

HOUSE BILL 157

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

INTRODUCED BY

Al Park

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; CREATING THE NATURAL RESOURCES AND ENVIRONMENT DEPARTMENT; REPLACING THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, THE DEPARTMENT OF ENVIRONMENT AND THE NATURAL RESOURCES TRUSTEE; PROVIDING POWERS AND DUTIES; CONSOLIDATING CERTAIN REGULATORY BOARDS; CHANGING THE DEPOSIT OF FINES FROM SPECIAL FUNDS TO THE GENERAL FUND FOR CREDIT TO THE CURRENT SCHOOL FUND; TRANSFERRING FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES; REPEALING THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ACT AND THE DEPARTMENT OF ENVIRONMENT ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO SECTIONS OF LAW IN LAWS 2000.

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

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1 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
2 through 16 of this act may be cited as the "Natural Resources
3 and Environment Department Act".

4 SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the
5 Natural Resources and Environment Department Act is to
6 establish a single, unified department to administer laws and
7 exercise functions formerly administered and exercised by the
8 energy, minerals and natural resources department, the
9 department of environment and the natural resources trustee.

10 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
11 Natural Resources and Environment Department Act:

- 12 A. "board" means the environmental improvement
13 board;
- 14 B. "department" means the natural resources and
15 environment department; and
- 16 C. "secretary" means the secretary of natural
17 resources and environment.

18 SECTION 4. [NEW MATERIAL] DEPARTMENT CREATED.--

19 A. The "natural resources and environment
20 department" is created as a cabinet department and includes the
21 following organizational units:

- 22 (1) the office of the secretary;
- 23 (2) the administrative services division;
- 24 (3) the information technology division;
- 25 (4) the environmental protection division;

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- 1 (5) the energy conservation and management
- 2 division;
- 3 (6) the forestry division;
- 4 (7) the mining and minerals division;
- 5 (8) the oil conservation division;
- 6 (9) the state parks division;
- 7 (10) the water and waste management division;
- 8 (11) the environmental health division; and
- 9 (12) the water and wastewater infrastructure
- 10 development division.

11 B. The secretary may establish, merge or eliminate
12 organizational units for better efficiency or effectiveness,
13 but a reorganization of statutory divisions or bureaus shall be
14 reported to the next regular session of the legislature.

15 SECTION 5. [NEW MATERIAL] ADMINISTRATIVELY ATTACHED
16 AGENCIES.--The following boards, commissions, committees and
17 councils are administratively attached to the department:

- 18 A. the environmental improvement board;
- 19 B. the mining commission;
- 20 C. the natural lands protection committee;
- 21 D. the oil conservation commission;
- 22 E. the radiation technical advisory council;
- 23 F. the water quality control commission; and
- 24 G. the New Mexico youth conservation corps
- 25 commission.

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1 SECTION 6. ~~[NEW MATERIAL]~~ SECRETARY OF NATURAL RESOURCES
2 AND ENVIRONMENT--APPOINTMENT.--

3 A. The administrative head of the natural resources
4 and environment department is the "secretary of natural
5 resources and environment", who shall be appointed by the
6 governor with the consent of the senate and who shall serve in
7 the executive cabinet.

8 B. An appointed secretary shall serve and have all
9 of the duties, responsibilities and authority of that office
10 during the period of time prior to final action by the senate
11 confirming or rejecting the appointment.

12 SECTION 7. DUTIES AND GENERAL POWERS.--

13 A. The secretary is responsible to the governor for
14 the operation of the department. It is the secretary's duty to
15 manage all operations of the department and to administer and
16 enforce the laws with which the secretary or the department is
17 charged.

18 B. To perform the duties, the secretary has every
19 power expressly enumerated in the laws, whether granted to the
20 secretary, the department or any division of the department,
21 except where authority conferred upon any division is
22 explicitly exempt from the secretary's authority by statute.
23 In accordance with these provisions, the secretary shall:

24 (1) except as otherwise provided in the
25 Natural Resources and Environment Department Act, exercise

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1 general supervisory and appointing authority over all
2 department employees, subject to any applicable personnel laws
3 and rules;

4 (2) delegate authority to subordinates as the
5 secretary deems necessary and appropriate, clearly delineating
6 that delegated authority and the limitations thereto;

7 (3) organize the department into those
8 organizational units that the secretary deems will enable it to
9 function most efficiently, subject to any provisions of law
10 requiring or establishing specific organizational units;

11 (4) within the limitations of available
12 appropriations and applicable laws, employ and fix the
13 compensation of those persons necessary to discharge the duties
14 of the department;

15 (5) take administrative action by issuing
16 orders and instructions, consistent with the law, to assure
17 implementation of and compliance with the provisions of law for
18 which administration or execution the department or the
19 secretary is responsible and to enforce those orders and
20 instructions by appropriate administrative action or actions in
21 the courts;

22 (6) conduct research and studies that will
23 improve the operations of the department and the provision of
24 services to the residents of the state;

25 (7) provide courses of instruction and

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1 practical training for employees of the department and other
2 persons involved in the administration of programs with the
3 objective of improving the operations and efficiency of
4 administration;

5 (8) prepare an annual budget of the
6 department; and

7 (9) appoint, with the governor's consent, a
8 "director" for each division. These appointed positions are
9 exempt from the provisions of the Personnel Act. Persons
10 appointed to these positions shall serve at the pleasure of the
11 secretary.

12 C. The secretary may apply for and receive, with
13 the governor's approval and in the name of the department, any
14 public or private funds, including United States government
15 funds, available to the department to carry out its programs,
16 duties or services.

17 D. The secretary may adopt such reasonable rules as
18 necessary to carry out the duties of the department and its
19 divisions. No rule promulgated by the director of any division
20 in carrying out the functions and duties of the division shall
21 be effective until approved by the secretary, unless otherwise
22 provided by statute. Unless otherwise provided by statute, no
23 procedural rules affecting any person or agency outside the
24 department shall be adopted, amended or repealed without a
25 public hearing on the proposed action before the secretary or a

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1 hearing officer designated by the secretary. The public
2 hearing shall be held in Santa Fe unless otherwise permitted by
3 statute. Notice of the subject matter of the rule, the action
4 proposed to be taken, the time and place of the hearing, the
5 manner in which interested persons may present their views and
6 the method by which copies of the proposed rule, proposed
7 amendment or repeal of an existing rule may be obtained shall
8 be published once at least thirty days prior to the hearing
9 date in a newspaper of general circulation and mailed at least
10 thirty days prior to the hearing date to all persons who have
11 made a written request for advance notice of hearing. All
12 rules shall be filed in accordance with the State Rules Act.

13 SECTION 8. [NEW MATERIAL] DEPARTMENT--ADDITIONAL

14 DUTIES.--The department shall develop a comprehensive watershed
15 restoration strategy that sets guidelines for coordination with
16 state and federal land management agencies and political
17 subdivisions, including the soil and water conservation
18 districts and other stakeholders. The strategy shall focus on
19 removing the overabundance of woody vegetation, particularly
20 non-native species of phreatophytes, that consume excessive
21 amounts of water and on reestablishing the natural ecology of
22 New Mexico. The strategy shall use:

- 23 A. incentives to encourage the formation of
24 businesses to clear vegetation;
25 B. incentives to encourage biomass energy use; and

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1 C. inmates from the corrections department to
2 assist with watershed cleanup.

3 SECTION 9. [NEW MATERIAL] BUREAUS--CHIEFS.--The secretary
4 shall establish within each division such "bureaus" as deemed
5 necessary to carry out the provisions of the Natural Resources
6 and Environment Department Act. The secretary shall employ a
7 "chief" to be the administrative head of each bureau. The
8 chief and all subsidiary employees of the department shall be
9 covered by the Personnel Act unless otherwise provided by law.

10 SECTION 10. [NEW MATERIAL] ORGANIZATIONAL UNITS OF THE
11 DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO
12 INFORMATION.--Those organizational units of the department and
13 the officers of those units specified by law shall have all of
14 the powers and duties enumerated in the specific laws involved.
15 However, the carrying out of those powers and duties shall be
16 subject to the direction and supervision of the secretary, and
17 the secretary shall retain the final decision-making authority
18 and responsibility for the administration of any laws as
19 provided in Section 7 of the Natural Resources and Environment
20 Department Act. The department shall have access to all
21 records, data and information of other state departments,
22 agencies and institutions, and of its own organizational units,
23 not specifically held confidential by law.

24 SECTION 11. [NEW MATERIAL] ADVISORY COMMITTEES.--

25 A. Advisory committees may be created. "Advisory"

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1 means furnishing advice, gathering information, making
2 recommendations and performing such other activities as may be
3 instructed or delegated and as may be necessary to fulfill
4 advisory functions or to comply with federal or private funding
5 requirements and does not extend to administering a program or
6 function or setting policy unless specified by law. Advisory
7 committees shall be appointed in accordance with the provisions
8 of the Executive Reorganization Act.

9 B. All members of advisory committees appointed
10 under the authority of this section are entitled to receive as
11 their sole remuneration for services as a member those amounts
12 authorized under the Per Diem and Mileage Act.

13 SECTION 12. [NEW MATERIAL] STATE ALTERNATIVE FUEL PROGRAM
14 MANAGER--CREATION.--A "state alternative fuel program manager"
15 is created in the energy conservation and management division
16 of the department. The manager's duties include:

17 A. promoting, coordinating and monitoring the
18 implementation of state clean alternative fuel transportation
19 programs, including a mass transit demonstration project and
20 other demonstration projects that place New Mexico on the
21 leading edge of new clean fuel technologies;

22 B. coordinating and directing the provisions of the
23 Alternative Fuel Acquisition Act; and

24 C. mobilizing and coordinating necessary resources
25 and expertise from the government, education and private

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1 sectors to assist in clean alternative fuel transportation
2 programs and projects.

3 SECTION 13. [NEW MATERIAL] WASTEWATER TREATMENT TECHNICAL
4 ADVISORY COMMITTEE CREATED--DUTIES AND POWERS OF THE
5 COMMITTEE.--

6 A. The "wastewater treatment technical advisory
7 committee" is created. The committee shall consist of five
8 members to be appointed by and to serve at the pleasure of the
9 secretary. The members shall include:

10 (1) a wastewater treatment system engineer
11 with at least ten years of experience in wastewater system
12 design and construction;

13 (2) a faculty member from a university or
14 college located within New Mexico with a minimum of a master's
15 degree in biological science, microbiology, soil science or
16 engineering and with a minimum of ten years of work or academic
17 experience with wastewater treatment or wastewater treatment
18 facility management;

19 (3) a representative from the New Mexico state
20 university water utilities technical assistance program;

21 (4) a class 4 certified wastewater operator
22 with at least ten years of experience; and

23 (5) a representative from the New Mexico home
24 builders association.

25 B. The term of appointed members shall be three

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1 years. Members shall serve until their successors are
2 appointed and qualified. Vacancies occurring in the membership
3 of an appointed member shall be filled by the secretary for the
4 remainder of the unexpired term.

5 C. The committee shall conduct open meetings as
6 needed but not less than quarterly.

7 D. The department shall provide technical and legal
8 assistance to the committee as needed.

9 E. The committee shall:

10 (1) establish procedures, practices and
11 policies governing the committee's activities;

12 (2) provide standardized objective evaluation
13 of wastewater treatment and disposal technologies for both
14 large- and small-flow domestic, commercial and agricultural
15 wastewater systems and submit its findings to the secretary for
16 final approval by the secretary, who shall add the wastewater
17 treatment and disposal technologies to the list of approved
18 technologies maintained by the department; and

19 (3) maintain a current list of approved
20 wastewater technologies accessible by the public on the
21 department's web site.

22 F. Members of the committee are entitled to receive
23 reimbursement for expenses incurred in the performance of their
24 duties pursuant to the Per Diem and Mileage Act and shall
25 receive no other compensation, perquisite or allowance.

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1 Expenditures for this purpose shall be made from the budgeted
2 funds of the department.

3 SECTION 14. [NEW MATERIAL] COOPERATION WITH THE FEDERAL
4 GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE STATUS.--

5 A. The department is authorized to cooperate with
6 the federal government in the administration of natural
7 resource, energy or environmental programs in which financial
8 or other participation by the federal government is authorized
9 or mandated under state or federal laws, rules or orders. The
10 secretary may enter into agreements with agencies of the
11 federal government to implement natural resource, energy or
12 environmental programs subject to availability of appropriated
13 state funds and any provisions of state laws applicable to such
14 agreements or participation by the state.

15 B. The governor or the secretary may by appropriate
16 order designate the department or any organizational unit of the
17 department as the single state agency for the administration
18 of any natural resource, energy or environmental program when
19 that designation is a condition of federal financial or other
20 participation in the program under applicable federal law, rule
21 or order. Whether or not a federal condition exists, the
22 governor may designate the department or any organizational
23 unit of the department as the single state agency for the
24 administration of any natural resource, energy or environmental
25 program. No designation of a single state agency under the

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1 authority granted in this section shall be made in
2 contravention of state law.

3 SECTION 15. [NEW MATERIAL] ENVIRONMENTAL IMPROVEMENT
4 BOARD--EXEMPTIONS FROM AUTHORITY OF SECRETARY.--The board shall
5 receive staff support from the department. All powers, duties
6 and responsibilities of the board under the Food Service
7 Sanitation Act, the New Mexico Food Act, the Flour and Bread
8 Act, the Occupational Health and Safety Act, the Environmental
9 Improvement Act, the Air Quality Control Act, the Radiation
10 Protection Act, the Hazardous Waste Act, the Ground Water
11 Protection Act, the Environmental Compliance Act, the Solid
12 Waste Act, the Rural Infrastructure Act, the Recycling and
13 Illegal Dumping Act and Sections 74-4A-1 and 74-8-1 through
14 74-8-3 NMSA 1978 are explicitly exempt from the authority of
15 the secretary under the provisions of Subsection B of Section 7
16 of the Natural Resources and Environment Department Act.

17 SECTION 16. [NEW MATERIAL] WATER QUALITY CONTROL
18 COMMISSION--EXEMPTIONS FROM AUTHORITY OF SECRETARY.--The water
19 quality control commission shall receive staff support from the
20 department. All powers, duties and responsibilities of the
21 water quality control commission under Section 74-6-11 NMSA
22 1978 and the Water Quality Act are hereby explicitly exempted
23 from the authority of the secretary under the provisions of
24 Subsection B of Section 7 of the Natural Resources and
25 Environment Department Act.

