance with Section 74-4-4.2 NMSA 1978, but only if, prior to any denial or revocation, the secretary notifies the applicant or permittee of the secretary's intention to do so and gives the applicant or permittee fourteen days from the date of the notice to explain why the information was not provided within the required thirty-day period. The secretary shall consider this information when determining whether to revoke or deny the permit.

F. No person shall be required to submit the disclosure statement required by this section if the person is:

- (1) the United States or any agency or instrumentality of the United States;
- (2) a state or any agency or political subdivision of a state; or
- (3) a corporation or an officer, director or shareholder of that corporation and that corporation:

(a) has on file and in effect with the federal securities and exchange commission a registration statement required under Section 5, Chapter 38, Title 1 of the federal Securities Act of 1933, as amended;

(b) submits to the secretary with the application for a permit evidence of the registration described in Subparagraph (a) of this paragraph and a copy of the corporation's most recent annual form 10-K or an equivalent report; and

(c) submits to the secretary on the annual anniversary of the date of the issuance of any permit it holds pursuant to the Hazardous Waste Act evidence of registration described in Subparagraph (a) of this paragraph and a copy of the corporation's most recent annual form 10-K or an equivalent report.

History: 1978 Comp., § 74-4-4.7, enacted by Laws 1992, ch. 43, § 4.
Securities Act of 1933. — Section 5, Chapter 38,

Title 1 of the Federal Securities Act of 1933, appears as 15 U S C § 77e(c)

~~74-4-4.8. Underground storage tank fund created; appropriation.~~

A. There is created in the state treasury the "underground storage tank fund" which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the underground storage tank program.

B. All fees collected pursuant to Subsection D of Section 74-4-4.4 NMSA 1978 shall be transmitted to the state treasurer for credit to the underground storage tank fund.

C. Balances remaining in the underground storage tank fund at the end of the fiscal year shall not revert to the general fund.

History: Laws 1993, ch. 298, § 2.
Compiler's notes. — Laws 1993, ch 100, § 7
enacted a 74-4-4-8 NMSA 1978, creating an under-

ground storage tank fund, effective March 31, 1993, and was approved March 31, 1993 However, because of the enactment of 74-4-4-8 NMSA 1978 by Laws

1993, ch. 298, § 2, approved April 7, 1993, the section as enacted by Laws 1993, ch. 100 has not been set out. See 12-1-8 NMSA 1978.

74-4-5. Adoption of regulations; notice and hearing.

A. No regulation shall be adopted, amended or repealed until after a public hearing by the board. Hearings on regulations shall be held in Santa Fe or in an area of the state substantially affected by the regulations. In making its regulations, the board shall give the weight it deems appropriate to all relevant facts and circumstances presented at the public hearing, including but not limited to:

(1) the character and degree of injury to or interference with the environment or public health; and

(2) the technical practicability and economic reasonableness of the regulation.

B. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation. The notice shall be published in a newspaper of general circulation in the area affected. Reasonable effort shall be made to give notice to all persons who have made a written request to the board for advance notice of hearings.

C. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the board.

D. The board may designate a hearing officer to take evidence in the hearing. A transcript shall be made of the entire hearing proceedings.

E. No regulation or amendment or repeal of a regulation adopted by the board shall become effective until thirty days after its filing under the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1953 Comp., § 12-9B-5, enacted by Laws 1977, ch. 313, § 5; 1992, ch. 43, § 5.

Cross references. — As to notice by publication, see 14-11-1 NMSA 1978 et seq.

The 1992 amendment, effective March 6, 1992, deleted "appeal" at the end of the section catchline; deleted "environmental improvement" preceding

"board" in the first sentence of the introductory paragraph of Subsection A; inserted "the environment or" in Subsection A(1); deleted former Subsections F, G, and H, relating to appeal; and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am Jur. 2d Pollution Control § 4.

74-4-6. Repealed.

Repeals. — Laws 1981 (1st S.S.), ch. 8, § 12, repeals 74-4-6 NMSA 1978, relating to disposal of out-of-state hazardous waste, effective April 14, 1981.

Compiler's notes. — Laws 1992, ch. 43, § 6 enacted a section designated 74-4-6 NMSA 1978 which has been redesignated by the compiler as 74-4-14 NMSA 1978.

74-4-7. Containment and cleanup of hazardous substance incidents; division powers.

The division may:

A. take any action necessary or appropriate to protect persons from injury or other harm which might arise from hazardous substance incidents, including but not limited to providing for cleanup and disposal, coordinating the activities of other public officials and any other action the division deems necessary or appropriate;

B. notify any person who may have incurred or may incur physical injury from a hazardous substance incident that he should undergo medical examination; and

~~C. assess charges against persons responsible for hazardous substance incidents for costs the division incurs in cleanup of hazardous substance incidents, disposal of hazardous substances and for damage to state property. Amounts received in payment of such assessments shall be deposited in the hazardous waste emergency fund. Any person who is assessed charges pursuant to this subsection may appeal the assessment to the district court within thirty days of receipt of notice of the assessment.~~

History: 1953 Comp., § 12-9B-7, enacted by Laws 1977, ch. 313, § 7; 1989, ch. 322, § 9.

Cross references. — For definition of "division," see 74-4-3 NMSA 1978. For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

Compiler's notes. — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control §§ 4, 719, 1136 et seq.

74-4-8. Emergency fund.

The "hazardous waste emergency fund" is created in the state treasury. This fund shall be used for cleanup of hazardous substance incidents, disposal of hazardous substances and necessary repairs to or replacement of state property and may be used for the state's share of any response action taken under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq. The administrative and technical expenses of maintaining an emergency response program within the division shall be reimbursable on a quarterly basis from this fund. Any penalties collected by the division shall be credited to this fund. Amounts in the fund shall be deposited with the state treasurer and then disbursed pursuant to vouchers signed by the director or his authorized representative upon warrants drawn by the secretary of finance and administration.

History: 1953 Comp., § 12-9B-8, enacted by Laws 1977, ch. 313, § 8; 1983, ch. 301, § 81; 1983, ch. 302, § 2; 1989, ch. 322, § 10.

Cross references. — For definitions of "director" and "division," see 74-4-3 NMSA 1978.

74-4-9. Existing hazardous waste facilities; interim status.

Any person owning or operating a hazardous waste facility who has met the requirements for interim status under 42 U.S.C. 6925 shall be deemed to have interim status under the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978].

History: 1978 Comp., § 74-4-9, enacted by Laws 1989, ch. 322, § 11.

Repeals and reenactments. — Laws 1989, ch. 322, § 11 repeals former 74-4-9 NMSA 1978, as en-

acted by Laws 1981 (1st S.S.), ch. 8, § 8, and enacts the above section, effective April 7, 1989. For former provisions, see 1988 Replacement Pamphlet.

~~74-4-10. Enforcement; compliance orders; civil penalties.~~

~~A. Whenever on the basis of any information the secretary determines that any person has violated, is violating or threatens to violate any requirement of the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978], any regulation adopted and promulgated pursuant to that act or any condition of a permit issued pursuant to that act, the secretary may:~~

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

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

~~B. Any order issued pursuant to Subsection A of this section may include a suspension or revocation of any permit issued by the secretary. Any penalty assessed in the order shall not exceed ten thousand dollars (\$10,000) per day of noncompliance for each violation. In~~

~~assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements. For violations related to underground storage tanks, "per violation" means per tank.~~

C. If a violator fails to take corrective actions within the time specified in a compliance order, the secretary may:

(1) assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to the Hazardous Waste Act.

D. Whenever on the basis of any information the secretary determines that the immediate termination of a research, development and demonstration permit is necessary to protect human health and the environment, the secretary may order an immediate termination of all research, development and demonstration operations permitted pursuant to the Hazardous Waste Act at the facility.

E. Whenever on the basis of any information the secretary determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under Section 74-4-9 NMSA 1978, the secretary may issue an order requiring corrective action, including corrective action beyond a facility's boundaries or other response measure as he deems necessary to protect human health or the environment or may commence an action in district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

F. Any order issued under Subsection E of this section may include a suspension or revocation of authorization to operate under Section 74-4-9 NMSA 1978 and shall state with reasonable specificity the nature of the required corrective action or other response measure and shall specify a time for compliance. If any person named in an order fails to comply with the order, the secretary may assess, and the person shall be liable to the state for a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each day of noncompliance with the order.

G. Any order issued pursuant to this section, any other enforcement proceeding initiated pursuant to this section or any claim for personal or property injury arising from any conduct for which evidence of financial responsibility must be provided may be issued to or taken against the insurer or guarantor of an owner or operator of a treatment, storage or disposal facility or underground storage tank if:

(1) the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the federal Bankruptcy Code; or

(2) jurisdiction in any state or federal court cannot with reasonable diligence be obtained over an owner or operator likely to be solvent at the time of judgment.

H. Any order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a public hearing. Upon such request the secretary shall promptly conduct a public hearing. The secretary shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who shall make the final decision.

I. In connection with any proceeding under this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may promulgate rules for discovery procedures.

J. Penalties collected pursuant to an administrative order shall be deposited in the state treasury to be credited to the hazardous waste emergency fund.

History: 1953 Comp., § 12-9B-10, enacted by Laws 1977, ch. 313, § 10; reenacted by 1981 (1st S.S.), ch. 8, § 9; 1987, ch. 179, § 8; 1989, ch. 322, § 12; 1992, ch. 43, § 7.

The 1992 amendment, effective March 6, 1992, added "civil penalties" at the end of the section catchline, substituted "secretary" for "director" several times throughout the section, rewrote the intro-

~~ductory paragraph of Subsection A, and made minor stylistic changes throughout the section.~~

Bankruptcy Code. — The federal Bankruptcy Code, referred to in Subsection G(1), appears as Title 11 of the United States Code.

~~Am. Jur. 2d, A.L.R. and C.J.S. references.~~

~~61A Am. Jur. 2d Pollution Control § 2046 et seq.~~

~~Right to maintain action based on violation of § 7003 of Resource Conservation and Recovery Act (42 USCS § 6973) pertaining to imminent hazards from solid or hazardous waste, 105 A.L.R. Fed. 800.~~

74-4-10.1. Hazardous waste monitoring, analysis and testing.

~~A. If the director determines, upon receipt of any information, that:~~

(1) the presence of any hazardous waste at a facility or site at which hazardous waste is or has been stored, treated or disposed of; or

(2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility to conduct such monitoring, testing, analysis and reporting with respect to such facility or site as the director deems reasonable to ascertain the nature and extent of such hazard.

B. In the case of any facility or site not in operation at the time a determination is made under Subsection A of this section with respect to the facility or site, if the director finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, the director may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have actual knowledge to carry out the provisions referred to in Subsection A of this section.

C. Any order under Subsection A or B of this section shall require the person to whom such order is issued to submit to the director, within thirty days from the issuance of such order, a proposal for carrying out the required monitoring, testing, analysis and reporting. The director may, after providing such person with an opportunity to confer with the director respecting such proposal, require such person to carry out such monitoring, testing, analysis and reporting in accordance with such proposal and such modifications in such proposal as the director deems reasonable to ascertain the nature and extent of the hazard.

~~D. (1) If the director determines that no owner or operator referred to in Subsection A or B of this section is able to conduct monitoring, testing, analysis or reporting satisfactory to the director, if the director deems any such action carried out by an owner or operator to be unsatisfactory or if the director cannot initially determine that there is an owner or operator referred to in Subsection A or B of this section who is able to conduct such monitoring, testing, analysis or reporting, the division may:~~

(a) conduct monitoring, testing or analysis, or any combination thereof, which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned; or

(b) authorize a local authority or other person to carry out any such action; and

(c) in either event the director may require, by order, the owner or operator referred to in Subsection A or B of this section to reimburse the division or other authority or person for the costs of such activity. Any reimbursement to the division pursuant to this subparagraph shall be deposited to the credit of the hazardous waste fund.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the division which confirms the results of an order issued under Subsection A or B of this section.

(3) For purposes of carrying out this subsection, the director or any authority or other person authorized under Paragraph (1) of this subsection may exercise the authorities set forth in Section 74-4-4.3 NMSA 1978.

E. The director may commence a civil action against any person who fails or refuses to comply with an order issued under this section. Such action shall be brought in the district court of the county in which the defendant is located, resides or is doing business. Such court

~~shall have jurisdiction to require compliance with such order and to assess a civil penalty not to exceed five thousand dollars (\$5,000) for each day during which such failure or refusal occurs.~~

History: 1978 Comp., § 74-4-10.1, enacted by Laws 1989, ch. 322, § 13.

74-4-11. Penalty; criminal.

A. No person:

(1) shall knowingly transport or cause to be transported any hazardous waste identified or listed pursuant to the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978] to a facility that does not have a permit under that act or the federal Resource Conservation and Recovery Act;

(2) shall knowingly treat, store or dispose of any hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without having obtained a hazardous waste permit pursuant to that act or the federal Resource Conservation and Recovery Act;

(b) in knowing violation of any material condition or requirement of a hazardous waste permit; or

(c) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

(3) shall knowingly omit material information or make any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the Hazardous Waste Act;

(4) who knowingly generates, stores, treats, transports, disposes of, exports or otherwise handles any hazardous waste shall knowingly destroy, alter, conceal or fail to file any record, application, manifest, report or other document required to be maintained or filed for purposes of compliance with regulations adopted and promulgated pursuant to the Hazardous Waste Act;

(5) shall knowingly transport without a manifest or cause to be transported without a manifest any hazardous waste required by regulations adopted and promulgated pursuant to the Hazardous Waste Act to be accompanied by a manifest; or

(6) shall knowingly export hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without the consent of the receiving country; or

(b) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export and enforcement procedures for the transportation, treatment, storage and disposal of hazardous wastes, in a manner that is not in conformance with such agreement.

