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1988 REPLACEMENT PAMPHLET

This pamphlet includes laws enacted through the Second Special Session of the Thirty-Eighth Legislature (1988) and annotations through 748 P.2d 306, 108 S. Ct. 766, 836 F.2d 1348, 675 F. Supp. 1374, 118 F.R.D. 188, and 81 Bankr. 168.

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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.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Governmental recovery of cost of hazardous waste removal under Comprehensive Environmental Re-

sponse, Compensation, and Liability Act (42 USCS §§ 9601 et seq.), 70 A.L.R. Fed. 329.

State or local regulation of toxic substances as preempted by Toxic Substances Control Act (15 USCS §§ 2601 et seq.), 84 A.L.R. Fed. 913.

74-4-2. Purpose.

The purpose of the Hazardous Waste Act [this article] 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 [this article]:

- A. "agency" means the environmental improvement division of the health and environment department;
- B. "board" means the environmental improvement board;
- C. "director" means the director of the agency;
- D. "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;
- E. "generator" means any person producing hazardous waste;
- F. "hazardous agricultural waste" means hazardous waste generated as part of his licensed activity by any person licensed under 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;
- G. "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;
- H. "hazardous waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility or other discarded material, including solid, liquid, semisolid or containing gaseous material resulting from industrial, commercial, mining or agricultural operations or from community activities which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. The term "hazardous waste" does not include solid or dissolved material in domestic sewage or animal excrement in connection with farm, ranch or feedlot operations 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; or source, special nuclear or byproduct material as defined in the Atomic Energy Act of 1954, as amended; or any of the following, until the board determines that they are subject to Subtitle C of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6921 et seq.): drilling fluids, produced waters and other wastes associated with the exploration, development or

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

History: 1963 Comp., § 12-9B-3, enacted by Laws 1977, ch. 313, § 3; 1981 (1st S.S.), ch. 8, § 2; 1987, ch. 179, § 1.

The 1987 amendment, effective April 8, 1987, substituted the present definition of "disposal" in Subsection D for "to abandon, deposit, inter or otherwise discard material as a final action after its use has been achieved or a use is no longer intended", inserted "nuclear" near the middle of the second sentence of Subsection H and in the same sentence substituted "as amended" for "as amended as the provisions exist on January 1, 1981" following "Water Pollution Control Act" and "as amended" for "as amended as these definitions exist on January 1, 1981" following "Atomic Energy Act of 1954", re-wrote Subsection J, and added present Subsections K, M, P and Q, while redesignating former Subsections K through M as present Subsections L, N and O.

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

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

Atomic Energy Act of 1954. — The Atomic Energy Act of 1954, referred to in the second sentence in Subsection H, appears as 42 U.S.C. § 2011 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 K (1), appears as 42 U.S.C. § 9601 (14).

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

✓ 74-4-3.1. Application of act.

Nothing in the Hazardous Waste Act [this article] 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. 1151 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 [69-25A-1 to 69-25A-35 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. Application to WIPP.

Nothing in the Hazardous Waste Act [this article] shall be construed to apply to any radioactive waste processed and certified for emplacement in the mined geologic repository at the waste isolation pilot plant.

History: 1978 Comp., § 74-4-3.2, enacted by Laws 1987, ch. 179, § 2.

Emergency clauses. — Laws 1987, ch. 179, § 12

makes the act effective immediately. Approved April 8, 1987.

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

The board shall adopt regulations for the management of hazardous waste and for underground storage tanks equivalent to, and no more stringent than, federal regulations adopted by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

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

F. It shall be unlawful for any owner or operator of an underground storage tank to violate any provision of this section or any regulation promulgated pursuant to this section or Subsection K of Section 74-4-4 NMSA 1978. A person who knowingly violates any provision of this section or any regulation promulgated pursuant to this section or Subsection K of Section 74-4-4 NMSA 1978 is guilty of a misdemeanor and shall be punished by a fine of not less than three hundred dollars (\$300) or more than ten thousand dollars (\$10,000) per underground storage tank per day or by imprisonment for not more than one year or both; provided that a second or subsequent conviction for a violation of this section or any regulation promulgated pursuant to this section or Subsection K of Section 74-4-4 NMSA 1978 shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) per underground storage tank per day or by imprisonment for not more than two years or both.

G. In addition to the remedy provided by Subsection F of this section, the trial court may impose a civil penalty for a violation of any provision of this section or any regulation promulgated pursuant to this section or Subsection K of Section 74-4-4 NMSA 1978 not exceeding ten thousand dollars (\$10,000) per underground storage tank per day.

H. The enforcement provisions of Sections 74-4-10 through 74-4-12 NMSA 1978 shall not apply to a violation of this section or any regulation promulgated pursuant to this section or Subsection K of Section 74-4-4 NMSA 1978.

I. All penalties collected pursuant to Subsections F and G of this section shall be transmitted to the state treasurer for credit to the hazardous waste emergency fund.

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

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

Emergency clauses. — Laws 1987, ch. 179, § 12 makes the act effective immediately. Approved April 8, 1987.

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 and underground storage tank fund created; appropriation.

A. There is created in the state treasury the "hazardous waste and underground storage tank fund" which shall be administered by the environmental improvement division of the health and environment department. All balances in the fund are appropriated to that division for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste and underground storage tank programs. All interest earned on money in the fund shall be credited to the fund.

B. All fees collected pursuant to Sections 74-4-4.2 F and 74-4-4.4 D NMSA 1978 shall be transmitted to the state treasurer for credit to the hazardous waste and underground storage tank fund.

History: 1978 Comp., § 74-4-4.5, enacted by Laws 1987, ch. 179, § 7.

Emergency clauses. — Laws 1987, ch. 179, § 12

makes the act effective immediately. Approved April 8, 1987.

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

A. No regulation shall be adopted, amended or repealed until after a public hearing by the environmental improvement board. Hearings on regulations shall be held in Santa Fe or within any 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) character and degree of injury to or interference with public health; and
- (2) 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 thereof adopted by the board shall become effective until thirty days after its filing under the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

F. Any person who is or may be affected by a regulation adopted by the board may appeal to the court of appeals for further relief. All such appeals shall be upon the transcript made at the hearing, and shall be taken to the court of appeals within thirty days after filing of the regulation under the State Rules Act.

G. The procedure for perfecting an appeal to the court of appeals under this section consists of the timely filing of a notice of appeal with a copy attached to the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that arrangements have been made with the board for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the appellant, including a copy which he shall furnish to the board.

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

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

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control §§ 6, 134.

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.

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

The agency 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 agency deems necessary or appropriate. If any action by the agency pursuant to this subsection is to occur or continue beyond forty-eight hours after notification or initial agency involvement with the incident, the director of the agency shall file in the district court, not later than forty-eight hours after notification or initial agency involvement with the incident an action to extend agency authority pursuant to this subsection;