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1 SECTION 17. Section 3-29-2 NMSA 1978 (being Laws 1965,
2 Chapter 300, Section 14-28-2, as amended) is amended to read:

3 "3-29-2. DEFINITIONS.--As used in the Sanitary Projects
4 Act:

5 A. "community" means a rural unincorporated
6 community and includes a combination of two or more rural
7 unincorporated communities when they have been combined for the
8 purposes set forth in the Sanitary Projects Act;

9 B. "association" includes an association or mutual
10 domestic water consumers association organized under Laws 1947,
11 Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as
12 well as any association organized under the provisions of the
13 Sanitary Projects Act;

14 C. "department" means the natural resources and
15 environment department [~~of environment~~];

16 D. "member" or "membership" means a person who has
17 paid the appropriate fees and has been issued a certificate as
18 required by association bylaws;

19 E. "person" means a single residence or property
20 owner, as determined by the rules adopted by the association's
21 board of directors; and

22 F. "project" means a water supply or reuse, storm
23 drainage or wastewater facility owned, constructed or operated
24 by an association."

25 SECTION 18. Section 6-10-3 NMSA 1978 (being Laws 1923,

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1 Chapter 76, Section 2, as amended) is amended to read:

2 "6-10-3. PAYMENT OF STATE MONEY INTO TREASURY--SUSPENSE
3 FUNDS.--All public money in the custody or under the control of
4 any state official or agency obtained or received by any
5 official or agency from any source, except as in Section
6 6-10-54 NMSA 1978 provided, shall be paid into the state
7 treasury. It is the duty of every official or person in charge
8 of any state agency receiving any money in cash or by check,
9 draft or otherwise for or on behalf of the state or any agency
10 thereof from any source, except as in Section 6-10-54 NMSA 1978
11 provided, to forthwith and before the close of the next
12 succeeding business day after the receipt of the money to
13 deliver or remit it to the state treasurer. Provided, however,
14 that the money collected by the state [~~park and recreation~~
15 parks division of the [~~energy, minerals and~~ natural resources
16 and environment department and the state monuments [~~of the~~
17 ~~museum~~] division of the [~~office of~~] cultural affairs department
18 shall be deposited into the state treasury no later than ten
19 days following collection. Provided that county treasurers
20 shall remit all money received for taxes for state purposes or
21 that are by law required to be remitted to the state treasurer
22 on or before the tenth day of the next succeeding month
23 following the receipt or collection thereof. Provided further
24 that every official or person in charge of any state agency
25 receiving any money, except as in Section 6-10-54 NMSA 1978

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1 provided, in cash or by check, draft or otherwise, on deposit,
2 in escrow or in evidence of good faith to secure the
3 performance of any contract or agreement with the state or with
4 any department, institution or agency of the state, which money
5 has not yet been earned so as to become the absolute property
6 of the state, shall deliver or remit to the state treasurer
7 within the times and in the manner in this section provided,
8 which money shall be by the state treasurer deposited in a
9 suspense account to the credit of the proper official, person,
10 board or bureau in charge of any state agency so receiving the
11 money; provided, however, that all money held by the
12 commissioner of public lands on deposit, in escrow or in
13 evidence of good faith to secure the performance of any
14 contract or agreement with the state shall be delivered or
15 remitted to the state treasurer within six months from the date
16 this act is approved and, at those times, in the amounts and
17 from the various banks in which it is deposited as may be
18 directed by the state board of finance."

19 SECTION 19. Section 6-21A-3 NMSA 1978 (being Laws 1997,
20 Chapter 144, Section 3, as amended) is amended to read:

21 "6-21A-3. DEFINITIONS.--As used in the Drinking Water
22 State Revolving Loan Fund Act:

23 A. "authority" means the New Mexico finance
24 authority;

25 B. "department" means the natural resources and

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1 environment department [~~of environment~~];

2 C. "drinking water facility construction project"
3 means the acquisition, design, construction, improvement,
4 expansion, repair or rehabilitation of all or part of any
5 structure, facility or equipment necessary for a drinking water
6 system or water supply system;

7 D. "drinking water supply facility" means any
8 structure, facility or equipment necessary for a drinking water
9 system or water supply system;

10 E. "financial assistance" means loans, the purchase
11 or refinancing of debt obligation of a local authority at an
12 interest rate that is less than or equal to the market interest
13 rate in any case in which a debt obligation is incurred after
14 July 1, 1993, loan guarantees, bond insurance or security for
15 revenue bonds issued by the authority;

16 F. "fund" means the drinking water state revolving
17 loan fund;

18 G. "local authority" means any municipality,
19 county, incorporated county, sanitation district, water and
20 sanitation district or any similar district, public or private
21 water cooperative or association or any similar organization,
22 public or private community water system or nonprofit
23 noncommunity water system or any other agency created pursuant
24 to a joint powers agreement acting on behalf of any entity
25 listed in this subsection with a publicly owned drinking water

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1 system or water supply system that qualifies as a community
2 water system or nonprofit noncommunity system as defined by the
3 Safe Drinking Water Act. "Local authority" does not include
4 systems owned by federal agencies;

5 H. "operate and maintain" means to perform all
6 necessary activities, including the replacement of equipment or
7 appurtenances, to assure the dependable and economical function
8 of a drinking water facility in accordance with its intended
9 purpose; and

10 I. "Safe Drinking Water Act" means the federal Safe
11 Drinking Water Act as amended in 1996 and its subsequent
12 amendments or successor provisions."

13 SECTION 20. Section 6-21D-2 NMSA 1978 (being Laws 2005,
14 Chapter 176, Section 2) is amended to read:

15 "6-21D-2. DEFINITIONS.--As used in the Energy Efficiency
16 and Renewable Energy Bonding Act:

17 A. "authority" means the New Mexico finance
18 authority;

19 B. "bonds" means energy efficiency bonds;

20 C. "department" means the [~~energy, minerals and~~]
21 natural resources and environment department;

22 D. "energy efficiency measure" means a modification
23 or improvement to a building or complex of buildings that is
24 designed to reduce energy consumption or operating costs or
25 that provides a renewable energy source and may include:

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1 (1) insulation of the building structure or
2 systems within the building;

3 (2) storm windows or doors, caulking or
4 weatherstripping, multiglazed windows or doors, heat-absorbing
5 or heat-reflective glazed and coated window or door systems,
6 additional glazing, reductions in glass area or other window
7 and door system modifications that reduce energy consumption;

8 (3) automated or computerized energy control
9 systems;

10 (4) heating, ventilating or air conditioning
11 system modifications or replacements;

12 (5) replacement or modification of lighting
13 fixtures to increase the energy efficiency of the lighting
14 system;

15 (6) energy recovery systems;

16 (7) on-site photovoltaics, solar heating and
17 cooling systems or other renewable energy systems; or

18 (8) cogeneration or combined heat and power
19 systems that produce steam, chilled water or forms of energy
20 such as heat, as well as electricity, for use primarily within
21 a building or complex of buildings;

22 E. "fund" means the energy efficiency and renewable
23 energy bonding fund;

24 F. "school district" means a political subdivision
25 of the state established for the administration of public

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1 schools, segregated geographically for taxation and bonding
2 purposes and governed by the Public School Code;

3 G. "school district building" means a building, the
4 title to which is held by a school district; and

5 H. "state building" means a building, the title to
6 which is held by the state or an agency of the state."

7 SECTION 21. Section 6-23-2 NMSA 1978 (being Laws 1993,
8 Chapter 231, Section 2, as amended) is amended to read:

9 "6-23-2. DEFINITIONS.--As used in the Public Facility
10 Energy Efficiency and Water Conservation Act:

11 A. "conservation-related cost savings" means cost
12 savings, other than utility cost savings, in the operating
13 budget of a governmental unit that are a direct result of
14 energy or water conservation measures implemented pursuant to a
15 guaranteed utility savings contract;

16 B. "energy conservation measure" means a training
17 program or a modification to a facility, including buildings,
18 systems or vehicles, that is designed to reduce energy
19 consumption or conservation-related operating costs and may
20 include:

21 (1) insulation of the building structure or
22 systems within the building;

23 (2) storm windows or doors, caulking or
24 weatherstripping, multiglazed windows or doors, heat absorbing
25 or heat reflective glazed and coated window or door systems,

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1 additional glazing, reductions in glass area or other window
2 and door system modifications that reduce energy consumption;

3 (3) automated or computerized energy control
4 systems;

5 (4) heating, ventilating or air conditioning
6 system modifications or replacements;

7 (5) replacement or modification of lighting
8 fixtures to increase the energy efficiency of the lighting
9 system without increasing the overall illumination of a
10 facility, unless an increase in illumination is necessary to
11 conform to the applicable state or local building code or
12 nationally accepted standards for the lighting system after the
13 proposed modifications are made;

14 (6) energy recovery systems;

15 (7) solar energy generating or heating and
16 cooling systems or other renewable energy systems;

17 (8) cogeneration or combined heat and power
18 systems that produce steam, chilled water or forms of energy
19 such as heat, as well as electricity, for use primarily within
20 a building or complex of buildings;

21 (9) energy conservation measures that provide
22 long-term operating cost reductions;

23 (10) maintenance and operation management
24 systems that provide long-term operating cost reductions;

25 (11) traffic control systems; or

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1 (12) alternative fuel options or accessories
2 for vehicles;

3 C. "governmental unit" means an agency, political
4 subdivision, institution or instrumentality of the state,
5 including two- and four-year institutions of higher education,
6 a municipality, a county or a school district;

7 D. "guaranteed utility savings contract" means a
8 contract for the evaluation and recommendation of energy or
9 water conservation measures and for the implementation of one
10 or more of those measures, and which contract provides that all
11 payments, except obligations on termination of the contract
12 before its expiration, are to be made over time and the savings
13 are guaranteed to the extent necessary to make the payments for
14 the conservation measures;

15 E. "qualified provider" means a person experienced
16 in the design, implementation and installation of energy or
17 water conservation measures and who meets the experience
18 qualifications developed by the [~~energy, minerals and~~] natural
19 resources and environment department for energy conservation
20 measures or the office of the state engineer for water
21 conservation measures;

22 F. "utility cost savings" means the amounts saved
23 by a governmental unit in the purchase of energy or water that
24 are a direct result of energy or water conservation measures
25 implemented pursuant to a guaranteed utility savings contract;

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1 and

2 G. "water conservation measures" means a training
3 program, change in maintenance practices or facility or
4 landscape alteration designed to reduce water consumption or
5 conservation-related operating costs."

6 SECTION 22. Section 7-29A-2 NMSA 1978 (being Laws 1992,
7 Chapter 38, Section 2) is amended to read:

8 "7-29A-2. DEFINITIONS.--As used in the Enhanced Oil
9 Recovery Act:

10 A. "crude oil" means oil and other liquid
11 hydrocarbons removed from natural gas at or near the wellhead;

12 B. "division" means the oil conservation division
13 of the [~~energy, minerals and~~] natural resources and environment
14 department;

15 C. "enhanced recovery project" means the use or the
16 expanded use of any process for the displacement of crude oil
17 from an oil well or pool classified by the division pursuant to
18 Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978
19 other than a primary recovery process, including but not
20 limited to the use of a pressure maintenance process, a water
21 flooding process, an immiscible, miscible, chemical, thermal or
22 biological process or any other related process;

23 D. "expansion or expanded use" means a significant
24 change or modification, as determined by the [~~oil conservation~~]
25 division in:

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1 (1) the technology or process used for the
2 displacement of crude oil from an oil well or pool classified
3 by the division pursuant to Paragraph (11) of Subsection B of
4 Section 70-2-12 NMSA 1978; or

5 (2) the expansion, extension or increase in
6 size of the geologic area or adjacent geologic area that could
7 reasonably be determined to represent a new or unique area of
8 activity;

9 E. "operator" means the person responsible for the
10 actual physical operation of an enhanced recovery project;

11 F. "person" means any individual, estate, trust,
12 receiver, business trust, corporation, firm, copartnership,
13 cooperative, joint venture, association or other group or
14 combination acting as a unit, and the plural as well as the
15 singular number;

16 G. "positive production response" means that the
17 rate of oil production from the wells or pools affected by an
18 enhanced recovery project is greater than the rate that would
19 have occurred without the project;

20 H. "primary recovery" means the displacement of
21 crude oil from an oil well or pool classified by the division
22 pursuant to Paragraph (11) of Subsection B of Section 70-2-12
23 NMSA 1978 into the well bore by means of the natural pressure
24 of the oil well or pool, including but not limited to
25 artificial lift;

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1 I. "recovered oil tax rate" means that tax rate, as
2 set forth in Paragraph (3) of Subsection A of Section 7-29-4
3 NMSA 1978, on crude oil produced from an enhanced recovery
4 project;

5 J. "secondary recovery project" means an enhanced
6 recovery project that:

7 (1) occurs subsequent to the completion of
8 primary recovery and is not a tertiary recovery project;

9 (2) involves the application, in accordance
10 with sound engineering principles, of carbon dioxide miscible
11 fluid displacement, pressure maintenance, water flooding or any
12 other secondary recovery method accepted and approved by the
13 division pursuant to the provisions of Paragraph (14) of
14 Subsection B of Section 70-2-12 NMSA 1978 that can reasonably
15 be expected to result in an increase, determined in light of
16 all facts and circumstances, in the amount of crude oil that
17 may ultimately be recovered; and

18 (3) encompasses a pool or portion of a pool
19 the boundaries of which can be adequately defined and
20 controlled;

21 K. "severance" means the taking from the soil of
22 any product in any manner whatsoever;

23 L. "termination" means the discontinuance of an
24 enhanced recovery project by the operator; and

25 M. "tertiary recovery project" means an enhanced

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1 recovery project that:

2 (1) occurs subsequent to the completion of a
3 secondary recovery project;

4 (2) involves the application, in accordance
5 with sound engineering principles, of carbon dioxide miscible
6 fluid displacement, pressure maintenance, water flooding or any
7 other tertiary recovery method accepted and approved by the
8 division pursuant to the provisions of Paragraph (14) of
9 Subsection B of Section 70-2-12 NMSA 1978 that can reasonably
10 be expected to result in an increase, determined in light of
11 all facts and circumstances, in the amount of crude oil that
12 may ultimately be recovered; and

13 (3) encompasses a pool or portion of a pool
14 the boundaries of which can be adequately defined and
15 controlled."