B. Any person who violates any of the provisions of Paragraphs (1) through (6) of Subsection A of this section is guilty of a fourth degree felony and upon conviction shall be punished by a fine of not more than ten thousand dollars (\$10,000) per violation per day or by imprisonment for a definite term of not more than eighteen months or both. For a second or subsequent violation of the provisions of Paragraphs (1) through (6) of Subsection A of this section, the person is guilty of a third degree felony and shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) per violation per day or by imprisonment for not more than three years or both.

C. Any person who knowingly violates any regulation adopted and promulgated pursuant to Subsection C of Section 74-4-4 or 74-4-4.4 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000) per violation per day or by imprisonment for a definite term of one year or both. For violations related to underground storage tanks, "per violation" means per tank.

D. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste in violation of Subsection A of this section and who knows at the time of

~~the violation that he creates a substantial danger of a substantial adverse environmental impact, is guilty of a third degree felony if the violation causes a substantial adverse environmental impact.~~

E. As used in this section, a "substantial adverse environmental impact" exists when an act or omission of a person causes harm or damage:

(1) to human beings; or

(2) to flora, wildlife, fish or other aquatic life or water fowl; to the habitats of wildlife, fish, other aquatic life, water fowl or livestock; to agricultural crops; to any ground water or surface water; or to the lands or waters of this state where such harm or damage amounts to more than ten thousand dollars (\$10,000).

F. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste in violation of Subsection A of this section and who knows at the time of the violation that he creates a substantial danger of death or serious bodily injury to another person is guilty of a second degree felony and shall be sentenced to a term of imprisonment not to exceed nine years or a fine not to exceed one hundred thousand dollars (\$100,000), or both. Any person, other than an individual, that knowingly transports, treats, stores, disposes of or exports any hazardous waste in violation of Subsection A of this section and knows at that time that it places an individual in imminent danger of death or serious bodily injury is guilty of a second degree felony and shall be fined in an amount not to exceed two hundred fifty thousand dollars (\$250,000).

History: 1953 Comp., § 12-9B-11, enacted by Laws 1977, ch. 313, § 11; 1981 (1st S.S.), ch. 8, § 10; 1987, ch. 179, § 9; 1989, ch. 322, § 14; 1992, ch. 43, § 8.

The 1992 amendment, effective March 6, 1992, rewrote the provisions of former Subsection A and redesignated them as present Subsections A and B; added present Subsections C to E; redesignated former Subsection B as present Subsection F; and, in Subsection F substituted "creates a substantial danger" for "thereby places another person in imminent danger" and inserted "to another person" near the

middle of the first sentence while substituting "a term of imprisonment not to exceed nine years" for "nine years imprisonment" near the end of that sentence, and made minor stylistic changes throughout the subsection

Resource Conservation and Recovery Act. — The federal Resource Conservation and Recovery Act, referred to in Subsection A, appears as 42 U S C § 6901 et seq

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am Jur 2d Pollution Control § 80 et seq.

74-4-12. Penalty; civil.

Any person who violates any provision of the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978], any regulation made pursuant to that act or any compliance order issued by the director pursuant to Section 74-4-10 NMSA 1978 may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs. For violations related to underground storage tanks, "per violation" means per tank.

History: 1953 Comp., § 12-9B-12, enacted by Laws 1977, ch. 313, § 12; 1981 (1st S.S.), ch. 8, § 11; 1987, ch. 179, § 10; 1989, ch. 322, § 15.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur 2d Pollution Control § 2032 et seq

74-4-13. Imminent hazards; authority of director; penalties.

A. Notwithstanding any other provision of the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978], whenever the director is in receipt of evidence that the past or current handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste or the condition or maintenance of any underground storage tank may present an imminent and substantial endangerment to health or the environment, he may bring suit in the appropriate district court to immediately restrain any person, including any past or present generator, past or present transporter or past or present owner or operator of a treatment, storage or disposal facility, who has contributed or is contributing to such activity, to take such other action as may be necessary or both. A transporter shall not be ~~deemed to have contributed or to be contributing to such handling, storage, treatment or~~

~~disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The director may also take other action, including but not limited to issuing such orders as may be necessary to protect health and the environment.~~

B. Any person who willfully violates or fails or refuses to comply with any order of the director under Subsection A of this section may in an action brought in the appropriate district court to enforce such order be fined not more than five thousand dollars (\$5,000) for each day in which the violation occurs or the failure to comply continues.

C. Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the director shall provide immediate notice to the appropriate local government agencies. In addition, the director shall require notice of such endangerment to be promptly posted at the site where the waste is located.

History: Laws 1983, ch. 302, § 3; 1987, ch. 179, § 11; 1989, ch. 322, § 16.

74-4-14. Administrative actions; judicial review.

A. Any person who is or may be affected by any final administrative action of the board or the secretary may appeal to the court of appeals for further relief within thirty days after the action. All appeals shall be upon the record before the board or the secretary.

B. For appeals of regulations, the date of the action shall be the date of filing of the regulation under the State Rules Act [Chapter 14, Article 4 NMSA 1978].

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

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

D. A stay of enforcement of the action being appealed may be granted after hearing and upon good cause shown:

- (1) by the board or the secretary, whichever took the action being appealed; or
- (2) by the court of appeals if the board or the secretary denies a stay or fails to act upon an application for a stay within sixty days after receipt.

History: 1978 Comp., § 74-4-14, enacted by Laws 1992, ch. 43, § 6.

Compiler's notes. — This section was enacted as 74-4-6 NMSA 1978 but was redesignated by the com-

piler, since a section with the same code number had previously been enacted (repealed by Laws 1981 (1st SS), ch 8, § 12).

ARTICLE 4A

Radioactive Materials

Sec.		Sec.	
74-4A-1	Radioactive material transport; conditions	74-4A-9	Committee
74-4A-2	Short title	74-4A-10	Membership; appointment; vacancies.
74-4A-3	Purpose.	74-4A-11	Committee duties.
74-4A-4	Definitions	74-4A-11 1.	Condition.
74-4A-5	Repealed	74-4A-12	Subcommittees.
74-4A-6	Task force	74-4A-13.	Interrelationship with task force.
74-4A-7	Duties of the task force	74-4A-14.	Staff.
74-4A-8	Powers of the task force.	74-4A-15 to 74-4A-19.	Repealed.

**NEW MEXICO
STATUTES
1978**

ANNOTATED

**Chapter 74
Environmental Improvement**

Pamphlet 120



2009 CUMULATIVE SUPPLEMENT

This supplement includes laws enacted since the 2000 Replacement Pamphlet through the First Session of the Forty-Ninth Legislature (2009) and annotations through 2009-NMSC-018 and 2009-NMCA-049.

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~~B. A person who willfully violates an order of the secretary pursuant to Subsection A of this section may be fined not more than fifteen thousand dollars (\$15,000) per day for each violation of the order.~~

History: Laws 2003, ch. 297, § 3.

Effective dates. — Laws 2003, ch. 297, § 8 makes the act effective on July 1, 2003.

ARTICLE 4

Hazardous Wastes

Sec.

74-4-3. Definitions.

74-4-4. Duties and powers of the board.

74-4-4.2. Permits; issuance; denial; modification; suspension; revocation.

74-4-4.3. Entry; availability of records.

74-4-4.4. Storage tanks; registration; installer certification; fees.

Sec.

74-4-4.5. Hazardous waste fund created; appropriation.

74-4-4.8. Storage tank fund created; appropriation.

74-4-10. Enforcement; compliance orders; civil penalties.

74-4-11. Penalty; criminal.

74-4-12. Penalty; civil.

74-4-13. Imminent hazards; authority of director; penalties.

~~74-4-1. Short title.~~

Administrative warrant was lawful where the New Mexico Hazardous Waste Act authorizes the acts specified in the warrant to be carried out by the New Mexico environment department's officers and agents. *Eden v. Voss*, 105 Fed. Appx. 234 (10th Cir. 2004).

~~Am. Jur. 2d, A.L.R. and C.J.S. references.~~

~~Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.A. § 9613(f)(1): multiple waste streams, 162 A.L.R. 371.~~

74-4-3. Definitions.

As used in the Hazardous Waste Act [74-1-1 NMSA 1978]:

~~A. "above ground storage tank" means a single tank or combination of tanks, including under-ground pipes connected thereto, that are used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. "Above ground storage tank" does not include any:~~

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

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

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

(4) storm water or wastewater collection system;

(5) flow-through process tank;

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

(7) tank associated with an emergency generator system;

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

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

B. "board" means the environmental improvement board;

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

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

E. "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous

waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

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

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

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

I. "hazardous agricultural waste" means hazardous waste generated as part of his licensed activity by any person licensed pursuant to the Pesticide Control Act [76-4-1 NMSA 1978] or any hazardous waste designated as hazardous agricultural waste by the board, but does not include animal excrement in connection with farm, ranch or feedlot operations;

J. "hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

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

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

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. "Hazardous waste" does not include any of the following, until the board determines that they are subject to Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy; fly ash waste; bottom ash waste; slag waste; flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore; or cement kiln dust waste;

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

M. "person" means any individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

N. "regulated substance" means:

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

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

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

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

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

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

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

T. "treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

U. "underground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. "Underground storage tank" does not include any:

- (1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel or heating oil for noncommercial purposes;
- (2) septic tank;
- (3) pipeline facility, including gathering lines that are regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;
- (4) surface impoundment, pit, pond or lagoon;
- (5) storm water or wastewater collection system;
- (6) flow-through process tank;
- (7) liquid trap, tank or associated gathering lines directly related to oil or gas production and gathering operations;
- (8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;
- (9) tank associated with an emergency generator system;
- (10) tank exempted by rule of the board after finding that the type of tank is adequately regulated under another federal or state law; or
- (11) pipes connected to any tank that is described in Paragraphs (1) through (10) of this subsection; and

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

History: 1953 Comp., § 12-9B-3, enacted by Laws 1977, ch. 313, § 3; 1981 (1st S.S.), ch. 8, § 2; 1987, ch. 179, § 1; 1989, ch. 322, § 1; 1991, ch. 25, § 33; 1992, ch. 43, § 1; 2001, ch. 323, § 1; 2001, ch. 325, § 2; 2002, ch. 47, § 1.

Federal acts. — The federal Natural Gas Pipeline Safety Act of 1968 and the federal Hazardous Liquid Pipeline Safety Act of 1979, referred to in Subsections A(2) and U(3), formerly appeared as part of 49 App. U.S.C. Following the revision of Title 49 in 1994, present comparable provisions appear as 49 U.S.C. § 60101 et seq.

Resource Conservation and Recovery Act. — Subtitle C of the Resource Conservation and Recovery Act, referred to in Subsections K(2) and N(1), appears as 42 U.S.C. § 6921 et seq.

Comprehensive Environmental Response, Compensation and Liability Act. — Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, referred to in Subsection N(1), appears as 42 U.S.C. § 9601 (14).

Water Pollution Control Act. — Section 402 of the federal Water Pollution Control Act, referred to in Subsection O, appears as 33 U.S.C. § 1342.

Atomic Energy Act of 1954. — The Atomic Energy Act of 1954, referred to in Subsection O, appears as 42 U.S.C. § 2011 et seq.

2001 amendments. — Laws 2001, ch. 325, § 2, effective July 1, 2001, adding Subsection A; redesignated former Subsection A as B; adding Subsection C; redesignating former Subsections B to N as D to P; adding Subsection Q; redesignating former Subsections O to R as R to U; deleting "an underground" preceding "storage tank" in current Subsection R; substituting "Treatment" for "Such term" in last sentence of current Subsection T; substituting "Underground storage tank" for "The term" preceding "does not include any" in current Subsection U; deleting the citations to the two acts listed in Paragraph U(3); deleting "tank" following "liquid trap" in Paragraph U(7); adding Paragraphs U(9) and (10); redesignating former Paragraph U(9) as (11) and updating the internal references was approved April 15, 2001. However, this section was also amended by Laws 2001, ch. 323, § 1, effective July 1, 2001. Because Laws 2001, ch. 323, § 1 was approved earlier on April 5, 2001, this section was set out as amended by Laws 2001, ch. 325, § 2. See 12-1-8 NMSA 1978. Laws 2001, ch. 323, § 1 was repealed by Laws 2002, ch. 47, § 3, effective May 15, 2002.

The 2002 amendment, effective May 15, 2002, added Subsection V.

~~74-4-4. Duties and powers of the board.~~

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

~~(1) for the identification and listing of hazardous wastes, taking into account toxicity, persistence and degradability, potential for accumulation in tissue and other related factors, including flammability, corrosiveness and other hazardous characteristics; provided that, except as authorized by Sections 74-4.3.3 and 74-8-2 NMSA 1978, the board shall not identify or list any solid waste or combination of solid wastes as a hazardous waste that has not been listed and designated as a hazardous waste by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;~~

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

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

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

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

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

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

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

~~(g) submission of reports to the secretary at such times as the secretary deems necessary, setting out the quantities of hazardous waste identified or listed pursuant to the Hazardous Waste Act [74-4-1 NMSA 1978] that the generator has generated during a particular time period and the disposition of all hazardous waste reported, the efforts undertaken during a particular time period to reduce the volume and toxicity of waste generated and the changes in volume and toxicity of waste actually achieved during a particular time period in comparison with previous time periods; and~~

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

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

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

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

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

~~(d) transportation of all the hazardous waste only to the hazardous waste treatment, storage or disposal facilities that the shipper designates on the manifest form to be a facility holding a permit issued pursuant to the Hazardous Waste Act [74-4-1 NMSA 1978] or the federal Resource Conservation and Recovery Act of 1976, as amended;~~

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

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

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

~~(5) establishing performance standards as may be necessary to protect human health and the environment applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous~~

~~waste identified or listed under this section, distinguishing, where appropriate, between new facilities and facilities in existence on the date of promulgation, including requirements for:~~

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

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

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

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

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

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

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

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

(i) the taking of corrective action beyond a facility's boundaries where necessary to protect human health and the environment unless the owner or operator of that facility demonstrates to the satisfaction of the secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Rules adopted and promulgated under this subparagraph shall take effect immediately and shall apply to all facilities operating under permits issued under Paragraph (6) of this subsection and to all landfills, surface impoundments and waste pile units, including any new units, replacements of existing units or lateral expansions of existing units, that receive hazardous waste after July 26, 1982. No private entity shall be precluded by reason of criteria established under Subparagraph (f) of this paragraph from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where the entity can provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste;

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

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

(8) defining major and minor modifications; and

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

B. The board shall adopt rules:

(1) concerning hazardous substance incidents; and

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

C. The board shall adopt rules concerning storage tanks as may be necessary to protect public health and the environment and that, in the case of underground storage tanks, are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended. Rules adopted pursuant to this subsection shall include:

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

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

E. The board shall adopt rules concerning the management of used oil that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

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

History: 1953 Comp., § 12-9B-4, enacted by Laws 1977, ch. 313, § 4; 1981 (1st S.S.), ch. 8, § 4; 1987, ch. 179, § 3; 1989, ch. 322, § 2; 1992, ch. 43, § 2; 1993, ch. 127, § 1; 2001, ch. 323, § 2; 2001, ch. 325, § 3; 2002, ch. 47, § 2.

Resource Conservation and Recovery Act. — The Resource Conservation and Recovery Act of 1976, referred to in several places in this section, appears as 42 U.S.C. § 6901 et seq.

2001 amendments. — Laws 2001, ch. 325, § 3, effective July 1, 2001, deleting the citation to the act noted in Subparagraph A(3)(d); in the preliminary language of Subsection C, deleting "underground" preceding "storage tanks", inserting "in the case of underground storage tanks" preceding "are

equivalent to"; deleting "underground" preceding "storage tanks" in Paragraphs C(1), (4), (5) and (7); and making stylistic changes was approved April 5, 2001. However, this section was also amended by Laws 2001, ch. 323, § 2, effective June 15, 2001. Because Laws 2001, ch. 323, § 2 was approved earlier on April 5, 2001, this section was set out as amended by Laws 2001, ch. 325, § 3. See 12-1-8 NMSA 1978. Laws 2001, ch. 323, § 2 was repealed by Laws 2002, ch. 47, § 3, effective May 15, 2002.

The 2002 amendment, effective May 15, 2002, added Subsection E, and redesignated former Subsection E as Subsection F.

74-4-4.2. Permits; issuance; denial; modification; suspension; revocation.

A. An application for a permit pursuant to the Hazardous Waste Act [74-4-1 NMSA 1978] shall contain information required pursuant to Section 74-4-4.7 NMSA 1978 or to regulations promulgated by the board and shall include:

- (1) estimates of the composition, quantity and concentration of any hazardous waste identified or listed under Subsection A of Section 74-4-4 NMSA 1978 or combinations of any hazardous waste and other solid waste proposed to be disposed of, treated, transported or stored and the time, frequency or rate at which the waste is proposed to be disposed of, treated, transported or stored; and
- (2) an identification and description of, and other pertinent information about, the site where hazardous waste or the products of treatment of hazardous waste will be disposed of, treated, transported to or stored.

B. Hazardous waste permits shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this section.

~~C. The department shall provide timely review on all permit applications. Upon a determination by the secretary that the applicant has met the requirements adopted pursuant to Section 74-4-4 NMSA 1978, the secretary may issue a permit or a permit subject to any conditions necessary to protect human health and the environment for the facility.~~

~~D. The secretary may deny any permit application or modify, suspend or revoke any permit issued pursuant to the Hazardous Waste Act if the applicant or permittee has:~~

- ~~(1) knowingly and willfully misrepresented a material fact in the application for a permit;~~
- (2) refused to disclose the information required under the provisions of Section 74-4-4.7 NMSA 1978;
- (3) been convicted in any court, within ten years immediately preceding the date of submission of the permit application, of:
 - (a) a felony or other crime involving moral turpitude; or
 - (b) a crime defined by state or federal statutes as involving or being in restraint of trade, price-fixing, bribery or fraud;
- (4) exhibited a history of willful disregard for environmental laws of any state or the United States;
- (5) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States; or
- (6) violated any provision of the Hazardous Waste Act, any regulation adopted and promulgated pursuant to that act or any condition of a permit issued under that act.

E. In making a finding under Subsection D of this section, the secretary may consider aggravating and mitigating factors.

F. If an applicant or permittee whose permit is being considered for denial or revocation, respectively, on any basis provided by Subsection D of this section has submitted an action plan that has been approved in writing by the secretary, and plan approval includes a period of operation under a conditional permit that will allow the applicant or permittee a reasonable opportunity to demonstrate its rehabilitation, the secretary may issue a conditional permit for a reasonable period of time. In approving an action plan intended to demonstrate rehabilitation, the secretary may consider:

- (1) implementation by the applicant or permittee of formal policies;
- (2) training programs and management control to minimize and prevent the occurrence of future violations;
- (3) installation by the applicant or permittee of internal environmental auditing programs;
- (4) the applicant's release or the permittee's release subsequent to serving a period of incarceration or paying a fine, or both, after conviction of any crime listed in Subsection D of this section; and
- ~~(5) any other factors the secretary deems relevant.~~

G. Notwithstanding the provisions of Subsection D of this section:

- ~~(1) a research, development and demonstration permit may be terminated upon the determination by the secretary that termination is necessary to protect human health or the environment; and~~
- (2) a permit may be modified at the request of the permittee for just cause as demonstrated by the permittee.

~~H. No ruling shall be made on permit issuance, major modification, suspension or revocation without an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing; provided, however, that the secretary may, pursuant to Section 74-4-10 NMSA 1978, order the immediate termination of a research development and demonstration permit whenever the secretary determines that termination is necessary to protect human health or the environment and may order the immediate suspension or revocation of a permit for a facility that has been ordered to take corrective action or other response measures for releases of hazardous waste into the environment.~~

I. The secretary shall hold a public hearing on a minor permit modification if the secretary determines that there is significant public interest in the minor modification.

J. The board shall provide a schedule of fees for businesses generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste, including but not limited to:

- (1) a hazardous waste business fee applicable to any business engaged in a regulated hazardous waste activity, which shall be an annual flat fee based on the type of activity;
- (2) a hazardous waste generation fee applicable to any business generating hazardous waste, which shall be based on the quantity of hazardous waste generated annually; however, when any material listed in Paragraph (2) of Subsection K of Section 74-4-3 NMSA 1978 is determined by the board to be subject to regulation under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, the board may set a generation fee under this paragraph for that waste based on its volume, toxicity, mobility and economic impact on the regulated entity;

(3) a hazardous waste permit application fee, not exceeding the estimated cost of investigating the application and issuing the permit, to be paid at the time the secretary notifies the applicant by certified mail that the application has been deemed administratively complete and a technical review is scheduled; and

(4) an annual hazardous waste permit management fee based on and not exceeding the estimated cost of conducting regulatory oversight of permitted activities.

K. The department and a business generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste may enter into a voluntary fee agreement in addition to and that includes all of the fees required by Subsection J of this section.

History: 1978 Comp., § 74-4-4.2, enacted by Laws 1981 (1st S.S.), ch. 8, § 6; 1987, ch. 179, § 4; 1989, ch. 322, § 4; 1992, ch. 43, § 3; 2003, ch. 41, § 1; 2006, ch. 100, § 1.

Federal Resource Conservation and Recovery Act. — Subtitle C of the federal Resource Conservation and Recovery Act, referred to in Subsection J(2), appears as 42 U.S.C. § 6921.

The 2003 amendment, effective June 20, 2003, in Subsection A substituted "An" for "Each" at the beginning, deleted "as may be" following "shall contain information" near the beginning, deleted "pursuant" following "NMSA 1978 or" near the middle and substituted "and shall include" for "including information with respect to" near the end; substituted "of" for "with respect to" following "estimates" at the beginning of Paragraph A(1); inserted "an identification and description of, and other pertinent information about," at the beginning of Paragraph A(2); deleted "issued after April 8, 1987" following "Hazardous waste permits" near the beginning of Subsection B; substituted "department" for "division" near the beginning of Subsection C; inserted "conducting permitted hazardous waste management activities" following "generating hazardous waste" near the middle of Subsection J; inserted "of 1976" following "Recovery Act" near the middle of Paragraph J(2); and added Paragraph J(4).

The 2006 amendment, effective July 1, 2006, adds Subsection K to provide for voluntary fee agreements.

Response to public comments. — The fact that the secretary issued a written response to public comments after issuing a final order does not establish the fact that the secretary did not consider public input when drafting the order. *Citizen Action v. Sandia Corporation*, 2008-NMCA-031, 143 N.M. 620, 179 P.3d 1228, cert. denied, 2008-NMCERT-002.

Permit modifications. — When the secretary of the New Mexico environment department modified a permit to operate a hazardous waste disposal site to clarify the type of waste that could be disposed of there, consistent with the permit's previous language, the modification was minor, under Subsection I of this section, so the secretary only had to hold a public hearing on the modification if there was significant public interest in the modification. *S.W. Research & Info. Ctr. v. State*, 2003-NMCA-012, N.M. , 62 P.3d 270.

When the secretary of the New Mexico environment department determined that a modification to a permit to operate a hazardous waste disposal site was minor, his decision about whether to hold a public hearing on that modification, due to significant public interest in the modification, was reviewable only for abuse of discretion. *S.W. Research & Info. Ctr. v. State*, 2003-NMCA-012, N.M. , 62 P.3d 270.

74-4-4.3. Entry; availability of records.

A. For purposes of developing or assisting in the development of any rules, conducting any study, taking any corrective action or enforcing the provisions of the Hazardous Waste Act [74-4-1 NMSA 1978], upon request of the secretary or his authorized representative:

(1) any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall furnish information relating to such hazardous wastes and permit the secretary or his authorized representatives:

(a) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are or have been generated, stored, treated, disposed of or transported from or where a storage tank is located; and

(b) to inspect and obtain samples from any person of any hazardous wastes and samples of any containers or labeling for the wastes; and

(2) any person who owns or operates a storage tank, or any tank subject to study under Section 9009 of the [federal] Resource Conservation and Recovery Act of 1976 that is used for storing regulated substances, shall furnish information relating to such tanks, including their associated equipment and their contents, conduct monitoring or testing, permit the secretary or his authorized representative at all reasonable times to have access to and to copy all records relating to such tanks and permit the secretary or his authorized representative to have access for corrective action. For the purposes of developing or assisting in the development of any rule, conducting any study, taking corrective action or enforcing the provisions of the Hazardous Waste Act], the secretary or his authorized representative is authorized to:

(a) enter at reasonable times any establishment or other place where a storage tank is located;

(b) inspect or obtain samples from any person of any regulated substance in such tank;

(c) conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water or ground water; and

(d) take corrective action.

~~B. Any person owning property to which access is necessary in order to investigate or clean up a facility where hazardous waste is generated, stored, treated or disposed of, or where storage tanks are located, shall:~~

~~(1) permit the secretary or his authorized representative to obtain samples of soil or ground water, or both, at reasonable times; and~~

~~(2) provide access to such property for structures or equipment necessary to monitoring or cleanup of hazardous wastes or leaking from storage tanks; provided that:~~

~~(a) such structures or equipment do not unreasonably interfere with the owner's use of the property; or~~

~~(b) the owner is adequately compensated for activities that unreasonably interfere with his use or enjoyment of such property.~~

C. Each inspection shall be commenced and completed with reasonable promptness. If the secretary or his representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

D. Any records, reports or information obtained by the department under this section shall be available to the public, except that upon a showing satisfactory to the department that records, reports or information, or a particular part thereof, to which the secretary or his authorized representatives have access under this section, if made public, would divulge information entitled to protection under Section 1905 of Title 18 of the United States Code, such information or particular portion thereof shall be considered confidential, except that such record, report, document or information may be disclosed to officers, employees or authorized representatives of the United States concerned with carrying out the Resource Conservation and Recovery Act of 1976, or when relevant in any proceedings under the Hazardous Waste Act [74-4-1 NMSA 1978].

E. Any person not subject to the provisions of Section 1905 of Title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than five thousand dollars (\$5,000) or to imprisonment not to exceed one year or both.

F. In submitting data under the Hazardous Waste Act, a person required to provide such data may:

(1) designate the data the person believes is entitled to protection under this subsection; and

(2) submit such designated data separately from other data submitted under the Hazardous Waste Act. A designation under this paragraph shall be made in writing and in such manner as the secretary may prescribe.

History: 1978 Comp., § 74-4-4.3, enacted by Laws 1981 (1st S.S.), ch. 8, § 7; 1987, ch. 179, § 5; 1989, ch. 322, § 5; 2001, ch. 325, § 4.

Bracketed material. — The bracketed word in Subsection A(2) was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law.

The 2001 amendment, effective July 1, 2001, substituted "secretary" for "director" throughout the section; deleted "underground" preceding "storage tank" and "storage tanks" throughout the section; substituted "department" for "division" in Subsection D; and made stylistic changes.