16 **SECTION 23.** Section 7-29B-2 NMSA 1978 (being Laws 1995,
17 Chapter 15, Section 2, as amended by Laws 1999, Chapter 7,
18 Section 2 and as further amended by Laws 1999, Chapter 256,
19 Section 3) is amended to read:

20 "7-29B-2. DEFINITIONS.--As used in the Natural Gas and
21 Crude Oil Production Incentive Act:

22 A. "average annual taxable value" means the average
23 of the taxable value per barrel, determined pursuant to Section
24 7-31-5 NMSA 1978, of all oil produced in New Mexico for the
25 specified calendar year as determined by the department;

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1 B. "average daily production" means, for any crude
2 oil or natural gas property assigned a single production number
3 by the department, the number derived by dividing the total
4 volume of crude oil or natural gas production from the property
5 reported to the division during a calendar year by the sum of
6 the number of days each eligible well within the property
7 produced or injected during that calendar year;

8 C. "department" means the taxation and revenue
9 department;

10 D. "division" means the oil conservation division
11 of the [~~energy, minerals and~~] natural resources and environment
12 department;

13 E. "eligible well" means a crude oil or natural gas
14 well that produces or an injection well that injects and is
15 integral to production for any period of time during the
16 preceding calendar year;

17 F. "natural gas" means any combustible vapor
18 composed chiefly of hydrocarbons occurring naturally;

19 G. "operator" means the person responsible for the
20 actual physical operation of a natural gas or oil well;

21 H. "person" means any individual or other legal
22 entity, including any group or combination of individuals or
23 other legal entities acting as a unit;

24 I. "production restoration incentive tax exemption"
25 means the tax exemption set forth in Subsection B of Section

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1 7-29-4 NMSA 1978 for natural gas or oil produced from a
2 production restoration project;

3 J. "production restoration project" means the use
4 of any process for returning to production a natural gas or oil
5 well that had thirty days or less of production in any period
6 of twenty-four consecutive months beginning on or after January
7 1, 1993 as approved and certified by the division;

8 K. "severance" means the taking from the soil of
9 any product in any manner whatsoever;

10 L. "stripper well property" means a crude oil or
11 natural gas producing property that is assigned a single
12 production unit number by the department and:

13 (1) if a crude oil producing property,
14 produced an average daily production of less than ten barrels
15 of oil per eligible well per day for the preceding calendar
16 year;

17 (2) if a natural gas producing property,
18 produced an average daily production of less than sixty
19 thousand cubic feet of natural gas per eligible well per day
20 during the preceding calendar year; or

21 (3) if a property with wells that produce both
22 crude oil and natural gas, produced an average daily production
23 of less than ten barrels of oil per eligible well per day for
24 the preceding calendar year, as determined by converting the
25 volume of natural gas produced by the well to barrels of oil by

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1 using a ratio of six thousand cubic feet to one barrel of oil;

2 M. "stripper well incentive tax rates" means the
3 tax rates set forth in Paragraphs (6) through (9) of Subsection
4 A of Section 7-29-4 NMSA 1978 and in Paragraphs (4) through (7)
5 of Subsection A of Section 7-31-4 NMSA 1978 for natural gas or
6 oil produced from a well within a stripper well property;

7 N. "well workover incentive tax rate" means the tax
8 rate set forth in Paragraphs (4) and (5) of Subsection A of
9 Section 7-29-4 NMSA 1978 on the natural gas or oil produced
10 from a well workover project; and

11 O. "well workover project" means any procedure
12 undertaken by the operator of a natural gas or oil well that is
13 intended to increase the production from the well and that has
14 been approved and certified by the division."

15 SECTION 24. Section 9-5B-3 NMSA 1978 (being Laws 1992,
16 Chapter 91, Section 3) is amended to read:

17 "9-5B-3. DEFINITIONS.--As used in the New Mexico Youth
18 Conservation Corps Act:

19 A. "commission" means the New Mexico youth
20 conservation corps commission;

21 B. "corps" means the New Mexico youth conservation
22 corps;

23 C. "corps member" means a person enrolled in the
24 corps;

25 D. "department" means the [~~energy, minerals and~~]

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1 natural resources and environment department;

2 E. "nonprofit organization" means any organization
3 that has been granted an exemption from federal income tax by
4 the United States commissioner of internal revenue as an
5 organization described in Section 501(c) of the United States
6 Internal Revenue Code of 1986, as amended or renumbered;

7 F. "project" means an activity that can be
8 completed in six months or less, results in a specific
9 identifiable service or product that otherwise would not be
10 accomplished with existing funds and does not duplicate the
11 routine services or functions of the sponsor;

12 G. "resident" means an individual who has resided
13 in New Mexico for at least six months before applying for
14 employment with the corps; and

15 H. "sponsor" means any local unit of government,
16 state agency, federal agency, nonprofit organization or
17 federally recognized Native American tribe."

18 SECTION 25. Section 9-5B-5 NMSA 1978 (being Laws 1992,
19 Chapter 91, Section 5) is amended to read:

20 "9-5B-5. COMMISSION CREATED--MEMBERSHIP--APPOINTMENTS--
21 TERMS--VACANCIES--COMPENSATION.--

22 A. There is created a nine-member "New Mexico youth
23 conservation corps commission", which is administratively
24 attached to the department. The commission consists of the
25 following members:

.184349.1

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1 (1) the [~~superintendent of public instruction~~]
2 secretary of public education or [~~his~~] the secretary's
3 designee;

4 (2) the commissioner of public lands or [~~his~~]
5 the commissioner's designee;

6 (3) the secretary of [~~energy, minerals and~~]
7 natural resources and environment or [~~his~~] the secretary's
8 designee;

9 (4) the secretary of [~~the youth authority~~]
10 children, youth and families or [~~his~~] the secretary's designee;
11 and

12 (5) five members of the general public
13 appointed by the governor to reflect the geographic diversity
14 of the state, one of whom is knowledgeable in the current
15 policies of the United States forest service and one of whom is
16 Native American.

17 B. One [~~of the members~~] public member of the
18 commission shall be appointed by the governor for a one-year
19 term, two public members shall be appointed for two-year terms
20 and two public members shall be appointed for three-year terms
21 [~~and~~]. All subsequent appointments of public members shall be
22 made for three-year terms.

23 C. The public members shall serve at the pleasure
24 of the governor. Vacancies on the commission caused by the
25 loss of a public member shall be filled by appointment by the

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1 governor for the unexpired term within sixty days of the
2 vacancy. Public commission members shall serve until their
3 successors have been appointed.

4 D. A majority of the members of the commission
5 constitutes a quorum for transaction of business. The
6 commission shall elect a [~~chairman~~] chair from its membership.

7 E. Public members of the commission [~~shall be~~
8 ~~compensated~~] are entitled to per diem and mileage as provided
9 in the Per Diem and Mileage Act and shall receive no other
10 compensation, perquisite or allowance."

11 SECTION 26. Section 13-1B-2 NMSA 1978 (being Laws 1992,
12 Chapter 58, Section 2, as amended) is amended to read:

13 "13-1B-2. DEFINITIONS.--As used in the Alternative Fuel
14 Acquisition Act:

15 A. "alternative fuel" means natural gas, liquefied
16 petroleum gas, electricity, hydrogen, a fuel mixture containing
17 not less than eighty-five percent ethanol or methanol, a fuel
18 mixture containing not less than twenty percent vegetable oil
19 or a water-phased hydrocarbon fuel emulsion consisting of a
20 hydrocarbon base and water in an amount not less than twenty
21 percent by volume of the total water-phased fuel emulsion;

22 B. "conventional fuel" means gasoline or diesel
23 fuel;

24 C. "department" means the [~~energy, minerals and~~]
25 natural resources and environment department;

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1 D. "fund" means the alternative fuel acquisition
2 loan fund;

3 E. "political subdivision" means a county,
4 municipality or school district; and

5 F. "vehicle" means a light duty vehicle under
6 ~~[8,500]~~ eight thousand five hundred pounds."

7 SECTION 27. Section 16-2-2 NMSA 1978 (being Laws 1977,
8 Chapter 254, Section 113, as amended) is amended to read:

9 "16-2-2. STATE PARKS ADVISORY BOARD CREATED--MEMBERSHIP--
10 COMPENSATION--DUTIES.--

11 A. The "advisory board" to the state parks division
12 of the ~~[energy, minerals and]~~ natural resources and environment
13 department is created. It shall be composed of seven to eleven
14 members appointed by the governor.

15 B. The advisory board shall provide advice and make
16 recommendations relating to the administration of ~~[the]~~ state
17 parks ~~[division]~~. It shall advise on all matters of policy,
18 ~~[regulations]~~ rules, the formulation of a comprehensive
19 statewide recreation plan and such other matters as may be
20 requested by the director of that division.

21 C. The advisory board shall meet quarterly or at
22 the call of the ~~[chairman]~~ chair.

23 D. Each member of the advisory board shall annually
24 elect a ~~[chairman]~~ chair and vice ~~[chairman]~~ chair from its
25 membership. The director of the state parks division shall

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1 serve as the executive secretary of the board."

2 SECTION 28. Section 16-2-3 NMSA 1978 (being Laws 1977,
3 Chapter 254, Section 12, as amended) is amended to read:

4 "16-2-3. MEANING OF DESIGNATIONS.--Wherever in the laws
5 of New Mexico, whether or not the statutes have been compiled
6 in the NMSA 1978, reference is made to the "state park and
7 recreation commission" [~~or to the "commission"~~], the term shall
8 mean the state [~~park and recreation~~] parks division of the
9 [~~energy, minerals and~~] natural resources and environment
10 department. As used in Chapter 16 NMSA 1978, "secretary" means
11 the secretary of [~~energy, minerals and~~] natural resources and
12 environment."

13 SECTION 29. Section 16-3-2 NMSA 1978 (being Laws 1973,
14 Chapter 372, Section 2, as amended) is amended to read:

15 "16-3-2. DEFINITIONS.--As used in the State Trails System
16 Act:

17 A. "local government" means any county,
18 municipality or other political subdivision of the state and
19 includes rural communities and unincorporated towns or villages
20 in the state; and

21 B. "secretary" means the secretary of [~~energy,~~
22 ~~minerals and~~] natural resources and environment."

23 SECTION 30. Section 16-4-3 NMSA 1978 (being Laws 1977,
24 Chapter 242, Section 3, as amended) is amended to read:

25 "16-4-3. DEFINITIONS.--As used in El Rio Chama Scenic and

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1 Pastoral Act:

2 A. "corridor" means those lands immediately
3 adjacent to the riverbed essentially from rim to rim or four
4 hundred feet back from the river banks of the Rio Chama,
5 whichever is less;

6 B. "pastoral" means those free-flowing segments of
7 the river [~~which~~] that are affected by the works of [~~man~~]
8 humans but [~~which~~] that still possess natural and scenic value.
9 Included are areas with developed or partially developed
10 shorelines;

11 C. "river" means a flowing body of water or any
12 segment, portion or tributary thereof within the corridor,
13 including rivers, streams, creeks, branches or small lakes;

14 D. "scenic" means those sections of the river that
15 are free of impoundments, with shorelines remaining largely
16 undeveloped, but [~~which~~] that may be accessible in places by
17 primitive roads; and

18 E. "secretary" means the secretary of [~~energy,~~
19 ~~minerals and~~] natural resources and environment."

20 SECTION 31. Section 16-4-11 NMSA 1978 (being Laws 1983,
21 Chapter 18, Section 3, as amended) is amended to read:

22 "16-4-11. DEFINITIONS.--As used in the Rio Grande Valley
23 State Park Act:

24 A. "conservancy district" means the middle Rio
25 Grande conservancy district;

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1 B. "operating party" means the party designated by
2 the secretary to manage the state park; and

3 C. "secretary" means the secretary of [~~energy,~~
4 ~~minerals and~~] natural resources and environment."

5 SECTION 32. Section 25-1-2 NMSA 1978 (being Laws 1977,
6 Chapter 309, Section 2, as amended) is amended to read:

7 "25-1-2. DEFINITIONS.--As used in the Food Service
8 Sanitation Act:

9 A. "agency" or "division" means the natural
10 resources and environment department [~~of environment~~];

11 B. "board" means the environmental improvement
12 board;

13 C. "employee" means [~~any individual~~] a person
14 employed in a food service establishment who transports food or
15 food containers, who handles food during storage, preparation
16 or serving, who comes in contact with any utensils or who is
17 employed in a room in which food is stored, prepared or served;

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

20 E. "general public" includes beneficiaries of
21 governmental feeding programs and private charitable feeding
22 programs and residents and employees of institutions that
23 provide meals to their residents and employees either with or
24 without direct payment to the institution by the residents or
25 employees;

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1 F. "temporary food service establishment" means a
2 food service establishment that operates at a fixed location in
3 conjunction with a single event or celebration for a short
4 period of time not exceeding the event or celebration or not
5 exceeding thirty days;

6 [~~G.~~ "person" means an individual or any other legal
7 entity;

8 ~~H.]~~ G. "food service establishment" means:

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

11 (2) any fixed or mobile place where food is
12 prepared for sale to or consumption by the general public
13 either on or off the premises, including any place where food
14 is manufactured for ultimate sale in a sealed original package;
15 but "prepared" as used in this paragraph does not include the
16 preparation of raw fruits, vegetables or pure honey for display
17 and sale in a grocery store or similar operation. For purposes
18 of this paragraph, "pure honey" means natural liquid or solid
19 honey, extracted from the combs or in the comb, taken from
20 beehives, with no processing or additional ingredients. "Food
21 service establishment" does not mean a dairy establishment; and

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

24 [~~F.]~~ H. "utensil" means any implement used in the
25 storage, preparation, transportation or service of food; and

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1 [~~J-~~] I. "dairy establishment" means a milk
2 processing or milk producing facility."

3 SECTION 33. Section 25-2-2 NMSA 1978 (being Laws 1951,
4 Chapter 169, Section 2, as amended) is amended to read:

5 "25-2-2. DEFINITIONS.--For the purpose of the New Mexico
6 Food Act:

7 A. "board" means the environmental improvement
8 board;

9 B. "dairy establishment" means a milk processing or
10 milk producing facility;

11 C. "division" means the natural resources and
12 environment department [~~of environment~~];

13 D. "director" means the secretary of natural
14 resources and environment or [~~his~~] the secretary's authorized
15 representative;

16 E. "person" includes an individual, partnership,
17 corporation and association;

18 F. "food" means:

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

21 (2) chewing gum; and

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

24 G. "label" means a display of written, printed or
25 graphic matter upon the immediate container of any article. A

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1 requirement made by or under authority of the New Mexico Food
2 Act that any word, statement or other information appear on the
3 label shall not be considered to be complied with unless such
4 word, statement or other information also appears on the
5 outside container or wrapper, if any, of the retail package of
6 such article or is easily legible through the outside container
7 or wrapper;

8 H. "immediate container" does not include package
9 liners;

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

12 (1) upon an article or any of its containers
13 or wrappers; or

14 (2) accompanying such article;

15 J. if an article is alleged to be misbranded
16 because the labeling is misleading or if an advertisement is
17 alleged to be false because it is misleading, then in
18 determining whether the labeling or advertisement is
19 misleading, there shall be taken into account, among other
20 things, not only representations made or suggested by
21 statement, word, design, device, sound or in any combination
22 thereof, but also the extent to which the labeling or
23 advertisement fails to reveal facts material in the light of
24 such representations or material with respect to consequences
25 [~~which~~] that may result from the use of the article to which

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1 the labeling or advertisement relates under the conditions of
2 use prescribed in the labeling or advertisement thereof or
3 under such conditions of use as are customary or usual;

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

8 L. "contaminated with filth" applies to any food
9 not securely protected from dust, dirt and, so far as may be
10 necessary by all reasonable means, [~~from~~] all foreign or
11 injurious contaminations, or any food found to contain any
12 dust, dirt, foreign or injurious contamination or infestation;

13 M. the provisions shall be considered to include
14 the manufacture, production, processing, packing, exposure,
15 offer, possession and holding of any such article and the
16 supplying or applying of any such articles in the conduct of
17 any food establishment; and

18 N. "federal act" means the Federal Food Drug and
19 Cosmetic Act, [~~21 USC § 301 et seq.~~] the Federal Meat
20 Inspection Act [~~21 USC § 601 et seq.~~] and the federal Poultry
21 Products Inspection Act [~~21 USC § 451 et seq.~~]."