Resource Conservation and Recovery Act. — See 42 U.S.C.S. § 6901 et seq. Section 9009 of the Act, referenced in Subsection A(2), is codified at 42 U.S.C. § 6991h.

Compiler's notes. — As referenced in this section, § 1905 of Title 18 of the United States Code is the codification of the Trade Secrets Act.

No conversion or trespass by private contractor. — Where private contractor acted pursuant to a valid administrative search and seizure warrant, the affidavits supporting the application for the warrant set forth probable cause for issuance of the warrant, and the New Mexico Hazardous Waste Act permitted seizure of hazardous waste, there was no conversion or trespass by the private contractor. *Eden v. Voss*, 105 Fed. Appx. 234 (10th Cir. 2004).

~~74-4-4.4. Storage tanks; registration; installer certification; fees.~~

A. By rule, the board shall require an owner of a storage tank to register the tank with the department and impose reasonable conditions for registration, including the submission of plans, specifications and other relevant information relating to the tank. For purposes of this subsection only, the term "owner" means: in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns the storage tank; and in the case of a storage tank in use before November 8, 1984 but no longer in use on that date, any person who owned the tank immediately before the discontinuation of its

~~use. The owner of a tank taken out of operation on or before January 1, 1974 shall not be required to notify under this subsection. The owner of a tank taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984 shall not be required to notify under this subsection. Evidence of current registration pursuant to this subsection shall be available for inspection at the site of the storage tank.~~

B. By rule, the board shall require any person who, beginning thirty days after the United States environmental protection agency administrator prescribes the form of notice pursuant to Section 9002(a)(5) of the Resource Conservation and Recovery Act of 1976 and for eighteen months thereafter, deposits a regulated substance into a storage tank to give notice of the registration requirements of Subsection A of this section to the owner and operator of the tank.

C. By rule, the board may require tank installers to obtain certification from the department and develop procedures for certification that will ensure that storage tanks are installed and repaired in a manner that will not encourage or facilitate leaking. If the board requires certification, it is unlawful for a person to install or repair a storage tank unless he is a certified tank installer. In accordance with the Uniform Licensing Act [61-1-1 NMSA 1978], the department may suspend or revoke the certification for a tank installer upon grounds that he:

- (1) exercised fraud, misrepresentation or deception in obtaining his certification;
- (2) exhibited gross incompetence in the installation or repair of a storage tank; or
- (3) was derelict in the performance of a duty as a certified tank installer.

D. By rule, the board shall provide a schedule of fees sufficient to defray the reasonable and necessary costs of:

- (1) reviewing and acting upon applications for the registration of storage tanks;
- (2) reviewing and acting upon applications for the certification of tank installers; and
- (3) implementing and enforcing any provision of the Hazardous Waste Act [74-4-1 NMSA 1978] applicable to storage tanks and tank installers, including standards for the installation, operation and maintenance of storage tanks and for the certification of tank installers.

History: 1978 Comp., § 74-4-4.4, enacted by Laws 1987, ch. 179, § 6; 1989, ch. 322, § 6; 2001, ch. 325, § 5.

The 2001 amendment, effective July 1, 2001, deleted "underground" preceding "storage tank" and "storage tanks" throughout the section; substituted "department" for "division" throughout the section; deleted "used for storage, use,

or dispensing of regulated substances" preceding "and in the case of" in the second sentence of Subsection A; and made stylistic changes.

Resource Conservation and Recovery Act. — Section 9002(a)(5) of the Resource Conservation and Recovery Act, referred to in Subsection B, appears as 42 U.S.C. § 6991a(a)(5).

74-4-4.5. Hazardous waste fund created; appropriation.

A. There is created in the state treasury the "hazardous waste fund", which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.

B. All fees collected pursuant to Section 74-4-4.2 NMSA 1978 shall be transmitted to the state treasurer for credit to the hazardous waste fund.

History: 1978 Comp., § 74-4-4.5, enacted by Laws 1987, ch. 179, § 7; 1989, ch. 322, § 7; 1989, ch. 324, § 36; 1990, ch. 124, § 20; 2006, ch. 100, § 2.

The 2006 amendment, effective July 1, 2006, changes "division" to "department" in Subsection A and deletes the Subsection F reference in Subsection B.

74-4-4.8. Storage tank fund created; appropriation.

A. There is created in the state treasury the "storage tank fund", which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the storage tank program.

B. All fees collected pursuant to Subsection D of Section 74-4-4.4 NMSA 1978 shall be transmitted to the state treasurer for credit to the storage tank fund.

C. Balances remaining in the storage tank fund at the end of a fiscal year shall not revert to the general fund.

History: Laws 1993, ch. 298, § 2; 2001, ch. 325, § 6.

~~The 2001 amendment, effective July 1, 2001, deleted "underground" preceding "storage tank" throughout the section.~~

74-4-10. Enforcement; compliance orders; civil penalties.

A. Whenever on the basis of any information the secretary determines that any person has violated, is violating or threatens to violate any requirement of the Hazardous Waste Act [74-4-1 NMSA 1978], any rule adopted and promulgated pursuant to that act or any condition of a permit issued pursuant to that act, the secretary may:

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

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

B. Any order issued pursuant to Subsection A of this section may include a suspension or revocation of any permit issued by the secretary. Any penalty assessed in the order shall not exceed ten thousand dollars (\$10,000) per day of noncompliance for each violation. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements. For violations related to storage tanks, "per violation" means per tank.

C. If a violator fails to take corrective actions within the time specified in a compliance order, the secretary may:

(1) assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to the Hazardous Waste Act.

D. Whenever on the basis of any information the secretary determines that the immediate termination of a research, development and demonstration permit is necessary to protect human health or the environment, the secretary may order an immediate termination of all research, development and demonstration operations permitted pursuant to the Hazardous Waste Act at the facility.

E. Whenever on the basis of any information the secretary determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under Section 74-4-9 NMSA 1978, the secretary may issue an order requiring corrective action, including corrective action beyond a facility's boundaries or other response measure as he deems necessary to protect human health or the environment or may commence an action in district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

F. Any order issued under Subsection E of this section may include a suspension or revocation of authorization to operate under Section 74-4-9 NMSA 1978 and shall state with reasonable specificity the nature of the required corrective action or other response measure and shall specify a time for compliance. If any person named in an order fails to comply with the order, the secretary may assess, and the person shall be liable to the state for, a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each day of noncompliance with the order.

G. Any order issued pursuant to this section, any other enforcement proceeding initiated pursuant to this section or any claim for personal or property injury arising from any conduct for which evidence of financial responsibility must be provided may be issued to or taken against the insurer or guarantor of an owner or operator of a treatment, storage or disposal facility or storage tank if:

(1) the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the federal Bankruptcy Code; or

(2) jurisdiction in any state or federal court cannot with reasonable diligence be obtained over an owner or operator likely to be solvent at the time of judgment.

H. Any order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a public hearing. Upon such request, the secretary shall promptly conduct a public hearing. The secretary shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who shall make the final decision.

I. ~~In connection with any proceeding under this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may promulgate rules for discovery procedures.~~

J. Penalties collected pursuant to an administrative order shall be deposited in the state treasury to be credited to the hazardous waste emergency fund.

History: 1953 Comp., § 12-9B-10, enacted by Laws 1977, ch. 313, § 10; reenacted by 1981 (1st S.S.), ch. 8, § 9; 1987, ch. 179, § 8; 1989, ch. 322, § 12; 1992, ch. 43, § 7; 2001, ch. 325, § 7.

The 2001 amendment, effective July 1, 2001, deleted "underground" preceding "storage tank" and "storage tanks" throughout the section; and substituted "or" for "and" preceding "the environment" in Subsection D.

A compliance order is not a limitation on the jurisdiction of the secretary. Citizen Action v. Sandia Corporation, 2008-NMCA-031, 143 N.M. 620, 179 P.3d 1228, cert. denied, 2008-NMCERT-002.

Bankruptcy Code. — The federal Bankruptcy Code, referred to in Subsection G(1), appears as Title 11 of the United States Code.

74-4-11. Penalty; criminal.

A. No person:

(1) shall knowingly transport or cause to be transported any hazardous waste identified or listed pursuant to the Hazardous Waste Act [74-4-1 NMSA 1978] to a facility that does not have a permit under that act or the federal Resource Conservation and Recovery Act of 1976;

(2) shall knowingly treat, store or dispose of any hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without having obtained a hazardous waste permit pursuant to that act or the federal Resource Conservation and Recovery Act of 1976;

(b) in knowing violation of any material condition or requirement of a hazardous waste permit; or

(c) in knowing violation of any material condition or requirement of any applicable interim status rules or standards;

(3) shall knowingly omit material information or make any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the Hazardous Waste Act;

(4) who knowingly generates, stores, treats, transports, disposes of, exports or otherwise handles any hazardous waste or used oil shall knowingly destroy, alter, conceal or fail to file any record, application, manifest, report or other document required to be maintained or filed for purposes of compliance with rules adopted and promulgated pursuant to the Hazardous Waste Act;

(5) shall knowingly transport without a manifest or cause to be transported without a manifest any hazardous waste required by rules adopted and promulgated pursuant to the Hazardous Waste Act to be accompanied by a manifest;

(6) shall knowingly export hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without the consent of the receiving country; or

(b) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export and enforcement procedures for the transportation, treatment, storage and disposal of hazardous wastes, in a manner that is not in conformance with such agreement; or

(7) shall knowingly store, treat, dispose of, transport, cause to be transported, market or otherwise handle any used oil in knowing violation of any material condition or requirement of any applicable rule adopted and promulgated pursuant to the Hazardous Waste Act.

B. Any person who violates any of the provisions of Paragraphs (1) through (7) of Subsection A of this section is guilty of a fourth degree felony and upon conviction shall be punished by a fine of not more than ten thousand dollars (\$10,000) per violation per day or by imprisonment for a definite term of not more than eighteen months or both. For a second or subsequent violation of the provisions of Paragraphs (1) through (7) of Subsection A of this section, the person is guilty of a third degree felony and shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) per violation per day or by imprisonment for not more than three years or both.

~~C. Any person who knowingly violates any rule adopted and promulgated pursuant to Subsection C of Section 74-4-4 or 74-4.4.4 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000) per violation per day or by imprisonment for a definite term of one year or both. For violations related to storage tanks, "per violation" means per tank.~~

D. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste or used oil in violation of Subsection A of this section and who knows at the time of the violation that the person creates a substantial danger of a substantial adverse environmental impact is guilty of a third degree felony if the violation causes a substantial adverse environmental impact.

E. As used in this section, a "substantial adverse environmental impact" exists when an act or omission of a person causes harm or damage:

- (1) to human beings; or
- (2) to flora, wildlife, fish or other aquatic life or water fowl; to the habitats of wildlife, fish, other aquatic life, water fowl or livestock; to agricultural crops; to any ground water or surface water; or to the lands or waters of this state where such harm or damage amounts to more than ten thousand dollars (\$10,000).

F. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste or used oil in violation of Subsection A of this section and who knows at the time of the violation that the person creates a substantial danger of death or serious bodily injury to another person is guilty of a second degree felony and shall be sentenced to a term of imprisonment not to exceed nine years or a fine not to exceed one hundred thousand dollars (\$100,000), or both. Any person, other than an individual, that knowingly transports, treats, stores, disposes of or exports any hazardous waste or used oil in violation of Subsection A of this section and knows at that time that it places an individual in imminent danger of death or serious bodily injury is guilty of a second degree felony and shall be fined in an amount not to exceed two hundred fifty thousand dollars (\$250,000).

History: 1953 Comp., § 12-9B-11, enacted by Laws 1977, ch. 313, § 11; 1981 (1st S.S.), ch. 8, § 10; 1987, ch. 179, § 9; 1989, ch. 322, § 14; 1992, ch. 43, § 8; 2001, ch. 325, § 8; 2007, ch. 267, § 1.

Resource Conservation and Recovery Act. — The federal Resource Conservation and Recovery Act, referred to in Subsection A, appears as 42 U.S.C. § 6901 et seq.

The 2001 amendment, effective July 1, 2001, deleted "underground" preceding "storage tank" in Subsection C; and made stylistic changes.

The 2007 amendment, effective July 1, 2007, adds Paragraph (7) of Subsection A to provide criminal penalties for certain transportation, treatment, storage and disposal of used oil.

74-4-12. Penalty; civil.

Any person who violates any provision of the Hazardous Waste Act [74-4-1 NMSA 1978], any rule made pursuant to that act or any compliance order issued by the director pursuant to Section 74-4-10 NMSA 1978 may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs. For violations related to storage tanks, "per violation" means per tank.

History: 1953 Comp., § 12-9B-12, enacted by Laws 1977, ch. 313, § 12; 1981 (1st S.S.), ch. 8, § 11; 1987, ch. 179, § 10; 1989, ch. 322, § 15; 2001, ch. 325, § 9.

The 2001 amendment, effective July 1, 2001, deleted "underground" preceding "storage tanks" and made a stylistic change.

74-4-13. Imminent hazards; authority of director; penalties.

A. Notwithstanding any other provision of the Hazardous Waste Act [74-4-1 NMSA 1978], whenever the secretary is in receipt of evidence that the past or current handling, storage, treatment, transportation or disposal of solid waste or hazardous waste or the condition or maintenance of a storage tank may present an imminent and substantial endangerment to health or the environment, he may bring suit in the appropriate district court to immediately restrain any person, including any past or present generator, past or present transporter or past or present owner or operator of a treatment, storage or disposal facility, who has contributed or is contributing to such activity, to take such other action as may be necessary or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual arrangement arising

~~from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The secretary may also take other action, including but not limited to issuing such orders as may be necessary to protect health and the environment.~~

B. Any person who willfully violates or fails or refuses to comply with any order of the secretary under Subsection A of this section may in an action brought in the appropriate district court to enforce such order be fined not more than five thousand dollars (\$5,000) for each day in which the violation occurs or the failure to comply continues.

C. Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the secretary shall provide immediate notice to the appropriate local government agencies. In addition, the director shall require notice of such endangerment to be promptly posted at the site where the waste is located.

History: Laws 1983, ch. 302, § 3; 1987, ch. 179, § 11; 1989, ch. 322, § 16; 2001, ch. 325, § 10.

The 2001 amendment, effective July 1, 2001, substituted "secretary" for "director" throughout the section; deleted "any"

preceding "solid waste" and "any underground" preceding "storage tank" in Subsection A.

ARTICLE 4A

Radioactive Materials

Sec.
74-4A-1. Radioactive material transport; conditions.
74-4A-6. Task force.

Sec.
74-4A-11. Committee duties.

74-4A-1. Radioactive material transport; conditions.

A. The environmental improvement board shall have exclusive authority to promulgate regulations prescribing the conditions for transport of radioactive material on the highways. Such conditions shall include the conditions of transport that the environmental improvement board finds necessary to protect the health, safety and welfare of the citizens of the state. Except as specifically preempted by federal law, the state transportation commission shall have the exclusive authority within New Mexico to designate highway routes for the transport of radioactive material. Any rule or regulation adopted by the environmental improvement board that designates highway routes for the transport of radioactive material and that was in effect prior to March 1, 1991 is deemed null and void. The state transportation commission shall incorporate into the record and consider in the initial designation of routes for the transport of radioactive material the evidentiary record from the environmental improvement board public hearings held for the purpose of receiving public comment regarding the designation of routes for the transport of radioactive material.

B. For the purposes of this section, "radioactive material" means a material or combination of materials that spontaneously emits ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material, and in which the radioactivity is essentially uniformly distributed, are not considered to be radioactive materials. "Radioactive material" includes but is not limited to:

- (1) materials associated with the operation and decommissioning of nuclear reactors and the supporting fuel cycle;
- (2) industrial radioisotope sources;
- (3) radioactive materials used in nuclear medicine;
- (4) radioactive materials used for research, education or training; and
- (5) radioactive wastes; but does not include radioactive material the regulation of which has been specifically preempted by federal law.

C. The department of environment shall have the authority to impose fines not to exceed one thousand dollars (\$1,000) as set by regulation of the environmental improvement board for a violation of the board's regulations pertaining to the transport of radioactive materials.

**EPA APPROVED NEW MEXICO REGULATORY REQUIREMENTS
APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM
December 2010**

**Title 20, Chapter 4, Part 1, New Mexico Administrative Code,
effective March 1, 2009, unless otherwise indicated**

State Citation	Description	Page
Hazardous Waste Management System: General		
20.4.1.100	Adoption of 40 CFR Part 260, as of July 1, 2008.	1
20.4.1.101	Modifications, Exceptions and Omissions to the Part 260 adoption by reference. Note: New Mexico has not adopted 260.1(b)(6), 260.20, 260.22, 260.30, 260.31, 260.32 and 260.33.	1
Identification and Listing of Hazardous Waste		
20.4.1.200	Adoption of 40 CFR Part 261, as of July 1, 2008.	1
Standards Applicable to Generators of Hazardous Waste		
20.4.1.300	Adoption of 40 CFR Part 262, as of July 1, 2008. EPA retains authority for the import/export provisions in Subparts E, F and H.	2
20.4.1.301	Modifications, exceptions, and omissions to the Part 262 adoption by reference.	2
Standards Applicable to Transporters of Hazardous Waste		
20.4.1.400	Adoption of 40 CFR Part 263, as of July 1, 2008.	2
20.4.1.401	Omission of 263.20(e) from the Part 263 adoption by reference.	2
Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities		
20.4.1.500	Adoption of 40 CFR Part 264, as of July 1, 2008. Note: At 264.12(a), EPA retains authority for receiving the required notice regarding the receipt of hazardous waste from a foreign source.	2
20.4.1.501	Omission of 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g) and 264.1080(e)-(g) from the Part 264 adoption by reference.	2-3
Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities		
20.4.1.600	Adoption of 40 CFR Part 265, as of July 1, 2008. Note: At 265.12(a), EPA retains authority for receiving the required notice regarding the receipt of hazardous waste from a foreign source.	3
20.4.1.601	Omission of 264.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f) and 265.1080(e)-(g) from the Part 265 adoption by reference.	3
Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities		
20.4.1.700	Adoption of 40 CFR Part 266, as of July 1, 2008.	4
20.4.1.701	Modifications, exceptions, and omissions to the Part 266 adoption by reference.	4
20.4.1.702	Omission of 40 CFR Part 267 from the adoption by reference.	4
Land Disposal Restrictions		
20.4.1.800	Adoption of 40 CFR Part 268, as of July 1, 2008.	4

State Citation	Description	Page
20.4.1.801	Omission of 268.5, 268.6, 268.42(b), and 268.44(a)-(g) from the Part 268 adoption by reference.	4
The Hazardous Waste Permit Program		
20.4.1.900	Adoption of 40 CFR Part 270, as of July 1, 2008.	4
20.4.1.901.B.1 through 20.4.1.901.B.7	Permitting Procedures – Permit Modifications, Suspension, and Revocation	5-6
20.4.1.901.E	Information Repository.	7
20.4.1.902	Modifications, exceptions, and omissions to the Part 270 adoption by reference.	7-8
Standards for Universal Waste Management		
20.4.1.1000	Adoption of 40 CFR Part 273, as of July 1, 2008.	8
20.4.1.1001 introductory paragraph	Modifications, Exceptions and Omissions to the Part 273 adoption by reference.	8
20.4.1.1001.A(2)	Exceptions to the use of the Federal terms “Regional Administrator” and “EPA” used in 40 CFR 273.12 and 273.32.	8
20.4.1.1001.B	Alternative universal waste labeling.	8
20.4.1.1002	Adoption of 40 CFR Part 279, as of July 1, 2008.	10
20.4.1.1003	Modifications, exceptions, and omissions to the Part 279 adoption by reference.	10-11
Miscellaneous		
20.4.1.1102, June 14, 2000	Reference to 40 CFR Part 124.	7
20.4.1.1103, October 1, 2003	Reference to 40 CFR Part 280.	6

Copies of the New Mexico regulations can be obtained from the New Mexico Commission of Public Records, State Records Center and Archives, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507; Phone: (505) 476-7907; Website: <http://www.nmcpr.state.nm.us/nmac/titles.htm>.

STATE RECORDS CENTER and ARCHIVES



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1205 Camino Carlos Rey, Santa Fe, New Mexico 87507 (505) 476-7902 Fax (505) 476-7901

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March 26, 2010

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Director, Museum of NM

CERTIFICATE

SANDRA JARAMILLO
State Records Administrator

JUDI ROSS HAZLETT
Deputy State Records
Administrator

This certifies that attached is a copy of the ENVIRONMENTAL IMPROVEMENT BOARD amendment to rule, 20.4.1 NMAC, entitled "Hazardous Waste Management", consisting of NMAC Transmittal Form and eleven (11) pages, Sections 100, 101, 200, 300, 301, 400, 401, 500, 501, 600, 601, 700, 701, 702, 800, 801, 900, 901, 902, 1000, 1001, 1002 and 1003. This document was filed as a rule with the State Records Center at 9:57 AM, January 14, 2009, under the provisions of Section 14-4-5 NMSA 1978, of the State Rules Act.

Sandra Jaramillo
State Records Administrator

A handwritten signature in cursive script, reading "Art Bransford".

Art Bransford
Administrative Law Division

SEAL

US EPA ARCHIVE DOCUMENT

Historical
NMAC TRANSMITTAL FORM

1.24.10 NMAC

Vol. XX No. 02

01/30/2009

[Sequence # 17.18] C

1. Issuing Agency Environmental Improvement Board	2. Agency Code (DFA) 667
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3. Agency Address P.O. Box 5469 - 1190 St. Francis Drive, Santa Fe, New Mexico 87502-5469

4. Contact Person Name John Kielling	Phone # (505) 476-6035	FAX (505) 476-6030
E-mail john.kielling@state.nm.us		

5. Type of Rule Action				
New ☐	Amendment ☒	Renumber ☐	Repeal ☐	Emergency ☐

6. Total number of pages 11	7. Hearing date 10/6/2008	8. Effective date 3/1/2009
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9. NMAC Number		
Title	Chapter	Part
20	4	1

10. NMAC Name		
Title	Chapter	Part
Environmental Protection	Hazardous Waste	Hazardous Waste Management

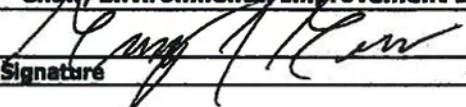
11. Amendment Description	12. Amendment's NMAC Citation
Update regulations current with July 1, 2008 federal requirements	20.4.1.100, 101, 200, 300, 400, 401, 500, 501, 600, 601, 700, 800, 801, 900, 1000, and 1002
New sections - modifications, exceptions and omissions	20.4.1.301, 701, 702, 902, 1003
Insignificant changes (e.g. clarification and corrections)	20.4.1.302, 901, 903, 1004
Adoption of universal waste modification, exceptions and omissions	20.4.1.1001 & 703

13. Most recent filing date (if applicable) 08 / 18 / 2005
--

14. Are there any materials incorporated by reference?		Reference / Internet site
No ☐	Yes ☒	
Please list attachments and Internet site(s) if applicable		1. Title 40 Code of Federal Regulations Part 260 through 265 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfrv22_02.html
		2. Title 40 Code of Federal Regulations Part 266, 268, 270, 273 and 279 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfrv23_02.html

15. If materials are attached, has copyright permission been received?		
No ☐	Yes ☐	Public domain ☒

16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply). Hazardous Waste Act 74-4-4 NMSA 1978 - Duties and powers of the [EIB] board
--

17 Signature & Title of Issuing Authority (Delegated authority must be on file)	
Name: <u>Gregory Green</u>	Check if delegated authority ☐
Title: <u>Chair, Environmental Improvement Board</u>	
Signature <u></u>	Date Signed <u>03 NOV 08</u>

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This is an amendment to 20.4.1 NMAC Sections 100, 101, 200, 300, 400, 401, 500, 501, 600, 601, 700, 800, 801, 900, 901, 1000, 1001, and 1002, adds new Sections 301, 701, 702, 902 and 1003, and rennumbers sections. It includes revisions of 40 CFR 260 through 279 date of July 1, 2008, and adopts requirements for universal waste and used oil management. This amendment is effective 3/1/2009.

20.4.1.100 ADOPTION OF 40 CFR PART 260. Except as otherwise provided, the regulations of the United States environmental protection agency ("EPA") set forth in 40 CFR Part 260 through July 1, [2002]2008 are hereby incorporated by reference.

[20.4.1.100 NMAC - Rp, 20 NMAC 4.1.101, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.101 MODIFICATIONS, [AND] EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, [and] exceptions and omissions are made to the incorporated federal regulations.

A. The following terms defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein, in lieu of the meanings set forth in 40 CFR Sections 260.10 and 270.2:

(1) "administrator" or "regional administrator" means the secretary of the New Mexico environment department or his/her designee;

(2) "act" or "RCRA" (Resource Conservation and Recovery Act, as amended) means the New Mexico Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14 (as amended).

B. The following terms not defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein when the terms are used in this part:

(1) "appropriate act or regulation" means the New Mexico Hazardous Waste Act or 20.4.1 NMAC;

(2) "board" means the environmental improvement board;

(3) "CFR" means the Code of Federal Regulations;

(4) "department" means the New Mexico environment department;

(5) "environmental protection agency" or "EPA" shall be construed to mean the New Mexico environment department except when used in the phrases "EPA hazardous waste number," "EPA identification number," "EPA region," "EPA acknowledgment of consent," "EPA test methods," and in the definitions set forth in 40 CFR Sections 260.10 and 270.2;

(6) "freedom of Information Act" or "FOIA" means NMSA 1978, Sections 14-2-1 through 14-2-12, 14-3A-1 through 14-3A-2, and 74-4-4.3D (as amended);

(7) "hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

(8) "secretary" means the secretary of the New Mexico environment department or his/her designee; and

(9) "Subtitle C of RCRA" means the New Mexico Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14 (as amended).

C. The following provisions of 40 CFR Part 260 are omitted from Section 20.4.1.100 NMAC:

(1) Section 260.1(b)(6);

(2) Section 260.20;

(3) Section 260.22;

(4) Section 260.30;

(5) Section 260.31;

(6) Section 260.32; [and]

(7) Section 260.33[-]; and

(8) Reference to 40 CFR Part 267.

D. Wherever there is any requirement in any of the federal regulations incorporated into this part to report an emergency situation, the requirement shall be construed to mean that the party required to report shall report the incident to the department via the New Mexico 24-hour emergency response number at (505) 827-9329 or such other number designated by the department.

[20.4.1.101 NMAC - Rp, 20 NMAC 4.1.102, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.200 ADOPTION OF 40 CFR PART 261. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 261 through July 1, [2002]2008 are hereby incorporated by reference.