22 **SECTION 34.** Section 25-5-1 NMSA 1978 (being Laws 1955,
23 Chapter 244, Section 1, as amended) is amended to read:

24 "25-5-1. DEFINITIONS.--As used in the Flour and Bread
25 Act, unless the context otherwise requires:

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

3 (1) includes:

4 (a) white flour, also known as wheat
5 flour or plain flour;

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

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

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

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

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

20 C. "rolls" includes plain white rolls and buns of
21 the semi-bread dough type, namely: soft rolls such as
22 hamburger rolls, hot dog rolls and Parker House rolls and hard
23 rolls such as Vienna rolls and Kaiser rolls; but [~~shall~~]
24 "rolls" does not include yeast-raised sweet rolls or sweet buns
25 made with fillings or coatings such as cinnamon rolls or buns

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1 and butterfly rolls;

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

3 E. "director" means the ~~[director of the division]~~
4 secretary of natural resources and environment or ~~[his]~~ the
5 secretary's authorized representative;

6 F. "division" means the ~~[environmental improvement~~
7 ~~division of the health]~~ natural resources and environment
8 department; and

9 G. "person" means an individual, corporation,
10 partnership, association, joint stock company, trust or any
11 group of persons, whether incorporated or not, engaged in the
12 commercial manufacture or sale of flour, white bread or rolls."

13 SECTION 35. Section 30-8-7 NMSA 1978 (being Laws 1975,
14 Chapter 199, Section 4) is amended to read:

15 "30-8-7. PUBLIC EDUCATION.--The state game commission,
16 the ~~[state highway]~~ department of transportation and the state
17 ~~[park and recreation commission]~~ parks division and the
18 environmental ~~[improvement agency]~~ protection division of the
19 natural resources and environment department are encouraged to
20 institute public education programs through the news media in
21 order to inform the public of the litter problem in New Mexico
22 and of individual efforts that can be made to assist in the
23 abatement of the problem. In addition, these agencies are
24 authorized to work with industry organizations in a joint anti-
25 litter campaign so that additional effect may be given to the

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1 anti-litter effort in New Mexico."

2 SECTION 36. Section 33-13-2 NMSA 1978 (being Laws 1998,
3 Chapter 57, Section 2) is amended to read:

4 "33-13-2. DEFINITIONS.--As used in the Inmate Forestry
5 Work Camp Act:

- 6 A. "department" means the corrections department;
- 7 B. "forestry division" means the forestry division of
8 the ~~[energy, minerals and]~~ natural resources and environment
9 department;
- 10 C. "program" means the inmate forestry work camp
11 program; and
- 12 D. "work camp" means a minimum security facility
13 operated by the department that houses inmates training or
14 working in the program."

15 SECTION 37. Section 50-9-1 NMSA 1978 (being Laws 1972,
16 Chapter 63, Section 1, as amended) is amended to read:

17 "50-9-1. SHORT TITLE.--~~[Sections 50-9-1 through 50-9-25]~~
18 Chapter 50, Article 9 NMSA 1978 may be cited as the
19 "Occupational Health and Safety Act"."

20 SECTION 38. Section 50-9-3 NMSA 1978 (being Laws 1972,
21 Chapter 63, Section 3, as amended) is amended to read:

22 "50-9-3. DEFINITIONS.--As used in the Occupational Health
23 and Safety Act:

- 24 A. "person" means any individual, partnership, firm,
25 public or private corporation, association, trust, estate,

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1 political subdivision or agency or any other legal entity or
2 their legal representatives, agents or assigns;

3 B. "employee" means an individual who is employed by
4 an employer, but does not include a domestic employee or a
5 volunteer nonsalaried firefighter;

6 C. "employer" means any person who has one or more
7 employees, but does not include the United States;

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

9 E. "department" means the [~~department of~~] natural
10 resources and environment department;

11 F. "place of employment" means any place, area or
12 environment in or about which an employee is required or
13 permitted to work;

14 G. "commission" means the [~~occupational health and~~
15 ~~safety review commission established under the Occupational~~
16 ~~Health and Safety Act~~] board;

17 H. "chemical" means any element, chemical compound or
18 mixture of elements or compounds;

19 I. "hazardous chemical" means any chemical or
20 combination of chemicals that has been labeled hazardous by the
21 chemical manufacturer, importer or distributor in accordance
22 with regulations promulgated by the federal Occupational Safety
23 and Health Act of 1970;

24 J. "label" means any written, printed or graphic
25 material displayed on or affixed to containers of chemicals

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1 [which] that identifies the chemical as hazardous;

2 K. "material safety data sheet" means written or
3 printed material concerning a hazardous chemical that contains
4 information on the identity listed on the label, the chemical
5 and common names of the hazardous ingredients, the physical and
6 health hazards, the primary route of entry, the exposure
7 limits, any generally applicable control measures, any
8 emergency or first aid procedures, the date of preparation and
9 the name, address and telephone number of the chemical
10 manufacturer, importer, employer or other responsible party
11 preparing or distributing the material safety data sheet;

12 L. "mobile work site" means any place of employment
13 in standard industrial classification codes 13, oil and gas
14 extraction, and 15 through 17, construction, where work is
15 performed in a different location than the principal office in
16 a fixed location used by the employer; and

17 M. "secretary" means the secretary of natural
18 resources and environment."

19 SECTION 39. Section 61-14E-4 NMSA 1978 (being Laws 1983,
20 Chapter 317, Section 4, as amended) is amended to read:

21 "61-14E-4. DEFINITIONS.--As used in the Medical Imaging
22 and Radiation Therapy Health and Safety Act:

23 A. "advisory council" means the medical imaging and
24 radiation therapy advisory council;

25 B. "board" means the environmental improvement board;

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1 C. "certificate of limited practice" means a
2 certificate issued pursuant to the Medical Imaging and
3 Radiation Therapy Health and Safety Act to persons who perform
4 restricted diagnostic radiography under direct supervision of a
5 licensed practitioner limited to the following specific
6 procedures:

- 7 (1) the viscera of the thorax;
- 8 (2) extremities;
- 9 (3) radiation to humans for diagnostic purposes
10 in the practice of dentistry;
- 11 (4) axial/appendicular skeleton; or
- 12 (5) the foot, ankle or lower leg;

13 D. "certified nurse practitioner" means a person
14 licensed pursuant to Section 61-3-23.2 NMSA 1978;

15 E. "credential" or "certification" means the
16 recognition awarded to an individual who meets the requirements
17 of a credentialing or certification organization;

18 F. "credentialing organization" or "certification
19 organization" means a nationally recognized organization
20 recognized by the board that issues credentials or
21 certification through testing or evaluations that determine
22 whether an individual meets defined standards for training and
23 competence in a medical imaging modality;

24 G. "department" means the [~~department of~~] natural
25 resources and environment department;

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1 H. "diagnostic medical sonographer" means a person,
2 including a vascular technologist or echocardiographer, other
3 than a licensed practitioner, who provides patient care
4 services using ultrasound;

5 I. "division" means the environmental health division
6 of the [~~department of~~] natural resources and environment
7 department;

8 J. "ionizing radiation" means alpha particles, beta
9 particles, gamma rays, x-rays, neutrons, high-speed electrons,
10 high-speed protons and other particles capable of producing
11 ions; "ionizing radiation" does not include non-ionizing
12 radiation, such as sound waves, radio waves or microwaves, or
13 visible, infrared or ultraviolet light;

14 K. "license" means a document issued by the
15 department pursuant to the Medical Imaging and Radiation
16 Therapy Health and Safety Act to [~~an individual~~] a person who
17 has met the requirements of licensure;

18 L. "licensed practitioner" means a person licensed to
19 practice medicine, dentistry, podiatry, chiropractic or
20 osteopathy in this state;

21 M. "licensure" means a grant of authority through a
22 license or limited license to perform specific medical imaging
23 and radiation therapy services pursuant to the Medical Imaging
24 and Radiation Therapy Health and Safety Act;

25 N. "magnetic resonance technologist" means a person

.184349.1

1 other than a licensed practitioner who performs magnetic
2 resonance procedures under the supervision of a licensed
3 practitioner using magnetic fields and radio frequency signals;

4 O. "medical imaging" means the use of substances or
5 equipment emitting ionizing or non-ionizing radiation on humans
6 for diagnostic or interventional purposes;

7 P. "medical imaging modality" means:

8 (1) diagnostic medical sonography and all of its
9 subspecialties;

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

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

14 (4) radiation therapy and all of its
15 subspecialties; and

16 (5) radiography and all of its subspecialties;

17 Q. "medical imaging professional" means a person who
18 is a magnetic resonance technologist, radiographer, nuclear
19 medicine technologist or diagnostic medical sonographer and who
20 is licensed pursuant to the Medical Imaging and Radiation
21 Therapy Health and Safety Act;

22 R. "non-ionizing radiation" means the optical
23 radiations, including ultraviolet, visible, infrared and
24 lasers, static and time-varying electric and magnetic fields
25 and radio frequency, including microwave radiation and

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1 ultrasound;

2 S. "nuclear medicine technologist" means a person
3 other than a licensed practitioner who applies
4 radiopharmaceutical agents to humans for diagnostic or
5 therapeutic purposes under the direction of a licensed
6 practitioner;

7 T. "physician assistant" means a person licensed
8 pursuant to Section 61-6-7 or 61-10A-4 NMSA 1978;

9 U. "radiation therapy" means the application of
10 ionizing radiation to humans for therapeutic purposes;

11 V. "radiation therapy technologist" means a person
12 other than a licensed practitioner whose application of
13 radiation to humans is for therapeutic purposes;

14 W. "radiographer" means a person other than a
15 licensed practitioner whose application of radiation to humans
16 is for diagnostic purposes;

17 X. "radiography" means the application of radiation
18 to humans for diagnostic purposes, including adjustment or
19 manipulation of x-ray systems and accessories, including image
20 receptors, positioning of patients, processing of films and any
21 other action that materially affects the radiation dose to
22 patients;

23 Y. "radiologist" means a licensed practitioner
24 certified by the American board of radiology, the British royal
25 college of ~~[radiology]~~ radiologists, the American osteopathic

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1 board of radiology or the American chiropractic board of
2 radiology; and

3 Z. "radiologist assistant" means [~~an individual~~] a
4 person licensed as a radiographer as defined in the Medical
5 Imaging and Radiation Therapy Health and Safety Act who holds
6 additional certification as a registered radiologist assistant
7 by the American registry of radiologic technologists and who
8 works under the supervision of a radiologist; provided that a
9 radiologist assistant shall not interpret images, render
10 diagnoses or prescribe medications or therapies."

11 SECTION 40. Section 61-33-2 NMSA 1978 (being Laws 1992,
12 Chapter 44, Section 2, as amended) is amended to read:

13 "61-33-2. DEFINITIONS.--As used in the Utility Operators
14 Certification Act:

15 A. "certified operator" means a person who is
16 certified by the department as being qualified to operate one
17 of the classifications of public water supply systems or public
18 wastewater facilities;

19 B. "commission" means the water quality control
20 commission;

21 C. "department" means the [~~department of~~] natural
22 resources and environment department;

23 D. "domestic liquid waste" means human excreta and
24 water-carried waste from typical residential plumbing fixtures
25 and activities, including waste from toilets, sinks, bath

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1 fixtures, clothes or dishwashing machines and floor drains;

2 E. "domestic liquid waste treatment unit" means any
3 system that is designed to discharge less than two thousand
4 gallons per day and that is subject to rules promulgated by the
5 environmental improvement board pursuant to Paragraph (3) of
6 Subsection A of Section 74-1-8 NMSA 1978 or a watertight unit
7 designed, constructed and installed to stabilize only domestic
8 liquid waste and to retain solids contained in such domestic
9 liquid waste, including septic tanks;

10 F. "operate" means performing any activity, function,
11 process control decision or system integrity decision regarding
12 water quality or water quantity that has the potential to
13 affect the proper functioning of a public water supply system
14 or public wastewater facility or to affect human health, public
15 welfare or the environment;

16 G. "person" means any agency, department or
17 instrumentality of the United States and any of its officers,
18 agents or employees, the state or any agency, institution or
19 political subdivision thereof, any public or private
20 corporation, individual, partnership, association or other
21 entity, and includes any officer or governing or managing body
22 of any political subdivision or public or private corporation;

23 H. "public wastewater facility" means a system of
24 structures, equipment and processes designed to collect and
25 treat domestic and industrial waste and dispose of the

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1 effluent, but does not include:

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

3 (2) any industrial facility subject to an
4 industrial pretreatment program regulated by the United States
5 environmental protection agency under the requirements of the
6 federal Clean Water Act of 1977; and

7 I. "public water supply system" means:

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

11 (a) has at least fifteen service
12 connections; or

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

15 (2) includes any water supply source and any
16 treatment, storage and distribution facilities under control of
17 the operator of the system."