[20.4.1.200 NMAC - Rp, 20 NMAC 4.1.200, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

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20.4.1.300 ADOPTION OF 40 CFR PART 262. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 262 through July 1, [2002]2008 are hereby incorporated by reference. ~~[The substitution of the following terms in Subparts E, F and H of 40 CFR Part 262 does not apply to Section 20.4.1.300 NMAC: "Administrator" and "Regional Administrator" for the term "Secretary" and "EPA" or "Environmental Protection Agency" for the term "Department."]~~
[20.4.1.300 NMAC - Rp, 20 NMAC 4.1.300, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.301 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations. The substitution of the following terms in Subparts E, F and H of 40 CFR Part 262 does not apply to Section 20.4.1.300 NMAC: "administrator" and "regional administrator" for the term "secretary" and "EPA" or "environmental protection agency" for the term "department."
[20.4.1.301 - 20.4.1.399 NMAC - Rp, 20 NMAC 4.1.301 - 4.1.399, 6/14/2000; 20.4.1.301 NMAC - N, 3/1/2009]

~~[20.4.1.301] 20.4.1.302 - 20.4.1.399~~ [Reserved]
[20.4.302 NMAC - 20.4.1.399 NMAC - Rn, 20.4.1.301 - 20.4.1.399 NMAC, 3/1/2009]

20.4.1.400 ADOPTION OF 40 CFR PART 263. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 263 through July 1, [2002]2008 are hereby incorporated by reference.
[20.4.1.400 NMAC - Rp, 20 NMAC 4.1.400, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.401 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporate the federal regulations. The following provision of 40 CFR Part 263 is omitted from Section 20.4.1.400 NMAC: Section 263.20(e).
[20.4.1.401 NMAC - Rp, 20 NMAC 4.1.401, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.500 ADOPTION OF 40 CFR PART 264. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 264 through July 1, [2002]2008 are hereby incorporated by reference. ~~[The substitution of "Secretary" for the term "Regional Administrator" in Section 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 264.12(a), as adopted in this section. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the Secretary at the time that notice is provided to the Regional Administrator. The substitution of "Department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 264.1082(e)(4)(ii).]~~
[20.4.1.500 NMAC - Rp, 20 NMAC 4.1.500, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.501 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporate the federal regulations.

A. The following provisions of 40 CFR Part 264 are modified in 20.4.1.500 NMAC:

- (1) ~~the substitution of "secretary" for the term "regional administrator" in 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 264.12(a), as adopted in this section; the owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the secretary at the time that notice is provided to the regional administrator;~~
- (2) the owner or operator proposing a class 1 permit modification pursuant to 40 CFR 264.15(b)(5) shall submit the request to the director as required in 40 CFR Sections 264.15(b)(5)(i) and 270.42(a);
- (3) the owner and operator shall submit the reports in 40 CFR Section 264.100(g) on a semi-annual basis to the secretary;
- (4) "qualified professional engineer" as provided for in 40 CFR Sections 264.115, 264.120, 264.143(i), 264.145(i), 264.147(e), 264.191(a), 264.191(b)(5)(ii), 264.192(a), 264.192(b), 264.193(i)(2), 264.196(f), 264.280(b), 264.554(c)(2), 264.571(a-c), 264.573(a)(4)(ii), 264.573(g), 264.574(a) and 264.1101(c)(2) shall mean an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Section 61-23-1 through 32 (as amended).

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(5) the requirements of 40 CFR Section 264.73(b) shall be maintained in the operating record by the owner and operator at his facility until closure, except for 40 CFR Sections 264.73(b)(7) and 264.73(b)(9) which shall be kept in the operating record for no less than 3 years;

(6) the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating record by the owner and operator at his facility until closure.

(7) the substitution of "department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 264.1082(c)(4)(ii).

B. The following provisions of 40 CFR Part 264 are omitted from Section 20.4.1.500 NMAC:

[A-](1) Section 264.1(f);

[B-](2) Section 264.149;

[C-](3) Section 264.150;

[D-](4) Section 264.301(1);

[E-](5) Section 264.1030(d);

[F-](6) Section 264.1050(g); and

[G-](7) Sections 264.1080(e), 264.1080(f), 264.1080(g).

[20.4.1.501 NMAC - Rp, 20 NMAC 4.1.501, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.600 ADOPTION OF 40 CFR PART 265. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 265 through July 1, [2002]2008 are hereby incorporated by reference. [~~The substitution of "Secretary" for the term "Regional Administrator" in Section 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 265.12(a), as adopted in this section. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the Secretary at the time that notice is provided to the Regional Administrator. The substitution of "Department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 265.1083(e)(4)(ii).~~]

[20.4.1.600 NMAC - Rp, 20 NMAC 4.1.600, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.601 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations:

A. The following provisions of 40 CFR Part 265 are modified in 20.4.1.600 NMAC:

(1) the substitution of "secretary" for the term " regional administrator " in 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 265.12(a), as adopted in this section. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 265.12(a) to the secretary at the time that notice is provided to the regional administrator;

(2) the owner and operator shall submit the reports in 40 CFR Section 264.100(g) on a semi-annual basis to the secretary;

(3) "qualified professional engineer" as provided for in 40 CFR Sections 265.115, 265.120, 265.143(h), 265.145(h), 265.147(e), 265.191(a), 265.191(b)(5)(ii), 265.192(a), 265.192(b), 265.193(i)(2), 264.196(f), 265.280(e), 265.441(a) through (c), 265.443(a)(4)(ii), 265.443(g), 265.444(a) and 264.1101(c)(2) shall mean an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Section 61-23-1 through 32 (as amended);

(4) the requirements of 40 CFR 265.73(b) shall be maintained in the operating record by the owner and operator at his facility until closure;

(5) the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating record by the owner and operator at his facility until closure.

(6) the substitution of "department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 265.1083(c)(4)(ii).

B. The following provisions of 40 CFR Part 265 are omitted from Section 20.4.1.600 NMAC:

[A-](1) Section 265.1(c)(4);

[B-](2) Section 265.149;

[C-](3) Section 265.150;

[D-](4) Section 265.1030(c);

[E-](5) Section 265.1050(f); and

[F-](6) Sections 265.1080(e), 265.1080(f), 265.1080(g).

[20.4.1.601 NMAC - Rp, 20 NMAC 4.1.601, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

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20.4.1.700 ADOPTION OF 40 CFR PART 266. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 266 through July 1, [2002]2008 are hereby incorporated by reference. [20.4.1.700 NMAC - Rp, 20 NMAC 4.1.700, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.701 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations. The provision of 40 CFR Section 266.102(e)(10) are modified in 20.4.1.700 NMAC and shall be maintained in the operating record by the owner and operator at his facility until closure. [20.4.1.701 NMAC - N, 3/1/2009]

20.4.1.702 OMISSION OF 40 CFR PART 267. The provisions of and any reference to 40 CFR Part 267 are omitted from these regulations. [20.4.1.702 NMAC - N, 3/1/2009]

~~[20.4.1.701] 20.4.1.703 - 20.4.1.799 [Reserved]~~
~~{20.4.1.701 - 20.4.1.799 NMAC - Rp, 20 NMAC 4.1.701 - 4.1.799, 6/14/2000; 20.4.1.703 - 20.4.1.799 NMAC - Rn, 20.4.1.701 - 20.4.1.799 NMAC, 3/1/2009}~~

20.4.1.800 ADOPTION OF 40 CFR PART 268. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 268 through July 1, [2002]2008 are hereby incorporated by reference. [The substitution of "Department" for the term "EPA" in Section 20.4.1.101 NMAC does not apply to 40 CFR Section 268.1(e)(3), as adopted in this section.] [20.4.1.800 NMAC - Rp, 20 NMAC 4.1.800, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.801 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. The substitution of "department" for the term "EPA" in 20.4.1.101 NMAC does not apply to 40 CFR Section 268.1(e)(3), as adopted in this section.

B. The following provisions of 40 CFR Part 268 are omitted from Section 20.4.1.800 NMAC:

- ~~[A-](1)~~ Section 268.5;
- ~~[B-](2)~~ Section 268.6;
- ~~[C-](3)~~ Section 268.42(b); and
- ~~[D-](4)~~ Section 268.44(a) through 264.44(g).

[20.4.1.801 NMAC - Rp, 20 NMAC 4.1.801, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.900 ADOPTION OF 40 CFR PART 270. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 270 through July 1, [2002]2008 are hereby incorporated by reference. [The substitution of the terms "EPA," "Regional Administrator" and "Administrator" in Section 20.4.1.101 NMAC does not apply to 40 CFR Sections 270.5, 270.10(f)(2)&(3), 270.10 (g)(1)(i), 270.11 (a) (3), 270.32(e), 270.72(a)(5), and 270.72(b)(5), as adopted in this section.]

[20.4.1.900 NMAC - Rp, 20 NMAC 4.1.900, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.901 PERMITTING PROCEDURES

A. Permit Issuance or Denial.

(1) Once an application is determined to be administratively and technically complete, the secretary shall prepare and issue either a draft permit or a notice of intent to deny.

(a) A draft permit shall contain all conditions, compliance schedules, monitoring requirements and technical standards for treatment, storage, and/or disposal provided for in 40 CFR Part 270.

(b) A notice of intent to deny shall state the secretary's reasons for the intended denial.

(2) Any draft permit or notice of intent to deny prepared by the department under Paragraph (1) of this subsection shall be accompanied by a fact sheet and shall be based on the administrative file. Copies of the fact sheet shall be sent to the applicant; to any state or federal agency, as applicable; and, upon request, to any other person.

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~~(3) The secretary shall give public notice that a draft permit or a notice of intent to deny has been prepared, and shall allow forty-five (45) days for review and public comment, including requests for public hearing.~~

~~(4) If the secretary issues a draft permit, and a timely written notice of opposition to the draft permit and a request for a public hearing is received, the department, acting in conjunction with the applicant, will respond to the request in an attempt to resolve the issues giving rise to the opposition. If such issues are resolved to the satisfaction of the opponent, the opponent may withdraw the request for a public hearing.~~

~~(5) No ruling shall be made on permit issuance or denial without an opportunity for a public hearing, at which all interested persons shall be given a reasonable chance to submit significant data, views or arguments orally or in writing and to examine witnesses testifying at the public hearing. A public hearing shall be scheduled if:~~

~~(a) the secretary issues a notice of intent to deny, and a timely request for public hearing is received from the applicant;~~

~~(b) the secretary issues a draft permit, a timely request for public hearing is received from any person opposed to the granting of a permit, and such person does not subsequently withdraw the request pursuant to Paragraph (4) of this subsection; or~~

~~(c) the secretary determines, no later than five (5) days following the end of the comment period specified in Paragraph (4) of this subsection, that a public hearing should be held notwithstanding the absence of a timely request for public hearing.~~

~~(6) The comment period specified in Paragraph (3) of this subsection shall automatically be extended to the close of any public hearing.~~

~~(7) The secretary shall give due consideration and the weight he/she deems appropriate to all comments received during a public comment period and to all relevant facts and circumstances presented at a public hearing.~~

~~(8) When ruling on permit issuance or denial, the secretary may disapprove in whole or in part, or make reasonable conditions to any permit, if it appears that the permit applied for will not meet the requirements of these regulations.~~

~~(9) At the time that any final permit decision is issued, the secretary shall issue a response to comments. This response shall:~~

~~(a) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change;~~

~~(b) briefly describe and respond to all comments on the draft permit or the permit application raised during the public comment period, or during any hearing, and~~

~~(c) be available to the public.~~

~~(10) A final permit decision shall become effective thirty (30) days after notice of the decision has been served on the applicant, or such later time as the secretary may specify. This provision shall not be construed to extend the time for appeal of a permit decision as provided by the Hazardous Waste Act.~~

~~(11) The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations.~~

~~(12) The secretary shall notify the applicant by certified mail of any impending permit action and of any scheduled public hearing date.~~

B. Permit Modifications, Suspension and Revocation.

(1) The secretary may modify, suspend, or revoke a permit issued pursuant to Subsection A of this section for cause set forth in 40 CFR Part 270 and the act.

(2) The secretary may modify, suspend, revoke any permit upon his/her initiative, or if, after the department's investigation of the facts and circumstances, pursuant to the request of any interested person, such permit action is deemed warranted.

(3) Requests for permit modification, suspension, revocation shall be in writing and shall contain facts or reasons supporting the request.

(4) If the secretary decides that the request is not justified, the permittee will be notified in writing explaining the reason for denial. Denial of request of modification, revocation, and reissuance, or termination are not subject to public notice, comment, or hearings.

(5) If the secretary decides to modify or revoke and reissue a permit under 40 CFR section 270.41 or 40 CFR section 270.42(c), considered a major modification under the act, a draft permit shall be prepared incorporating the proposed changes. The secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit the secretary shall require the submission of a new application.

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(6) Class 1 and 2 modifications under 40 CFR 270.42(a) and (b) shall be considered minor permit modifications under the act.

~~[(6)](7)~~ In a permit modification under this section, only those conditions to be modified shall be reopened. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and were being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the exiting permit until a new final permit is reissued.

~~[(7)](8)~~ If the secretary decides to terminate a permit under 40 CFR section 270.43, a notice of intent to terminate shall be issued. The secretary shall follow the applicable procedures as required for a draft permit under Section 20.4.1.901 NMAC.

C. Public Notices.

(1) Pre-application public meeting and notice. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR Section 124.31 through July 1, [2002]2008 is hereby incorporated by reference.

(2) Public notice requirements at the application stage. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.32 through July 1, [2002]2008 is hereby incorporated by reference.

(3) Public notice of issuance of a draft permit or a notice of intent to deny, and of any public hearing scheduled, shall be given by publication of a notice in a newspaper of general circulation in the area affected, broadcasts over local radio stations and by mailing a copy of the notice to the permit applicant, those individuals on the department mailing list of persons interested in hazardous waste permit actions, and to any unit of local, state and federal government as may be applicable.