18 SECTION 41. Section 66-12-3 NMSA 1978 (being Laws 1959,
19 Chapter 338, Section 3, as amended) is amended to read:

20 "66-12-3. DEFINITIONS.--As used in the Boat Act:

21 A. "vessel" means every description of watercraft,
22 other than a seaplane on the water, used or capable of being
23 used as a means of transportation on water;

24 B. "motorboat" means any vessel propelled by
25 machinery, whether or not machinery is the principal source of

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1 propulsion, but does not include a vessel that has a valid
2 marine document issued by the bureau of customs of the United
3 States government or any federal agency successor thereto;
4 "motorboat" includes any vessel propelled or designed to be
5 propelled by sail and that does not have a valid document
6 issued by a federal agency, but does not include a sailboard or
7 windsurf board;

8 C. "owner" means a person, other than a lienholder,
9 having the property in or title to a motorboat; "owner"
10 includes a person entitled to the use or possession of a
11 motorboat subject to an interest in another person, reserved or
12 created by agreement and securing payment or performance of an
13 obligation, but excludes a lessee under a lease not intended as
14 security;

15 D. "waters of this state" means waters within the
16 territorial limits of this state;

17 E. "person" means an individual, partnership, firm,
18 corporation, association or other entity;

19 F. "operate" means to navigate or otherwise use a
20 motorboat or a vessel;

21 G. "state agency" means any department, institution,
22 board, bureau, commission, district or committee of the
23 government of this state and means every office or officer of
24 any state agency;

25 H. "subdivision of the state" means every county,

.184349.1

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1 county institution, board, bureau or commission, incorporated
2 city, town or village, drainage, conservancy, irrigation or
3 other district and every office or officer of any subdivision
4 of this state;

5 I. "division" means the state parks division of the
6 ~~[energy, minerals and]~~ natural resources and environment
7 department;

8 J. "boat" means a motorboat that is ten feet in
9 length or longer;

10 K. "dealer" means any person who engages in whole or
11 in part in the business of buying, selling or exchanging new
12 and unused motorboats or used motorboats, or both, either
13 outright or on conditional sale, bailment, lease, chattel
14 mortgage or otherwise and who has an established place of
15 business for sale, trade and display of motorboats; "dealer"
16 includes a yacht broker;

17 L. "lien" means every chattel mortgage, conditional
18 sales contract, lease, purchase lease, sales lease, contract,
19 security interest under the Uniform Commercial Code or other
20 instrument in writing having the effect of a mortgage or lien
21 or encumbrance upon, or intended to hold the title to any boat
22 in the former owner, possessor or grantor;

23 M. "manufacturer" means any person engaged in the
24 business of manufacturing or importing new and unused
25 motorboats for the purpose of sale or trade;

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1 N. "demonstration" means:

2 (1) the operation of a motorboat on the waters
3 of this state for the purpose of selling, transferring,
4 bartering, trading, negotiating or attempting to negotiate the
5 sale or exchange of an interest in a motor boat; or

6 (2) the operation of a motorboat by a
7 manufacturer for the purpose of testing the motorboat; and

8 O. "established place of business" means a salesroom
9 in an enclosed building or structure that the dealer owns or
10 leases, where the business of bartering, trading and selling of
11 motorboats is conducted and where the books, records and files
12 necessary to conduct the business are maintained."

13 SECTION 42. Section 68-2-31 NMSA 1978 (being Laws 1990,
14 Chapter 96, Section 3, as amended) is amended to read:

15 "68-2-31. DEFINITION.--As used in the New Mexico Forest
16 Re-Leaf Act:

17 A. "division" means the forestry division of the
18 [~~energy, minerals and~~] natural resources and environment
19 department; and

20 B. "tree" means any living single-stemmed or multi-
21 stemmed woody material."

22 SECTION 43. Section 69-25A-3 NMSA 1978 (being Laws 1979,
23 Chapter 291, Section 3, as amended) is amended to read:

24 "69-25A-3. DEFINITIONS.--As used in the Surface Mining
25 Act:

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1 A. "commission" means the [~~coal surface~~] mining
2 commission;

3 B. "director", when used without further
4 qualification, means the director of the mining and minerals
5 division of the [~~energy, minerals and~~] natural resources and
6 environment department or [~~his~~] the director's designee;

7 C. "alluvial valley floors" means the unconsolidated
8 stream-laid deposits holding streams where water availability
9 is sufficient for subirrigation or flood irrigation
10 agricultural activities but does not include upland areas
11 [~~which~~] that are generally overlain by a thin veneer of
12 colluvial deposits composed chiefly of debris from sheet
13 erosion, deposits by unconcentrated runoff or slope wash,
14 together with talus, other mass movement accumulation and
15 windblown deposits;

16 D. "approximate original contour" means that surface
17 configuration achieved by backfilling and grading of the mined
18 area so that the reclaimed area, including any terracing or
19 access roads, closely resembles the general surface
20 configuration of the land prior to mining and blends into and
21 complements the drainage pattern of the surrounding terrain
22 with all highwalls and spoil piles eliminated; water
23 impoundments may be permitted where the director determines
24 that they are in compliance with Paragraph (8) of Subsection B
25 of Section 69-25A-19 NMSA 1978;

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1 E. "imminent danger to the health and safety of the
2 public" means the existence of any condition or practice, or
3 any violation of a permit or other requirement of the Surface
4 Mining Act, in a surface coal mining and reclamation operation,
5 which condition, practice or violation could reasonably be
6 expected to cause substantial physical harm to persons outside
7 the permit area before the condition, practice or violation can
8 be abated. A reasonable expectation of death or serious injury
9 before abatement exists if a rational person, subjected to the
10 same conditions or practices giving rise to the peril, would
11 not [~~expose himself~~] agree to be exposed to the danger during
12 the time necessary for abatement;

13 F. "operator" means any person engaged in coal mining
14 who removes or intends to remove more than two hundred fifty
15 tons of coal from the earth by coal mining within twelve
16 consecutive calendar months in any one location;

17 G. "other minerals" means clay, stone, sand, gravel,
18 metalliferous and nonmetalliferous ores and any other solid
19 material or substances of commercial value excavated in solid
20 form from natural deposits on or in the earth, exclusive of
21 coal, and those minerals [~~which~~] that occur naturally in liquid
22 or gaseous form;

23 H. "permit" means a permit to conduct surface coal
24 mining and reclamation operations issued by the director
25 pursuant to the Surface Mining Act;

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1 I. "permit applicant" or "applicant" means a person
2 applying for a permit;

3 J. "permit area" means the area of land indicated on
4 the approved map submitted by the operator with ~~[his]~~ the
5 operator's application, which area of land is to be covered by
6 the operator's bond as required by Section 69-25A-13 NMSA 1978
7 and shall be readily identifiable by appropriate markers on the
8 site;

9 K. "permittee" means a person holding a permit;

10 L. "person" means an individual, partnership,
11 association, society, joint stock company, firm, company,
12 corporation or other business organization;

13 M. ~~[the term]~~ "prime farmland" is to be defined by
14 ~~[regulation]~~ rule of the commission after considering such
15 factors as moisture availability, temperature regime, chemical
16 balance, permeability, surface layer composition,
17 susceptibility to flooding, erosion characteristics, history of
18 use for intensive agricultural purposes and regulations issued
19 by the United States secretary of agriculture;

20 N. "reclamation plan" means a plan submitted by an
21 applicant for a permit ~~[which]~~ that sets forth a plan for
22 reclamation of the proposed surface coal mining operations
23 pursuant to Section 69-25A-12 NMSA 1978;

24 O. "surface coal mining and reclamation operations"
25 means surface coal mining operations and all activities

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1 necessary and incident to the reclamation of those operations
2 after the date of enactment of the Surface Mining Act;

3 P. "surface coal mining operations" means:

4 (1) activities conducted on the surface of lands
5 in connection with a surface coal mine or activities subject to
6 the requirements of Section 69-25A-20 NMSA 1978 relating to
7 surface operations and surface impacts incident to an
8 underground coal mine. The activities include excavation for
9 the purpose of obtaining coal, including such common methods as
10 contour, strip, auger, mountaintop removal, box cut, open pit
11 and area mining. These activities also include uses of
12 explosives and blasting and in situ distillation or retorting,
13 leaching or other chemical or physical processing and the
14 cleaning, concentrating or other processing or preparation,
15 including loading of coal at or near the mine site. ~~[Provided]~~
16 However, ~~[that]~~ such activities do not include the extraction
17 of coal incidental to the extraction of other minerals where
18 coal does not exceed sixteen and two-thirds percent of the
19 tonnage of minerals removed for purposes of commercial use or
20 sale or coal exploration subject to Section 69-25A-16 NMSA
21 1978; and

22 (2) the areas upon which these activities occur
23 or where the activities disturb the natural land surface.
24 These areas also include any adjacent land, the use of which is
25 incidental to any of the activities, all lands affected by the

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1 construction of new roads or the improvement or use of existing
2 roads to gain access to the site of these activities and for
3 haulage and excavations, workings, impoundments, dams,
4 ventilation shafts, entryways, refuse banks, dumps, stockpiles,
5 overburden piles, spoil banks, culm banks, tailings, holes or
6 depressions, repair areas, storage areas, processing areas,
7 shipping areas and other areas upon which are sited structures,
8 facilities or other property or materials on the surface,
9 resulting from or incident to these activities;

10 Q. "unwarranted failure to comply" means the failure
11 of a permittee to prevent the occurrence of any violation of
12 ~~[his]~~ the permittee's permit or any requirement of the Surface
13 Mining Act due to indifference, lack of diligence or lack of
14 reasonable care, or the failure to abate any violation of the
15 permit or the Surface Mining Act due to indifference, lack of
16 diligence or lack of reasonable care; and

17 R. "lignite coal" means consolidated lignitic coal
18 ~~[having]~~ that has less than eight thousand three hundred BTUs
19 per pound and that is moisture- and mineral-matter-free."

20 SECTION 44. Section 69-25B-3 NMSA 1978 (being Laws 1980,
21 Chapter 87, Section 3, as amended) is amended to read:

22 "69-25B-3. DEFINITIONS.--As used in the Abandoned Mine
23 Reclamation Act:

24 A. "director" means the director of the mining and
25 minerals division of the ~~[energy, minerals and]~~ natural

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1 resources and environment department;

2 B. "eligible lands and water" means land or water
3 that was mined or that was affected by mining, wastebanks,
4 processing or other mining processes and abandoned or left in
5 an inadequate reclamation status and for which there is no
6 continuing reclamation responsibility under state or federal
7 laws;

8 C. "emergency" means a sudden danger or impairment
9 that presents a high probability of substantial physical harm
10 to health, safety or general welfare of people before the
11 danger can be abated under normal program procedures; and

12 D. "fund" means the abandoned mine reclamation fund."

13 SECTION 45. A new section of the Surface Mining Act is
14 enacted to read:

15 "[NEW MATERIAL] DUTIES OF COAL SURFACE MINING COMMISSION
16 TO MINING COMMISSION.--Beginning July 1, 2010, the mining
17 commission shall assume the duties of the coal surface mining
18 commission. All rules of the coal surface mining commission
19 shall remain in force unless the mining commission repeals or
20 amends them."

21 SECTION 46. Section 69-36-3 NMSA 1978 (being Laws 1993,
22 Chapter 315, Section 3) is amended to read:

23 "69-36-3. DEFINITIONS.--As used in the New Mexico Mining
24 Act:

25 A. "affected area" means the area outside of the

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1 permit area where the land surface, surface water, ground water
2 and air resources are [~~impacted~~] affected by mining operations
3 within the permit area;

4 B. "commission" means the mining commission
5 [~~established in the New Mexico Mining Act~~];

6 C. "director" means the director of the division or
7 [~~his~~] the director's designee;

8 D. "division" means the mining and minerals division
9 of the [~~energy, minerals and~~] natural resources and environment
10 department;

11 E. "existing mining operation" means an extraction
12 operation that produced marketable minerals for a total of at
13 least two years between January 1, 1970 and [~~the effective date~~
14 ~~of the New Mexico Mining Act~~] June 18, 1993;

15 F. "exploration" means the act of searching for or
16 investigating a mineral deposit, including sinking shafts,
17 tunneling, drilling core and bore holes, digging pits, making
18 cuts and other works for the purpose of extracting samples
19 prior to commencement of development or extraction operations
20 and the building of roads, access ways and other facilities
21 related to such work; however, activities that cause no or very
22 little surface disturbance, such as airborne surveys and
23 photographs, use of instruments or devices that are hand
24 carried or otherwise transported over the surface to perform
25 magnetic, radioactive or other tests and measurements, boundary

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1 or claim surveying, location work or other work that causes no
2 greater disturbance than is caused by ordinary lawful use of
3 the area by persons not engaged in exploration, are excluded
4 from the meaning of "exploration";

5 G. "mineral" means a nonliving commodity that is
6 extracted from the earth for use or conversion into a
7 [~~saleable~~] salable or usable product, but does not include
8 clays, adobe, flagstone, potash, sand, gravel, caliche, borrow
9 dirt, quarry rock used as aggregate for construction, coal,
10 surface water or subsurface water, geothermal resources, oil
11 and natural gas together with other chemicals recovered with
12 them, commodities, byproduct materials and wastes that are
13 regulated by the nuclear regulatory commission or waste
14 regulated under Subtitle C of the federal Resource Conservation
15 and Recovery Act of 1976;

16 H. "mining" means the process of obtaining useful
17 minerals from the earth's crust or from previously disposed or
18 abandoned mining wastes, including exploration, open-cut mining
19 and surface operation, the disposal of refuse from underground
20 and in situ mining, mineral transportation, concentrating,
21 milling, evaporation, leaching and other processing. "Mining"
22 does not mean the exploration and extraction of potash, sand,
23 gravel, caliche, borrow dirt [~~and~~] or quarry rock used as
24 aggregate in construction; the exploration and extraction of
25 natural petroleum in a liquid or gaseous state by means of

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1 wells or pipes; the development or extraction of coal; the
2 extraction of geothermal resources; smelting, refining,
3 cleaning, preparation, transportation or other off-site
4 operations not conducted on permit areas; or the extraction,
5 processing or disposal of commodities, byproduct materials or
6 wastes or other activities regulated by the federal nuclear
7 regulatory commission;

8 I. "new mining operation" means a mining operation
9 that engages in a development or extraction operation after
10 [~~the effective date of the New Mexico Mining Act~~] June 18, 1993
11 and that is not an existing mining operation;

12 J. "permit area" means the geographical area defined
13 in the permit for a new mining operation or for an existing
14 mining operation on which mining operations are conducted or
15 cause disturbance; and

16 K. "reclamation" means the employment during and
17 after a mining operation of measures designed to mitigate the
18 disturbance of affected areas and permit areas and, to the
19 extent practicable, provide for the stabilization of a permit
20 area following closure that will minimize future impact to the
21 environment from the mining operation and protect air and water
22 resources."

23 SECTION 47. Section 69-36-14 NMSA 1978 (being Laws 1993,
24 Chapter 315, Section 14, as amended) is amended to read:

25 "69-36-14. CITIZENS SUITS.--

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1 A. A person having an interest that is or may be
2 adversely affected may commence a civil action on [~~his~~] the
3 person's own behalf to compel compliance with the New Mexico
4 Mining Act. Such action may be brought against:

5 (1) the [~~department of environment, the energy,~~
6 ~~minerals and natural resources department~~] division or the
7 commission alleging a violation of the New Mexico Mining Act or
8 of a rule, regulation, order or permit issued pursuant to that
9 act;

10 (2) a person who is alleged to be in violation
11 of a rule, regulation, order or permit issued pursuant to the
12 New Mexico Mining Act; or

13 (3) the [~~department of environment, the energy,~~
14 ~~minerals and natural resources department~~] division or the
15 commission alleging a failure to perform any nondiscretionary
16 act or duty required by the New Mexico Mining Act; provided,
17 however, that no action pursuant to this section shall be
18 commenced if the [~~department of environment, the energy,~~
19 ~~minerals and natural resources department~~] division or the
20 commission has commenced and is diligently prosecuting a civil
21 action in a court of this state or an administrative
22 enforcement proceeding to require compliance with that act. In
23 an administrative or court action commenced by the [~~department~~
24 ~~of environment, the energy, minerals and natural resources~~
25 ~~department~~] division or the commission, a person whose interest

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1 may be adversely affected and who has provided notice pursuant
2 to Subsection B of this section prior to the initiation of the
3 action may intervene as a matter of right.

4 B. No action shall be commenced pursuant to this
5 section prior to sixty days after the plaintiff has given
6 written notice to the [~~department of environment, the energy,
7 minerals and natural resources department~~] division, the
8 commission, the attorney general and the alleged violator of
9 the New Mexico Mining Act; provided, however, when the
10 violation or order complained of constitutes an immediate
11 threat to the health or safety of the plaintiff or would
12 immediately and irreversibly impair a legal interest of the
13 plaintiff, an action pursuant to this section may be brought
14 immediately after notification of the proper parties.

15 C. [~~Except as otherwise provided herein~~] Suits
16 against the [~~department of environment, the energy, minerals
17 and natural resources department~~] division or the commission
18 shall be brought in the district court of Santa Fe county.
19 Suits [~~only against~~] in which only one or more owners or
20 operators of one or more mining operations are named as
21 defendants shall be brought in the district court where one of
22 the mining operations is located. If an action is brought
23 against the [~~department of environment, the energy, minerals
24 and natural resources department~~] division or the commission
25 and [~~the~~] an owner or operator of a mining operation, [~~such~~]

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1 the owner or operator may apply for a change of venue to the
2 judicial district in which the mining operation is located. If
3 not already a party, an owner or operator may intervene, upon a
4 showing that the action relates primarily to a dispute
5 regarding ~~[the]~~ a single mining operation and apply for ~~[such]~~
6 a change of venue. The district court shall grant a change of
7 venue upon a showing that the action relates primarily to a
8 dispute regarding the ~~[subject]~~ single mining operation and a
9 showing that a forum non conveniens analysis suggests that the
10 location of the mining operation is a superior venue.

11 D. In an action brought pursuant to this section, the
12 ~~[department of environment, the energy, minerals and natural~~
13 ~~resources department]~~ division or the commission, if not a
14 party, may intervene.

15 E. The court, in issuing a final order in an action
16 brought pursuant to this section, may award costs of
17 litigation, including attorney and expert witness fees, to a
18 party whenever the court determines such award is appropriate.
19 The court may, if a temporary injunction or preliminary
20 injunction is sought, require the filing of a bond or
21 equivalent security in accordance with the rules of civil
22 procedure."

23 SECTION 48. Section 69-36-19 NMSA 1978 (being Laws 1993,
24 Chapter 315, Section 19) is amended to read:

25 "69-36-19. FUNDS CREATED.--

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1 A. There is created within the state treasury the
2 "mining act fund". All money received by the state from permit
3 applicants, permit holders, the federal government, other state
4 agencies or legislative appropriations shall be delivered to
5 the state treasurer and deposited in the fund. Disbursements
6 from the fund shall be made upon warrants drawn by the
7 secretary of finance and administration pursuant to vouchers
8 signed by the secretary of [~~energy, minerals and~~] natural
9 resources and environment. Money in the fund is appropriated
10 to the [~~energy, minerals and~~] natural resources and environment
11 department to carry out the purposes of the New Mexico Mining
12 Act. Any unexpended or unencumbered balance remaining in the
13 mining act fund at the end of a fiscal year shall not revert to
14 the general fund but shall remain and accrue to the benefit of
15 the mining act fund.

16 B. There is created within the state treasury the
17 "inactive or abandoned non-coal mine reclamation fund". All
18 money received from administrative or court-imposed penalties
19 shall be delivered to the state treasurer and deposited in the
20 general fund to the credit of the current school fund.

21 Disbursements from the fund shall be made upon warrants drawn
22 by the secretary of finance and administration pursuant to
23 vouchers signed by the secretary of [~~energy, minerals and~~]
24 natural resources and environment. Money in the fund is
25 appropriated to the [~~energy, minerals and~~] natural resources

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1 and environment department to conduct reclamation activities on
2 abandoned or inactive non-coal mining areas. Any unexpended or
3 unencumbered balance remaining in the inactive or abandoned
4 non-coal mine reclamation fund at the end of a fiscal year
5 shall not revert to the general fund but shall remain and
6 accrue to the benefit of the inactive or abandoned non-coal
7 mine reclamation fund."

8 SECTION 49. Section 70-6-2 NMSA 1978 (being Laws 1963,
9 Chapter 139, Section 2, as amended) is amended to read:

10 "70-6-2. DEFINITIONS.--As used in Chapter 70, Article 6
11 NMSA 1978:

12 A. "underground storage" means storage of natural gas
13 in a subsurface stratum or formation of the earth;

14 B. "natural gas" means natural gas either while in
15 its original state after withdrawal from the earth or after it
16 has been processed by removal of component parts not essential
17 to its use for light and fuel;

18 C. "native gas" means gas that has not been
19 previously withdrawn from the earth;

20 D. "division" means the oil conservation division of
21 the [~~energy, minerals and~~] natural resources and environment
22 department;

23 E. "commission" means the oil conservation
24 commission;

25 F. "natural gas company" means any person, firm or

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1 corporation engaged in the distribution, sale or furnishing of
2 natural gas to or for the public and subject to regulation by
3 the ~~[New Mexico]~~ public ~~[utility]~~ regulation commission under
4 the Public Utility Act or any person, firm or corporation
5 engaged in the business of transporting natural gas and subject
6 to regulation by the federal energy regulatory commission under
7 the federal Natural Gas Act; and

8 G. "public body" means the state or any department,
9 board, commission, bureau, institution, public agency, county
10 or political subdivision thereof, including bodies corporate,
11 bodies politic, municipal corporations, school districts,
12 conservancy districts and quasi-municipal corporations of all
13 kinds."

14 SECTION 50. Section 70-7-3 NMSA 1978 (being Laws 1975,
15 Chapter 293, Section 3, as amended) is amended to read:

16 "70-7-3. ADDITIONAL POWERS AND DUTIES OF THE OIL
17 CONSERVATION DIVISION.--

18 A. As used in the Statutory Unitization Act,
19 "division" means the oil conservation division of the natural
20 resources and environment department.

21 B. Subject to the limitations of the Statutory
22 Unitization Act, the ~~[oil conservation]~~ division ~~[of the~~
23 ~~energy, minerals and natural resources department, hereinafter~~
24 ~~referred to as the "division"]~~ is vested with jurisdiction,
25 power and authority and it shall be its duty to make and

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1 enforce such orders and do such things as may be necessary or
2 proper to carry out and effectuate the purposes of the
3 Statutory Unitization Act."

4 SECTION 51. Section 70-11-2 NMSA 1978 (being Laws 1989,
5 Chapter 189, Section 2) is amended to read:

6 "70-11-2. OFFICE CREATED--DUTIES.--~~[There is created]~~ The
7 "office of interstate natural gas markets" ~~[to be located]~~ is
8 created in the ~~[energy, minerals and]~~ natural resources and
9 environment department. The office shall:

10 A. conduct economic and legal studies of the
11 interstate natural gas markets and of the trade policies and
12 practices of the federal energy regulatory commission and
13 regulatory agencies and local distributing companies lying
14 outside New Mexico;

15 B. determine the impact of those practices on the
16 economic well-being of New Mexico, especially as it relates to
17 severance tax, royalty and general fund income of the state;

18 C. develop and implement marketing strategies and, if
19 applicable, prepare legislation to promote the use of natural
20 gas produced in New Mexico by markets in other states;

21 D. employ legal counsel and initiate or enter
22 lawsuits as appropriate for the purpose of protecting and
23 promoting the public interest in matters involving interstate
24 natural gas markets;

25 E. initiate or intervene in cases before the federal

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1 energy regulatory commission, the California public utility
2 commission and other regulatory agencies lying outside New
3 Mexico to protect and promote the public interest of the state;

4 F. present two progress reports to the legislative
5 finance committee each year; and

6 G. contract with state agencies and other appropriate
7 entities and persons as may be required to carry out the
8 purposes of [~~this act~~] Chapter 70, Article 11 NMSA 1978 and
9 those purposes outlined in Laws 1988, Chapter 27, Section 3."

10 SECTION 52. Section 70-11-5 NMSA 1978 (being Laws 1989,
11 Chapter 189, Section 5) is amended to read:

12 "70-11-5. TECHNICAL ADVISORY COMMITTEE--COMPOSITION--
13 DUTIES.--

14 A. A "technical advisory committee" to the office of
15 interstate natural gas markets is created. The committee shall
16 consist of four members as follows:

17 (1) the secretary of [~~energy, minerals and~~]
18 natural resources and environment or [~~his~~] the secretary's
19 designee;

20 (2) the director of natural gas programs or
21 [~~his~~] the director's designee;

22 (3) the commissioner of public lands or [~~his~~]
23 the commissioner's designee; and

24 (4) the director of the oil conservation
25 division of the [~~energy, minerals and~~] natural resources and

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1 environment department or [~~his~~] the director's designee.

2 B. The secretary of [~~energy, minerals and~~] natural
3 resources and environment, the director of natural gas programs
4 and the commissioner of public lands shall be voting members.
5 The director of the oil conservation division shall be an ex-
6 officio advisory member of the committee. The committee shall
7 select a [~~chairman~~] chair and meet at the call of the
8 [~~chairman~~] chair.

9 C. The committee shall review and make
10 recommendations to the director of the office of interstate
11 natural gas markets on how the office [~~of interstate natural~~
12 ~~gas markets~~] can perform the duties assigned to the office in
13 Section [~~2 of this act~~] 70-11-2 NMSA 1978."

14 SECTION 53. Section 71-5-3 NMSA 1978 (being Laws 1975,
15 Chapter 272, Section 3, as amended) is amended to read:

16 "71-5-3. DEFINITIONS.--As used in the Geothermal
17 Resources Conservation Act:

18 A. "geothermal resources" means the natural heat of
19 the earth or the energy, in whatever form, below the surface of
20 the earth present in, resulting from, created by or [~~which~~]
21 that may be extracted from this natural heat and all minerals
22 in solution or other products obtained from naturally heated
23 fluids, brines, associated gases and steam, in whatever form,
24 found below the surface of the earth, but excluding oil,
25 hydrocarbon gas and other hydrocarbon substances;

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1 B. "commission" means the oil conservation
2 commission;

3 C. "correlative rights" means the opportunity
4 afforded, insofar as is practicable to do so, to the owner of
5 each property in a geothermal reservoir to produce [~~his~~] the
6 owner's just and equitable share of the geothermal resources
7 within [~~such~~] the reservoir, being an amount, so far as can be
8 practicably determined and so far as can be practicably
9 obtained without waste, substantially in the proportion that
10 the recoverable geothermal resources under [~~such~~] the property
11 bear to the total recoverable geothermal resources in the
12 reservoir and, for such purpose, to use [~~his~~] the owner's just
13 and equitable share of the natural heat or energy in the
14 reservoir;

15 D. "division" means the oil conservation division of
16 the [~~energy, minerals and~~] natural resources and environment
17 department;

18 E. "geothermal reservoir" means an underground
19 reservoir containing geothermal resources, whether the fluids
20 in the reservoir are native to the reservoir or flow into or
21 are injected into the reservoir;

22 F. "geothermal field" means the general area [~~which~~]
23 that is underlaid or reasonably appears to be underlaid by at
24 least one geothermal reservoir;

25 G. "low-temperature thermal reservoir" means a

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1 geothermal reservoir containing low-temperature thermal water,
2 which is defined as naturally heated water, the temperature of
3 which is less than boiling at the altitude of occurrence, which
4 has additional value by virtue of the heat contained therein
5 and is found below the surface of the earth or in warm springs
6 at the surface;

7 H. "person" means:

8 (1) any individual, estate, trust, receiver,
9 cooperative association, club, corporation, company, firm,
10 partnership, joint venture, syndicate or other entity; or

11 (2) the United States or any agency or
12 instrumentality [~~thereof~~] of the United States or the state of
13 New Mexico or any political subdivision [~~thereof~~] of the state;

14 I. "well" means any well dug or drilled for the
15 discovery or development of geothermal resources or incident to
16 the discovery or development of geothermal resources or for the
17 purpose of injecting or reinjecting geothermal resources or the
18 residue [~~thereof~~] of geothermal resources or other fluids into
19 a geothermal reservoir or any well dug or drilled for any other
20 purpose and reactivated or converted to any of the aforesaid
21 uses; and

22 J. "potash" means the naturally occurring bedded
23 deposits of the salts of the element potassium."

24 SECTION 54. Section 71-6-6 NMSA 1978 (being Laws 1981,
25 Chapter 379, Section 16, as amended) is amended to read:

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1 "71-6-6. DEFINITIONS.--As used in the Solar Collector
2 Standards Act:

3 A. "department" means the [~~energy, minerals and~~
4 natural resources and environment department; and

5 B. "solar collector" means a component that provides
6 for the collection and transfer of incident solar energy, such
7 transfer to be effected through a liquid or air medium
8 primarily by mechanical means for use in water heating, space
9 heating or cooling or other applications that normally require
10 or would require a conventional source of energy such as
11 petroleum products, natural gas or electricity; but "solar
12 collector" does not include a passive system that uses
13 structural elements of a building to provide for the
14 collection, storage and distribution of solar energy for
15 heating or cooling without the use of a motor-driven fan or
16 pump."