(4) All public notices issued shall contain the following minimum information:

- (a) the subject, the time and place of any scheduled hearing and the manner in which interested persons may present their views;
- (b) a brief description of the procedures by which requests for hearings may be made, unless already scheduled;
- (c) the name and address of the office processing the permit action for which notice is being given;
- (d) the name and address of the permittee or permit applicant, and, if different, of the facility or activity regulated by the permit;
- (e) a brief description of the business conducted at the facility or activity described in the permit application or the draft permit;
- (f) the name, address and telephone number of a person from whom interested persons may obtain further information;
- (g) in addition, public notice of a scheduled public hearing shall also contain references to the dates of previous public notices relating to the permit;
- (h) the notice shall state where interested persons may secure copies of any proposed draft permit or notice of intent to deny.

D. Fact Sheet.

(1) A fact sheet shall be prepared for every draft permit for a hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit.

(2) The fact sheet shall include, when applicable:

- (a) a brief description of the type of facility or activity which is the subject of the draft permit;
- (b) the type and quantity of wastes which are proposed to be or are being treated, stored, disposed, injected, emitted, or discharged;
- (c) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
- (d) reasons why any request for variance or alternative to require standards do or do not appear justified;
- (e) a description of the procedures for reaching a final decision on the draft permit including:
 - (i) the beginning and ending dates of the comment period and the address where comments will be received;
 - (ii) procedures for requesting a hearing and the nature of that hearing; and
 - (iii) any other procedures by which the public may participate in the final decision;
 - (iv) name and telephone number of a person to contact for additional information.

~~(3) The fact sheet shall be available at the time the public notice is published.~~

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E. Information repository. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.33 through July 1, [2002]2008 is hereby incorporated by reference.

F. Hearings.

(1) Public notice of any public hearing shall be given at least thirty (30) days prior to the scheduled date of the hearing and shall state the subject.

(2) Hearings shall be held in Santa Fe or within any area of the state substantially affected by the proceedings as specified by the secretary.

(3) The secretary may designate a hearing officer to take evidence at the hearing.

(4) All hearings shall be recorded by a certified court reporter. A transcript will be furnished to all persons for review at the department's main office. Costs of a copy of a transcript will be borne by those requesting such copies.

(5) In hearings, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition.

(a) Testimony for hearings on permit issuance or modification shall be presented in the following order:

(i) testimony by the applicant (such testimony is a prerequisite to the granting of the requested permit or modification);

(ii) testimony by other persons (except the department) supporting issuance or modification of the permit, in any reasonable order;

(iii) testimony by persons (except the department) opposed to issuance or modification of the permit, in any reasonable order;

(iv) testimony by the department; and

(v) rebuttal testimony, as appropriate.

(b) Testimony for hearings on permit suspension or revocation shall be as follows:

(i) testimony by the department;

(ii) testimony by other persons supporting suspension or revocation of the permit, in any reasonable order;

(iii) testimony by the permittee;

(iv) testimony by other persons opposed to suspension or revocation of the permit, in any reasonable order; and

(v) rebuttal testimony, as appropriate.

(c) In all hearings, cross examination of each witness shall be conducted by interested persons, in any reasonable order, immediately after that witness has testified.

(7) The burden of proof at hearings shall be as follows:

(a) for hearings on permit issuance or modifications, the burden of proof shall be on the applicant or permittee;

(b) for hearings on permit suspension or revocation, the burden of proof shall be on the department.

G. Secretary's Decision.

(1) Any person heard or represented at the hearing shall be given written notice of the action of the secretary.

(2) The secretary shall notify the applicant or permittee of his/her decision and the reasons therefore by certified mail.

H. Appeals. Appeals of the secretary's decision shall be as provided by the Hazardous Waste Act.

(1) The filing of an appeal does not act as a stay of any action required by the secretary's decision.

(2) The record on appeal shall include the transcript of the hearing, all related correspondence, any responses to comments, and all other information relied upon by the secretary in deciding upon the permit action. [20.4.1.901 NMAC - Rp, 20 NMAC 4.1.901, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.902 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. "Qualified professional engineer" as provided for in 40 CFR Sections 270.14(a), 270.16(a), and 270.26(c)(15) shall mean an independent New Mexico licensed professional engineer. A professional engineer shall abide by all requirements of the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Section 61-23-1 through 32 (as amended) and applicable regulations.

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B. The substitution of the terms "EPA," "regional administrator" and "administrator" in 20.4.1.101 NMAC does not apply to 40 CFR Sections 270.5, 270.10(f)(2)&(3), 270.10 (g)(1)(i), 270.11 (a) (3), 270.32(c), 270.72(a)(5), and 270.72(b)(5), as adopted in this section.

C. The following provisions of 40 CFR Part 270 are omitted from 20.4.1.900 NMAC:

- (1) statement in Section 270.1(b), "treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part.";
 - (2) Sections 270.1(b)(1) and 270.1(b)(2);
 - (3) "and standardized permit (subpart J of this part)" in the definition of "permit" in Section 270.2;
 - (4) definition of "standardized permit" in Section 270.2;
 - (5) Section 270.10(a)(6);
 - (6) Section 270.10(h)(2);
 - (7) portion of the first sentence stating "or as a routine change with prior approval under 40 CFR 124.213" of Section 270.40(b);
 - (8) Section 270.41 referencing 270.320 and 40 CFR part 124, subpart G;
 - (9) Section 270.41(b)(3);
 - (10) Section 270.51(e); and
 - (11) Section 270, subpart J.
- [20.4.1.902 NMAC - N, 3/1/2009]

~~[20.4.1.902] 20.4.1.903 - 20.4.1.999 [Reserved]~~

~~[20.4.1.902 - 20.4.1.999 NMAC - Rp, 20 NMAC 4.1.902 - 4.1.999, 6/14/2000; 20.4.1.903 - 20.4.1.999 NMAC - Rn, 20.4.1.902 - 20.4.1.999 NMAC, 3/1/2009]~~

20.4.1.1000 ADOPTION OF 40 CFR PART 273. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 273 through July 1, [2002]2008 are hereby incorporated by reference.
[20.4.1.1000 NMAC - Rp, 20 NMAC 4.1.1000, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.1001 MODIFICATIONS, [AND] EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. The following terms have the meanings set forth herein.

- (1) "Aerosol can" means a container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.
- (2) [The term] "Regional administrator" and "EPA" as used in 40 CFR sections 273.12 and 273.32 shall mean, as applicable to [generators]handlers of universal waste pesticides under this part, notification to the secretary of the New Mexico department of agriculture.
- (3) "Universal waste" means, in addition to the hazardous wastes listed in 40 CFR Section 273.9, aerosol cans as described in this subsection.

B. Alternative universal waste labeling. As an alternative to the labeling requirements for universal waste in 40 CFR sections 273.14 and 273.34, universal waste handlers may use other words that accurately identify the universal waste material, for example, "spent bulbs" or "batteries for recycling." Note that the labeling must be either on the individual piece of universal waste, on the container in which the universal waste is stored, or on a pallet of banded or otherwise bound universal waste being readied for shipment.

C. Breaking and crushing universal waste lamps. In addition to the requirements for universal waste lamps contained in Subparts B and C of 40 CFR Part 273, the following requirements shall apply.

(1) A handler of universal waste may intentionally break or crush lamps to reduce their volume to facilitate management or transport to destination facilities. However, breaking and crushing of lamps and subsequent management of the resulting waste must occur in a safe and controlled manner that minimizes the release of hazardous constituents to the workplace and the environment, and steps must be taken to minimize exposures of children, pregnant women, and other sensitive individuals to mercury releases from these activities. Universal waste destination facilities as defined in 40 CFR Section 273.9 may not intentionally break or crush lamps under this subsection.

(2) A handler of universal waste who intentionally breaks or crushes mercury-containing universal waste lamps under this subsection shall comply with the following provisions.

(a) Use a mechanical unit specifically designed for the process that results in the breaking or crushing operation to take place in a container or while the lamps are being added to the container, for example, a

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drum-top lamp crusher. The unit must also incorporate air pollution controls that capture both particulate and vapor phase mercury. At a minimum, these controls must include, or must be equivalent to, the protection provided by a high efficiency particulate air (HEPA) filter, activated charcoal, and a negative air flow (vacuum) through the unit. The unit must have documentation from the manufacturer that demonstrates that the unit is capable of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury.

(b) Develop and implement a written procedure specifying how to safely break or crush universal waste lamps. This procedure must include: type of equipment to be used to break or crush the lamps, operation and maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment, safe work practices, decontamination and spill response practices, and proper waste management practices. The handler must document maintenance activities and keep records of maintenance. In addition, the unit operator(s) and assistant(s) must receive training applicable to their duties relating to breaking and crushing operations, waste handling, area and equipment decontamination, spill response, and emergency procedures; this training must be documented.

(c) Ensure that the area in which the lamps are broken or crushed is well ventilated and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

(d) Ensure that spills of the contents of the universal waste lamps that may occur during breaking or crushing operations are cleaned up in accordance with 40 CFR sections 273.13 or 273.33. A spill clean-up kit must be readily available to immediately clean up spills or leaks of the contents of the universal waste lamps which may occur during lamp breaking or crushing operations.

(e) Store the broken and crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury in closed, non-leaking containers that are in good condition. Transfer of the broken or crushed lamps to other containers is not permitted unless the area is well ventilated and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

(f) Label drums or containers used for storage of broken or crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury with the words "universal waste-lamps," "waste lamps," "used lamps," or other words that accurately identify the contents, for example, "crushed bulbs."

(g) Manage residues, filter media, or other solid waste generated as part of the breaking or crushing operation that are not being reclaimed and that exhibit any characteristics of a hazardous waste identified in Subpart C of 40 CFR Part 261 in accordance with all applicable requirements of this part.

(3) The owner or operator of a unit that breaks or crushes mercury-containing universal waste lamps must notify the department's hazardous waste bureau of its intent to operate the unit. The notification shall include the owner and operator name(s), address(es), and phone number(s); manufacturer's documentation describing the unit; documentation that demonstrates that the unit is capable of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury; and a description of how and where the unit will be operated.

(a) For units in operation before the requirements in this subsection became effective, the owner or operator must submit such notification within 90 days of the effective date of this requirement.

(b) For units not in operation before the effective date of the requirements in this subsection, the owner or operator must submit such notification before operating the unit.

D. Universal waste aerosol cans. In addition to the requirements for universal waste contained in 40 CFR Part 273, the following requirements shall apply.

(1) Applicability. The requirements of this part apply to persons managing aerosol cans as described in Subsection A of this section, except persons managing the following aerosol cans.

(a) Aerosol cans that are not yet wastes under this part, including those that do not meet the criteria for waste generation in Subparagraph (c) of Paragraph (2) of this subsection.

(b) Aerosol cans that are not hazardous waste. An aerosol can must be managed as a hazardous waste if its contents exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261.

(c) Generation of waste aerosol cans. An aerosol can becomes a waste on the date it is discarded or is no longer useable. For purposes of this part, an aerosol can is considered to be no longer useable when the can is as empty as proper work practices allow, the spray mechanism no longer operates as designed, the propellant is spent, or the product is no longer used. An unused aerosol can becomes a waste on the date the handler decides to discard it. This section does not apply to aerosol cans, including punctured aerosol cans, that are empty as defined in 40 CFR 261.7(b).

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(2) Waste management. A handler of universal waste must manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste to the environment as follows.

(a) A handler of universal waste must immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(b) A handler of universal waste may accumulate universal waste aerosol cans in an accumulation container provided it is clearly marked for such use. The accumulation container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans must be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) Puncturing universal waste aerosol cans. A handler of universal waste may puncture aerosol cans containing hazardous waste under this part to remove and collect the contents of the aerosol cans provided the handler complies with the following provisions.

(a) Ensure that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste to the environment.

(b) Ensure that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture aerosol cans. This procedure must include the type of equipment to be used to puncture the aerosol cans, operation and maintenance of the unit, safe work practices, and proper waste management practices.

(c) Ensure that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the aerosol can which may occur during the can-puncturing operation.

(d) Immediately transfers the contents of the aerosol can, or puncturing device if applicable, to a container that meets the requirements of 40 CFR Section 262.34.

(e) Ensure that the area in which the aerosol cans are punctured is well ventilated.

(f) Ensure that employees are thoroughly familiar with the procedure for sorting and puncturing aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(g) Determine whether the contents of the aerosol can, residues, and other solid wastes generated from the aerosol can puncturing activities are a hazardous waste identified in this part.

(h) Manage the contents of the universal waste aerosol can, residues, and other solid waste generated from the aerosol can puncturing activities in accordance with all applicable hazardous waste management requirements if they exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261. The handler is considered the generator of the contents of the universal waste aerosol can and other solid waste generated from the aerosol can puncturing activities. If the contents of the universal waste aerosol can, residues, or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

(4) Labeling or marking. Each universal waste aerosol can, or each container in which universal waste aerosol cans are contained or accumulated, must be labeled or marked clearly with any one of the following phrases: "universal waste-aerosol can(s)", "waste aerosol can(s)", or other words that accurately identify the contents, for example, "spent aerosol can(s)".

[20.4.1.1001 NMAC - Rp, 20 NMAC 4.1.1001, 6/14/2000; A, 3/1/2009]

20.4.1.1002 ADOPTION OF 40 CFR PART 279. Except as otherwise provided, the regulations of the United States environmental protection agency set forth in 40 CFR Part 279 through July 1, [2002]2008 are hereby incorporated by reference.

[20.4.1.1002 NMAC - N, 10/01/2003; A, 3/1/2009]

20.4.1.1003 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. Alternative used oil labeling for generators. As an alternative to the labeling requirements for containers and aboveground tanks used to store used oil in 40 CFR Section 279.22, used oil generators may use other words that accurately identify the used oil, for example, "waste oil" or "oil for recycling."