17 SECTION 55. Section 71-7-4 NMSA 1978 (being Laws 2004,
18 Chapter 55, Section 4) is amended to read:

19 "71-7-4. DEFINITIONS.--As used in the Advanced Energy
20 Technologies Economic Development Act:

21 A. "alternative fuel" means natural gas, liquefied
22 petroleum gas, electricity, hydrogen, a fuel mixture containing
23 not less than eighty-five percent ethanol or methanol, a fuel
24 mixture containing not less than twenty percent vegetable oil
25 or a water-phased hydrocarbon fuel emulsion consisting of a

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1 hydrocarbon base and water in an amount not less than twenty
2 percent by volume of the total water-phased fuel emulsion;

3 B. "clean energy" means alternative fuels, energy
4 efficiency, renewable energy and fuel cells;

5 C. "department" means the [~~energy, minerals and~~
6 natural resources and environment department;

7 D. "energy efficiency" means the application of
8 technology resulting in the reduced or improved use of energy;

9 E. "fuel cell" means equipment using an
10 electrochemical process to generate electricity and heat;

11 F. "fund" means the clean energy grants fund;

12 G. "renewable energy" means thermal or electrical
13 energy generated by means of a low- or zero-emissions
14 generation technology that has substantial long-term production
15 potential, including solar, wind, geothermal, landfill gas or
16 biomass, but does not include fossil fuel or nuclear power; and

17 H. "secretary" means the secretary of [~~energy,~~
18 ~~minerals and~~] natural resources and environment."

19 SECTION 56. Section 74-1-3 NMSA 1978 (being Laws 1971,
20 Chapter 277, Section 3, as amended) is amended to read:

21 "74-1-3. DEFINITIONS.--As used in the Environmental
22 Improvement Act:

23 A. "board" means the environmental improvement board;

24 B. "department" or "environmental improvement
25 department" means the [~~department of~~] natural resources and

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1 environment department;

2 C. "on-site liquid waste system" means a liquid waste
3 system, or part thereof, serving a dwelling, establishment or
4 group, and using a liquid waste treatment unit designed to
5 receive liquid waste followed by either a soil treatment or
6 other type of disposal system. "On-site liquid waste system"
7 includes holding tanks and privies but does not include systems
8 or facilities designed to receive or treat mine or mill
9 tailings or wastes;

10 D. "person" means the state or any agency,
11 institution or political subdivision thereof, any public or
12 private corporation, individual, partnership, association or
13 other entity and includes any officer or governing or managing
14 body of any political subdivision or public or private
15 corporation;

16 E. "residential on-site liquid waste system" means an
17 on-site liquid waste system serving up to four dwelling units;
18 and

19 F. "secretary" means the secretary of natural
20 resources and environment."

21 SECTION 57. Section 74-1-7 NMSA 1978 (being Laws 1971,
22 Chapter 277, Section 10, as amended by Laws 2000, Chapter 86,
23 Section 1 and also by Laws 2000, Chapter 96, Section 1) is
24 amended to read:

25 "74-1-7. DEPARTMENT--DUTIES.--

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1 A. The department is responsible for environmental
2 management and consumer protection programs. In that respect,
3 the department shall maintain, develop and enforce rules and
4 standards in the following areas:

5 (1) food protection;

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

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

18 (4) air quality management as provided in the
19 Air Quality Control Act;

20 (5) radiation control and collection of license,
21 registration and other related fees as provided in the
22 Radiation Protection Act;

23 (6) noise control;

24 (7) nuisance abatement;

25 (8) vector control;

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1 (9) occupational health and safety as provided
2 in the Occupational Health and Safety Act;

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

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

8 (12) medical radiation, health and safety
9 certification and standards for [~~radiologic technologists~~]
10 medical imaging professionals and radiation therapists as
11 provided in the Medical Imaging and Radiation Therapy Health
12 and Safety Act;

13 (13) hazardous wastes and underground storage
14 tanks as provided in the Hazardous Waste Act; [~~and~~]

15 (14) solid waste as provided in the Solid Waste
16 Act; and

17 (15) any other area assigned by law.

18 B. Nothing in Subsection A of this section imposes
19 requirements for the approval of subdivision plats in addition
20 to those required elsewhere by law. Nothing in Subsection A of
21 this section preempts the authority of any political
22 subdivision to approve subdivision plats."

23 **SECTION 58.** Section 74-1-8 NMSA 1978 (being Laws 1971,
24 Chapter 277, Section 11, as amended by Laws 2000, Chapter 86,
25 Section 2 and also by Laws 2000, Chapter 96, Section 2) is

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1 amended to read:

2 "74-1-8. BOARD--DUTIES.--

3 A. The board is responsible for environmental
4 management and consumer protection. In that respect, the board
5 shall promulgate rules and standards in the following areas:

6 (1) food protection;

7 (2) water supply, including a capacity
8 development program to assist water systems in acquiring and
9 maintaining technical, managerial and financial capacity in
10 accordance with Section 1420 of the federal Safe Drinking Water
11 Act and rules authorizing imposition of administrative
12 penalties for enforcement;

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

19 (4) air quality management as provided in the
20 Air Quality Control Act;

21 (5) radiation control and establishment of
22 license and registration and other related fees not to exceed
23 fees charged by the United States nuclear regulatory commission
24 for similar licenses as provided in the Radiation Protection
25 Act;

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- 1 (6) noise control;
2 (7) nuisance abatement;
3 (8) vector control;
4 (9) occupational health and safety as provided
5 in the Occupational Health and Safety Act;
6 (10) sanitation of public swimming pools and
7 public baths;
8 (11) plumbing, drainage, ventilation and
9 sanitation of public buildings in the interest of public
10 health;
11 (12) medical radiation, health and safety
12 certification and standards for [~~radiologic technologists~~]
13 medical imaging professionals and radiation therapists as
14 provided in the Medical Imaging and Radiation Therapy Health
15 and Safety Act;
16 (13) hazardous wastes and underground storage
17 tanks as provided in the Hazardous Waste Act; [~~and~~]
18 (14) solid waste as provided in the Solid Waste
19 Act; and
20 (15) any other area assigned by law.

21 B. Nothing in Subsection A of this section imposes
22 requirements for the approval of subdivision plats in addition
23 to those required elsewhere by law. Nothing in Subsection A of
24 this section preempts the authority of any political
25 subdivision to approve subdivision plats.

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1 C. Administrative penalties collected pursuant to
2 Paragraph (2) of Subsection A of this section shall be
3 deposited in the ~~[water conservation]~~ general fund to the
4 credit of the current school fund.

5 D. On-site liquid waste system fees shall be
6 deposited in the liquid waste fund.

7 ~~[D.]~~ E. Radiation license and registration and other
8 related fees shall be deposited in the radiation protection
9 fund."

10 SECTION 59. Section 74-1-10 NMSA 1978 (being Laws 1973,
11 Chapter 340, Section 8, as amended) is amended to read:

12 "74-1-10. PENALTY.--

13 A. A person who violates any ~~[regulation]~~ rule of the
14 board is guilty of a petty misdemeanor. This section does not
15 apply to any ~~[regulation]~~ rule for which a criminal penalty is
16 otherwise provided by law.

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

23 (1) issue a compliance order stating with
24 reasonable specificity the nature of the violation or
25 threatened violation, requiring compliance immediately or

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1 within a specified time period and assessing a civil penalty
2 for any past or current violation, or both; or

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

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

19 D. If a violator fails to take corrective actions
20 within the time specified in the compliance order, the
21 secretary shall:

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

25 (2) suspend or revoke any permit issued to the

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1 violator pursuant to Paragraph (3) of Subsection A of Section
2 74-1-8 NMSA 1978.

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

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

18 G. Penalties collected pursuant to violations of
19 rules, regulations or permit conditions adopted pursuant to
20 Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 shall
21 be deposited in the state treasury to be credited to the
22 general fund.

23 H. Penalties collected pursuant to violations of
24 drinking water regulations 20 NMAC 7.1 or permit conditions
25 pursuant to Paragraph (2) of Subsection A of Section 74-1-8

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1 NMSA 1978 shall be deposited in the [~~state treasury to the~~
2 ~~credit of the water conservation~~] general fund for credit to
3 the current school fund."

4 SECTION 60. Section 74-2-2 NMSA 1978 (being Laws 1967,
5 Chapter 277, Section 2, as amended) is amended to read:

6 "74-2-2. DEFINITIONS.--As used in the Air Quality Control
7 Act:

8 A. "air contaminant" means a substance, including any
9 particulate matter, fly ash, dust, fumes, gas, mist, smoke,
10 vapor, micro-organisms, radioactive material, any combination
11 thereof or any decay or reaction product thereof;

12 B. "air pollution" means the emission, except
13 emission that occurs in nature, into the outdoor atmosphere of
14 one or more air contaminants in quantities and of a duration
15 that may with reasonable probability injure human health or
16 animal or plant life or as may unreasonably interfere with the
17 public welfare, visibility or the reasonable use of property;

18 C. "department" means the [~~department of~~] natural
19 resources and environment department;

20 D. "director" means the administrative head of a
21 local agency;

22 E. "emission limitation" or "emission standard" means
23 a requirement established by the environmental improvement
24 board or the local board, the department, the local authority
25 or the local agency or pursuant to the federal act that limits

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1 the quantity, rate or concentration, or combination thereof, of
2 emissions of air contaminants on a continuous basis, including
3 any requirements relating to the operation or maintenance of a
4 source to assure continuous reduction;

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

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

10 H. "hazardous air pollutant" means an air contaminant
11 that has been listed as a hazardous air pollutant pursuant to
12 the federal act;

13 I. "local agency" means the administrative agency
14 established by a local authority pursuant to Paragraph (2) of
15 Subsection A of Section 74-2-4 NMSA 1978;

16 J. "local authority" means any of the following
17 political subdivisions of the state that have, by following the
18 procedure set forth in Subsection A of Section 74-2-4 NMSA
19 1978, assumed jurisdiction for local administration and
20 enforcement of the Air Quality Control Act:

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

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

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

3 L. "mandatory class I area" means any of the
4 following areas in this state that were in existence on August
5 7, 1977:

6 (1) national wilderness areas that exceed five
7 thousand acres in size; and

8 (2) national parks that exceed six thousand
9 acres in size;

10 M. "modification" means a physical change in, or
11 change in the method of operation of, a source that results in
12 an increase in the potential emission rate of a regulated air
13 contaminant emitted by the source or that results in the
14 emission of a regulated air contaminant not previously emitted,
15 but does not include:

16 (1) a change in ownership of the source;
17 (2) routine maintenance, repair or replacement;
18 (3) installation of air pollution control
19 equipment, and all related process equipment and materials
20 necessary for its operation, undertaken for the purpose of
21 complying with regulations adopted by the environmental
22 improvement board or the local board or pursuant to the federal
23 act; or

24 (4) unless previously limited by enforceable
25 permit conditions:

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1 (a) an increase in the production rate, if
2 such increase does not exceed the operating design capacity of
3 the source;

4 (b) an increase in the hours of operation;
5 or

6 (c) use of an alternative fuel or raw
7 material if, prior to January 6, 1975, the source was capable
8 of accommodating such fuel or raw material or if use of an
9 alternate fuel or raw material is caused by a natural gas
10 curtailment or emergency allocation or [~~an other~~] another lack
11 of supply of natural gas;

12 N. "nonattainment area" means for an air contaminant
13 an area that is designated "nonattainment" with respect to that
14 contaminant within the meaning of Section 107(d) of the federal
15 act;

16 O. "person" includes an individual, partnership,
17 corporation, association, the state or political subdivision of
18 the state and any agency, department or instrumentality of the
19 United States and any of their officers, agents or employees;

20 P. "potential emission rate" means the emission rate
21 of a source at its maximum capacity to emit a regulated air
22 contaminant under its physical and operational design, provided
23 any physical or operational limitation on the capacity of the
24 source to emit a regulated air contaminant, including air
25 pollution control equipment and restrictions on hours of

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1 operation or on the type or amount of material combusted,
2 stored or processed, shall be treated as part of its physical
3 and operational design only if the limitation or the effect it
4 would have on emissions is enforceable by the department or the
5 local agency pursuant to the Air Quality Control Act or the
6 federal act;

7 Q. "regulated air contaminant" means an air
8 contaminant, the emission or ambient concentration of which is
9 regulated pursuant to the Air Quality Control Act or the
10 federal act;

11 R. "secretary" means the secretary of natural
12 resources and environment;

13 S. "significant deterioration" means an increase in
14 the ambient concentrations of an air contaminant above the
15 levels allowed by the federal act or federal regulations for
16 that air contaminant in the area within which the increase
17 occurs;

18 T. "source" means a structure, building, equipment,
19 facility, installation or operation that emits or may emit an
20 air contaminant;

21 U. "standard of performance" means a requirement of
22 continuous emission reduction, including any requirement
23 relating to operation or maintenance of a source to assure
24 continuous emission reduction;

25 V. "state implementation plan" means a plan submitted

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1 by New Mexico to the federal environmental protection agency
2 pursuant to 42 U.S.C. Section 7410; and

3 W. "toxic air pollutant" means an air contaminant,
4 except a hazardous air pollutant, classified by the
5 environmental improvement board or the local board as a toxic
6 air pollutant."