B. Used oil storage.

2009 JAN 14 AM 9:57

(1) In addition to the requirements for used oil storage in 40 CFR Section 279.22, containers and aboveground tanks used to store used oil outdoors must be closed, except when it is necessary to add or remove used oil.

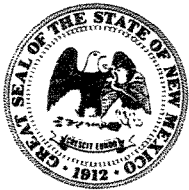
(2) With the exception of the response to releases requirements in 40 CFR 279.22(d), this section does not apply to used oil storage containers used temporarily in the normal course of maintenance and service activities where these containers are emptied at the end of each work day or shift.

[20.4.1.1003 NMAC - N, 3/1/2009]

~~[20.4.1.1003] 20.4.1.1004 - 20.4.1.1099 [Reserved]~~

~~[20.4.1.1002 - 20.4.1.1099 - Rp, 20 NMAC 4.1.1002 - 4.1.1100, 6/14/2000; A, 10/01/2003; 20.4.1.1004 -~~

~~20.4.1.1099 NMAC - Rn, 20.4.1.1003 - 20.4.1.1099 NMAC, 3/1/2009]~~



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HON. GARY KING
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HON. MARY HERRERA
Secretary of State

August 24, 2007

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State Records Administrator

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*Deputy State Records
Administrator*

CERTIFICATE

This certifies that attached is a copy of the ENVIRONMENTAL IMPROVEMENT BOARD, rule, 20.4.1 NMAC, entitled "Hazardous Waste Management", consisting of NMAC Transmittal Form and seven (7) pages. This document was filed as a rule with the State Records Center at 9:47 AM, August 18, 2003, under the provisions of Section 14-4-5 NMSA 1978, of the State Rules Act.

Sandra Jaramillo
State Records Administrator

Art Bransford
Administrative Law Division

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US EPA ARCHIVE DOCUMENT

2003 AUG 18 AM 9:47

Historical
NMAC TRANSMITTAL FORM

1.24.10 NMAC

Vol. XIV No. 16 - 8/29/2003[Sequence # *17.17* 1 *C*]

1. Issuing Agency	2. Agency Code (DFA)
New Mexico Environment Department <i>Environmental Improvement Board</i>	667

3. Agency Address
P.O. Box 26110 Santa Fe, New Mexico 87502

4. Contact Person		
Name Chuck Noble	Phone # (505) 827-0127	FAX (505) 827-1628
E-mail chuck_noble@nmenv.state.nm.us		

5. Type of Rule/Action
New ☐ Amendment ☒ Renummer ☐ Repeal ☐ Emergency ☐

6. Total number of pages: <i>79</i>	7. Hearing date: July 1, 2003	8. Effective date: Oct. 1, 2003
-------------------------------------	-------------------------------	---------------------------------

9. NMAC Number		
Title	Chapter	Part
20	4	1

10. NMAC Name		
Title	Chapter	Part
Environmental Protection	Hazardous Waste	Hazardous Waste Management

11. Amendment Description	12. Amendment's NMAC Citation
Update regulations current with July 1, 2002 federal requirements	20.4.1.100, 200, 300, 400, 500, 600, 700, 800, 900, 1000, and 1002
Insignificant changes (e.g. clarification and corrections)	20.4.101.C, 200, 300, 400, 401, 500, 501, 600, 601, 700, 800, 801, 900, 901, 1000, 1103, and 1107
Adoption of 40 CFR Part 279 - Used Oil Regulations are incorporated by reference to the federal regulations	20.4.1002

13. Most recent filing date (if applicable)
7-14-2000 05-15-2000

14. Are there any materials incorporated by reference?	
No ☐ Yes ☒	Reference / Internet site
<i>Please list attachments and Internet site(s) if applicable</i>	1. Title 40 Code of Federal Regulations Part 260 through 265 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfrv22_02.html
	2. Title 40 Code of Federal Regulations Part 266, 268, 270, 273 and 279 http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfrv23_02.html
	3.

15. If materials are attached, has copyright permission been received?		
No ☐	Yes ☐	Public domain ☒

2003 AUG 18 AM 9:47

16. Legal citation(s) that allows the *Issuing Agency* to regulate and the *Issuing Authority* to promulgate regulations on this subject (provide all that apply).

Hazardous Waste Act 74-4-4 NMSA 1978 - Duties and powers of the [EIB] board

17. Signature & Title of Issuing Authority: (*Delegated authority must be on file*)

Name: Gay Dillingham

Check if delegated
authority ☐

Title: Chair, Environmental Improvement Board

Signature

Gay Dillingham

Date Signed

8/5/03

2003 AUG 18 AM 9:47

~~(5) In hearings, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition.~~

~~(a) Testimony for hearings on permit issuance or modification shall be presented in the following order:~~

~~(i) testimony by the applicant (such testimony is a prerequisite to the granting of the requested permit or modification);~~

~~(ii) testimony by other persons (except the Department) supporting issuance or modification of the permit, in any reasonable order;~~

~~(iii) testimony by persons (except the Department) opposed to issuance or modification of the permit, in any reasonable order;~~

~~(iv) testimony by the Department; and~~

~~(v) rebuttal testimony, as appropriate.~~

~~(b) Testimony for hearings on permit suspension or revocation shall be as follows:~~

~~(i) testimony by the Department;~~

~~(ii) testimony by other persons supporting suspension or revocation of the permit, in any reasonable order;~~

~~(iii) testimony by the permittee;~~

~~(iv) testimony by other persons~~

~~opposed to suspension or revocation of the permit, in any reasonable order; and~~

~~(v) rebuttal testimony, as appropriate.~~

~~(c) In all hearings, cross examination of each witness shall be conducted by interested persons, in any reasonable order, immediately after that witness has testified.~~

~~(7) The burden of proof at hearings shall be as follows:~~

~~(a) For hearings on permit issuance or modifications, the burden of proof shall be on the applicant or permittee.~~

~~(b) For hearings on permit suspension or revocation, the burden of proof shall be on the Department.~~

~~G. Secretary's Decision.~~

~~(1) Any person heard or represented at the hearing shall be given written notice of the action of the Secretary.~~

~~(2) The Secretary shall notify the applicant or permittee of his/her decision and the reasons therefore by certified mail.~~

~~H. Appeals. Appeals of the Secretary's decision shall be as provided by the Hazardous Waste Act.~~

~~(1) The filing of an appeal does not act as a stay of any action required by the Secretary's decision.~~

~~(2) The record on appeal shall include the transcript of the hearing, all related correspondence, any responses to comments, and all other information relied upon by the Secretary in deciding upon the permit action.~~

~~[20.4.1.901 NMAC - Rp 20 NMAC 4.1.901, 6/14/2000; A, 10/01/2003]~~

~~20.4.1.1000 ADOPTION OF 40 CFR PART 273. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 273 through July 1, [1999]2002 are hereby incorporated [as Subpart X of this Part]by reference.~~

~~[20.4.1.1000 NMAC - Rp 20 NMAC 4.1.1000, 6/14/2000; A, 10/01/2003]~~

~~20.4.1.1002 ADOPTION OF 40 CFR PART 279. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 279 through July 1, 2002 are hereby incorporated by reference.~~

~~[20.4.1.1002 NMAC - N, 10/01/2003]~~

~~[20.4.1.1002]20.4.1.1003 - 20.4.1.1099 [Reserved]~~

~~[20.4.1.1002 - 20.4.1.1099 - Rp 20 NMAC 4.1.1002 - 4.1.1100, 6/14/2000; A, 10/01/2003]~~

20.4.1.1103 REFERENCE TO 40 CFR PART 280. Reference to any provisions of 40 CFR Part 280 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the New Mexico Underground Storage Tank Regulations, [20 NMAC 5.1 - 5.16]20.5.1 through 20.5.17 NMAC.

[20.4.1.1103 NMAC - Rp 20 NMAC 4.1.1104, 6/14/2000; A, 10/01/2003]



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CERTIFICATE

This certifies that attached is a copy of the ENVIRONMENTAL IMPROVEMENT BOARD, rule, 20.4.1 NMAC, entitled "Hazardous Waste Management", consisting of NMAC Transmittal Form and eight (8) pages. This document was filed as a rule with the State Records Center at 2:42 PM, May 15, 2000, under the provisions of Section 14-4-5 NMSA 1978, of the State Rules Act.

Sandra Jaramillo
State Records Administrator

Art Bransford
Administrative Law Division

SEAL

US EPA ARCHIVE DOCUMENT

2000 MAY 15 PM 2:42

NMAC TRANSMITTAL FORM

1 NMAC 3.3.10.22

Vol. XI, No. 10

Historical [Sequence No. 17.16] C

1. Agency Name & Mailing Address

Environmental Improvement Board
New Mexico Environment Department
P.O. Box 26110
Santa Fe, New Mexico 87502-6110

2. Agency Account Code

667

3. Type of Rule Action

New ☒ Emergency ☐
Amending ☐ Repealing ☐

4. NMAC Title Name

Environmental Protection

NMAC Title Number

20

5. NMAC Chapter Name

Hazardous Waste

NMAC Chapter Number

4

6. NMAC Part Name

Hazardous Waste Management

NMAC Part Number

1

7. Modified NMAC Name

Modified NMAC Number

Filing Date (if applicable)

8. Are there any materials incorporated by reference?

No ☐Yes ☒Please list attachments
and Internet site(s) if
applicable

Reference / Internet site

1. 40 CFR Parts 260-265 (1999)

2. 40 CFR Parts 266-299 (1999)

3. 40 CFR sections 124.31-33 (1999)

9. If materials are attached, have copyright permissions been received?

No ☐Yes ☐Public domain ☒

10. Total Number of Pages: 8

11. Hearing Date of Rule: 4/14/2000

12. Effective Date of Rule: 6/14/2000

13. Contact Person: Tannis L. Fox

Phone Number: (505) 827-2855

14. Signature & Title of Issuing Authority

Name: Jimi S. Gadzia

Title: Chair, Environmental Improvement Board

Signature

Date Signed

2000 MAY 15 PM 2:42

~~in any reasonable order, immediately after that witness has testified.~~

(7) The burden of proof at hearings shall be as follows:

(a) For hearings on permit issuance or modifications, the burden of proof shall be on the applicant or permittee.

(b) For hearings on permit suspension or revocation, the burden of proof shall be on the Department.

G. Secretary's Decision.

(1) Any person heard or represented at the hearing shall be given written notice of the action of the Secretary.

(2) The Secretary shall notify the applicant or permittee of his/her decision and the reasons therefore by certified mail.

H. Appeals. Appeals of the Secretary's decision shall be as provided by the Hazardous Waste Act.

(1) The filing of an appeal does not act as a stay of any action required by the Secretary's decision.

(2) The record on appeal shall include the transcript of the hearing, all related correspondence, any responses to comments, and all other information relied upon by the Secretary in deciding upon the permit action. [20.4.1.901 NMAC - Rp 20 NMAC 4.1.901, 6/14/2000]

20.4.1.902 - 20.4.1.999 [Reserved]

[20.4.1.902 - 20.4.1.999 - Rp 20 NMAC 4.1.902 - 4.1.999, 6/14/2000]

20.4.1.1000 **ADOPTION OF 40 CFR PART 273.** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 273 through July 1, 1999 are hereby incorporated as Subpart X of this Part.

~~[20.4.1.1000 NMAC - Rp 20 NMAC 4.1.1000, 6/14/2000]~~

20.4.1.1001 **MODIFICATIONS AND EXCEPTIONS.** The term "Regional Administrator" and "EPA" as used in 40 CFR sections 273.12 and 273.32 shall mean, as applicable to generators of universal waste pesticides under this Part, notification to the Secretary of the New Mexico Department of Agriculture.

[20.4.1.1001 NMAC - Rp 20 NMAC 4.1.1001, 6/14/2000]

~~20.4.1.1002 - 20.4.1.1099 [Reserved]~~

~~[20.4.1.1002 - 20.4.1.1099 - Rp 20 NMAC 4.1.1002 - 4.1.1100, 6/14/2000]~~

20.4.1.1100 **COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this Part does not relieve a person of the obligation to comply with all other applicable state and federal regulations. If the EPA should suspend any federal hazardous waste regulation having a direct counterpart to these regulations, the counterpart in these regulations shall be deemed suspended without any further action being taken.

[20.4.1.1100 NMAC - Rp 20 NMAC 4.1.1001, 6/14/2000]

20.4.1.1101 **CONSTRUCTION.** This Part shall be liberally construed to effectuate the purpose of the Act.

~~[20.4.1.1101 NMAC - Rp 20 NMAC 4.1.1102, 6/14/2000]~~

20.4.1.1102 **REFERENCE TO 40 CFR PART 124.** Reference to any provisions of 40 CFR Part 124 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the corresponding provision of section 901 of this Part with the exception of any reference to 40 CFR sections 124.31 through 124.33 and any reference to any section of 40 CFR Part 124 that is contained within 40 CFR sections 124.31 through 124.33.

[20.4.1.1102 NMAC - Rp 20 NMAC 4.1.1103, 6/14/2000]

~~20.4.1.1103 **REFERENCE TO 40 CFR PART 280.** Reference to any provisions of 40 CFR Part 280 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the New Mexico Underground Storage Tank Regulations, 20 NMAC 5.1 - 5.16.~~

~~[20.4.1.1103 NMAC - Rp 20 NMAC 4.1.1104, 6/14/2000]~~

20.4.1.1104 **SEVERABILITY.** If any provision or application of this Part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

~~[20.4.1.1104 NMAC - Rp 20 NMAC 4.1.1105, 6/14/2000]~~