7 SECTION 61. Section 74-3-4 NMSA 1978 (being Laws 1971,
8 Chapter 284, Section 4, as amended) is amended to read:

9 "74-3-4. DEFINITIONS.--As used in the Radiation
10 Protection Act:

11 A. "board" means the environmental improvement board;

12 B. "agency" or "division" means the environmental
13 protection division of the [~~department of~~] natural resources
14 and environment department;

15 C. "council" means the radiation technical advisory
16 council;

17 D. "radiation" includes particulate and
18 electromagnetic radiation and ultrasound, but does not include
19 audible sound;

20 E. "radioactive material" includes any materials or
21 sources, regardless of chemical or physical state, that emit
22 radiation;

23 F. "radiation equipment" means any device that is
24 capable of producing radiation;

25 G. "agreement state" means any state with which the

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

1 nuclear regulatory commission has entered into an agreement
2 under Section 274(b) of the federal Atomic Energy Act of 1954,
3 as amended;

4 H. "person" means any individual, partnership, firm,
5 public or private corporation, association, trust, estate,
6 political subdivision or agency, or any other legal entity or
7 its legal representatives, agents or assigns;

8 I. "continued care fund" means the radiation
9 protection continued care fund;

10 J. "director" means the director of the division;

11 K. "nuclear regulatory commission" means the United
12 States nuclear regulatory commission; and

13 L. "secretary" means the secretary of natural
14 resources and environment."

15 **SECTION 62.** Section 74-4-3 NMSA 1978 (being Laws 1977,
16 Chapter 313, Section 3, as amended) is amended to read:

17 "74-4-3. DEFINITIONS.--As used in the Hazardous Waste
18 Act:

19 A. "above ground storage tank" means a single tank or
20 combination of tanks, including underground pipes connected
21 thereto, that are used to contain petroleum, including crude
22 oil or any fraction thereof that is liquid at standard
23 conditions of temperature and pressure of sixty degrees
24 Fahrenheit and fourteen and seven-tenths pounds per square inch
25 absolute, and the volume of which is more than ninety percent

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1 above the surface of the ground. "Above ground storage tank"
2 does not include any:

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

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

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

11 (4) storm water or wastewater collection system;

12 (5) flow-through process tank;

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

18 (7) tank used for storing heating oil for
19 consumptive use on the premises where stored;

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

22 (9) tanks or related pipelines and facilities
23 owned or used by a refinery, natural gas processing plant or
24 pipeline company in the regular course of [~~their~~] its refining,
25 processing or pipeline business;

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1 B. "board" means the environmental improvement board;

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

6 D. "director" or "secretary" means the secretary of
7 natural resources and environment;

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

14 F. "division" or "department" means the [~~department~~
15 ~~of~~] natural resources and environment department;

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

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

23 I. "hazardous agricultural waste" means hazardous
24 waste generated as part of the licensed activity by any person
25 licensed pursuant to the Pesticide Control Act or hazardous

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1 waste designated as hazardous agricultural waste by the board,
2 but does not include animal excrement in connection with farm,
3 ranch or feedlot operations;

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

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

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

16 (2) pose a substantial present or potential
17 hazard to human health or the environment when improperly
18 treated, stored, transported, disposed of or otherwise managed.
19 "Hazardous waste" does not include any of the following, until
20 the board determines that they are subject to Subtitle C of the
21 federal Resource Conservation and Recovery Act of 1976, as
22 amended, 42 U.S.C. 6901 et seq.:

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

.184349.1

- 1 (b) fly ash waste;
- 2 (c) bottom ash waste;
- 3 (d) slag waste;
- 4 (e) flue gas emission control waste

5 generated primarily from the combustion of coal or other fossil
6 fuels;

- 7 (f) solid waste from the extraction,
8 beneficiation or processing of ores and minerals, including
9 phosphate rock and overburden from the mining of uranium ore;
10 or

- 11 (g) cement kiln dust waste;

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

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

21 N. "regulated substance" means:

- 22 (1) a substance defined in Section 101(14) of
23 the federal Comprehensive Environmental Response, Compensation,
24 and Liability Act of 1980, but not including a substance
25 regulated as a hazardous waste under Subtitle C of the federal

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1 Resource Conservation and Recovery Act of 1976, as amended; and

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

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

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

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

25 R. "tank installer" means any individual who installs

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1 or repairs a storage tank;

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

5 T. "treatment" means any method, technique or
6 process, including neutralization, designed to change the
7 physical, chemical or biological character or composition of a
8 hazardous waste so as to neutralize the waste or so as to
9 render the waste nonhazardous, safer for transport, amenable to
10 recovery, amenable to storage or reduced in volume.

11 "Treatment" includes any activity or processing designed to
12 change the physical form or chemical composition of hazardous
13 waste so as to render it nonhazardous;

14 U. "underground storage tank" means a single tank or
15 combination of tanks, including underground pipes connected
16 thereto, that ~~are~~ is used to contain an accumulation of
17 regulated substances and the volume of which, including the
18 volume of the underground pipes connected thereto, is ten
19 percent or more beneath the surface of the ground.

20 "Underground storage tank" does not include any:

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

24 (2) septic tank;

25 (3) pipeline facility, including gathering

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

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

6 (5) storm water or wastewater collection system;

7 (6) flow-through process tank;

8 (7) liquid trap, tank or associated gathering
9 lines directly related to oil or gas production and gathering
10 operations;

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

15 (9) tank used for storing heating oil for
16 consumptive use on the premises where stored;

17 (10) tank exempted by rule of the board after
18 finding that the type of tank is adequately regulated under
19 another federal or state law; or

20 (11) pipes connected to any tank that is
21 described in Paragraphs (1) through (10) of this subsection;
22 and

23 V. "used oil" means any oil that ~~[has been]~~ is either
24 refined from crude oil or ~~[any]~~ is synthetic ~~[oil, that]~~ and
25 has been used and as a result of such use is contaminated by

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1 physical or chemical impurities."

2 SECTION 63. Section 74-4C-3 NMSA 1978 (being Laws 1985
3 (1st S.S.), Chapter 4, Section 3) is amended to read:

4 "74-4C-3. DEFINITIONS.--As used in the Hazardous Waste
5 Feasibility Study Act:

6 A. "committee" means the radioactive and hazardous
7 materials committee;

8 B. "division" means the environmental [~~improvement~~]
9 protection division of the [~~health~~] natural resources and
10 environment department;

11 C. "hazardous waste" means garbage, refuse, sludge
12 from a waste treatment plant, water supply treatment plant or
13 air pollution control facility or other discarded material,
14 including solid, liquid or semisolid material or containing
15 gaseous material resulting from industrial, commercial, mining
16 or agricultural operations, other than waste pesticides
17 disposed of by a farmer pursuant to Section 74-4-3.1 NMSA 1978,
18 or from community activities [~~which~~] that, because of its
19 quantity, concentration or physical, chemical or infectious
20 characteristics, may cause or significantly contribute to an
21 increase in mortality or an increase in serious irreversible or
22 incapacitating reversible illness, or pose a substantial
23 present or potential hazard to human health or the environment
24 when improperly treated, stored, transported, disposed of or
25 otherwise managed. [~~The term~~] "Hazardous waste" does not

.184349.1

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1 include solid or dissolved material in domestic sewage, or
2 animal excrement in connection with farm, ranch or feedlot
3 operations, or solid or dissolved materials in irrigation
4 return flows or industrial discharges [~~which~~] that are point
5 sources subject to permits under Section 402 of the Federal
6 Water Pollution Control Act, as amended, as the provisions
7 exist on January 1, 1981; or source, special or byproduct
8 material as defined in the Atomic Energy Act of 1954, as
9 amended, as these definitions exist on January 1, 1981; or any
10 of the following, until the environmental improvement board
11 determines that they are subject to Subtitle C of the Resource
12 Conservation and Recovery Act of 1976, as amended (42 U.S.C.
13 6921 et seq.): drilling fluids, produced waters and other
14 wastes associated with the exploration, development or
15 production of crude oil or natural gas or geothermal energy;
16 any fly ash waste, bottom ash waste, slag waste or flue gas
17 emission control waste generated primarily from the combustion
18 of coal or other fossil fuels; solid waste from the extraction,
19 beneficiation or processing of ores and minerals, including
20 phosphate rock and overburden from the mining of uranium ore;
21 cement kiln dust waste; or pesticide waste disposed of by any
22 farmer from [~~his~~] the farmer's own use, provided that [~~he~~] the
23 farmer triple rinses each emptied pesticide container and
24 disposes of the pesticide residues on [~~his~~] the farmer's own
25 farm in a manner consistent with the disposal instructions on

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1 the pesticide label; and

2 D. "hazardous waste activity" means the generation,
3 treatment, storage, transportation or disposal of hazardous
4 waste."

5 SECTION 64. Section 74-4G-3 NMSA 1978 (being Laws 1997,
6 Chapter 38, Section 3) is amended to read:

7 "74-4G-3. DEFINITIONS.--As used in the Voluntary
8 Remediation Act:

9 A. "applicable standards" means federal, state or
10 local standards, requirements, criteria or limitations that are
11 legally applicable to the facility;

12 B. "applicant" means a person that elects to submit
13 an application to participate and enter into an agreement under
14 the Voluntary Remediation Act;

15 C. "contaminant" means the following substances
16 within the jurisdiction of the department:

17 (1) solid waste;

18 (2) hazardous waste as defined in 20 NMAC
19 4.1.200;

20 (3) an RCRA hazardous waste constituent listed
21 in Appendices VIII and IX in 20 NMAC 4.1.200;

22 (4) any substance that could alter, if
23 discharged or spilled, the physical, chemical, biological or
24 radiological qualities of water; or

25 (5) a hazardous substance, as defined by Section
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1 101(14) of the federal Comprehensive Environmental Response,
2 Compensation and Liability Act of 1980 and 40 C.F.R. Part 302,
3 Table 302.4;

4 D. "department" means the [~~department of~~] natural
5 resources and environment department;

6 E. "enforcement action" means:

7 (1) a written notice from the department or
8 other state agency that requires abatement of contamination
9 under 20 NMAC 6.2;

10 (2) a written order from the department or other
11 state agency that requires or involves the removal or
12 remediation of contaminants;

13 (3) a judicial action by the department or other
14 state agency seeking the abatement of contamination or the
15 remediation of contaminants; or

16 (4) a notice, order or judicial action similar
17 to those enumerated in Paragraphs (1) through (3) of this
18 subsection, but initiated by the federal government;

19 F. "fraud" means the knowingly false representation,
20 whether by words or conduct and whether by inaccurate or
21 misleading allegations or by concealment of that which should
22 have been disclosed, that is intended to deceive or circumvent
23 the intent of this statute;

24 G. "participant" means an applicant that has been
25 approved by the department as eligible for and that signs and

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1 performs an agreement pursuant to the provisions of the
2 Voluntary Remediation Act;

3 H. "person" means an individual or any other entity,
4 including partnerships, corporations, associations, responsible
5 business or association agents or officers, the state or a
6 political subdivision of the state or any agency, department or
7 instrumentality of the United States and any of its officers,
8 agents or employees;

9 I. "release" means any spilling, leaking, pumping,
10 pouring, emitting, emptying, discharging, injecting, escaping,
11 leaching, dumping or disposing into the environment, including
12 abandonment or discarding of any contaminant;

13 J. "remediation" means:

14 (1) actions necessary to investigate, prevent,
15 minimize or mitigate damages to the public health or to the
16 environment that may otherwise result from a release or threat
17 of release; and

18 (2) the cleanup or removal of released
19 contaminants to conform with applicable standards;

20 K. "site" means a parcel of real property for which
21 an application has been submitted pursuant to the provisions of
22 Section [~~5 of the Voluntary Remediation Act~~] 74-4G-5 NMSA 1978;
23 and

24 L. "voluntary remediation" means remediation taken
25 [~~under and~~] in compliance with the Voluntary Remediation Act."

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underscoring material = new
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1 SECTION 65. Section 74-6-2 NMSA 1978 (being Laws 1967,
2 Chapter 190, Section 2, as amended) is amended to read:

3 "74-6-2. DEFINITIONS.--As used in the Water Quality Act:

4 A. "gray water" means untreated household wastewater
5 that has not come in contact with toilet waste and includes
6 wastewater from bathtubs, showers, washbasins, clothes washing
7 machines and laundry tubs, but does not include wastewater from
8 kitchen sinks or dishwashers or laundry water from the washing
9 of material soiled with human excreta, such as diapers;

10 B. "water contaminant" means any substance that could
11 alter, if discharged or spilled, the physical, chemical,
12 biological or radiological qualities of water. "Water
13 contaminant" does not mean source, special nuclear or byproduct
14 material as defined by the federal Atomic Energy Act of 1954;

15 C. "water pollution" means introducing or permitting
16 the introduction into water, either directly or indirectly, of
17 one or more water contaminants in such quantity and of such
18 duration as may with reasonable probability injure human
19 health, animal or plant life or property, or to unreasonably
20 interfere with the public welfare or the use of property;

21 D. "wastes" means sewage, industrial wastes or any
22 other liquid, gaseous or solid substance that may pollute any
23 waters of the state;

24 E. "sewer system" means pipelines, conduits, pumping
25 stations, force mains or any other structures, devices,

.184349.1

underscored material = new
[bracketed material] = delete

1 appurtenances or facilities used for collecting or conducting
2 wastes to an ultimate point for treatment or disposal;

3 F. "treatment works" means any plant or other works
4 used for the purpose of treating, stabilizing or holding
5 wastes;

6 G. "sewerage system" means a system for disposing of
7 wastes, either by surface or underground methods, and includes
8 sewer systems, treatment works, disposal wells and other
9 systems;

10 H. "water" means all water, including water situated
11 wholly or partly within or bordering upon the state, whether
12 surface or subsurface, public or private, except private waters
13 that do not combine with other surface or subsurface water;

14 I. "person" means an individual or any other entity,
15 including partnerships, corporations, associations, responsible
16 business or association agents or officers, the state or a
17 political subdivision of the state or any agency, department or
18 instrumentality of the United States and any of its officers,
19 agents or employees;

20 J. "commission" means the water quality control
21 commission;

22 K. "constituent agency" means, as the context may
23 require, any or all of the following agencies of the state:

24 (1) the ~~[department of]~~ natural resources and
25 environment department;

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1 (2) the state engineer and the interstate stream
2 commission;

3 (3) the department of game and fish;

4 (4) the oil conservation commission;

5 (5) the state parks division of the [~~energy,~~
6 ~~minerals and~~] natural resources and environment department;

7 (6) the New Mexico department of agriculture;

8 (7) the soil and water conservation commission;

9 and

10 (8) the bureau of geology and mineral resources
11 at the New Mexico institute of mining and technology;

12 L. "new source" means:

13 (1) any source, the construction of which is
14 commenced after the publication of proposed regulations
15 prescribing a standard of performance applicable to the source;
16 or

17 (2) any existing source when modified to treat
18 substantial additional volumes or when there is a substantial
19 change in the character of water contaminants treated;

20 M. "source" means a building, structure, facility or
21 installation from which there is or may be a discharge of water
22 contaminants directly or indirectly into water;

23 N. "septage" means the residual wastes and water
24 periodically pumped from a liquid waste treatment unit or from
25 a holding tank for maintenance or disposal purposes;

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

1 O. "sludge" means solid, semi-solid or liquid waste
2 generated from a municipal, commercial or industrial wastewater
3 treatment plant, water supply treatment plant or air pollution
4 control facility that is associated with the treatment of these
5 wastes. "Sludge" does not mean treated effluent from a
6 wastewater treatment plant;

7 P. "substantial adverse environmental impact" means
8 that an act or omission of the violator causes harm or damage:

9 (1) to human beings; or

10 (2) that amounts to more than ten thousand
11 dollars (\$10,000) damage or mitigation costs to flora,
12 including agriculture crops; fish or other aquatic life;
13 waterfowl or other birds; livestock or wildlife or damage to
14 their habitats; ground water or surface water; or the lands of
15 the state;

16 Q. "federal act" means the Federal Water Pollution
17 Control Act, its subsequent amendment and successor provisions;
18 and

19 R. "standards of performance" means any standard,
20 effluent limitation or effluent standard adopted pursuant to
21 the federal act or the Water Quality Act."

22 **SECTION 66.** Section 74-6-3 NMSA 1978 (being Laws 1967,
23 Chapter 190, Section 3, as amended) is amended to read:

24 "74-6-3. WATER QUALITY CONTROL COMMISSION CREATED.--

25 A. ~~[There is created]~~ The "water quality control

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1 commission" is created, consisting of:

2 (1) the secretary of natural resources and
3 environment or a member of the secretary's staff designated by
4 the secretary;

5 (2) the secretary of health or a member of the
6 secretary's staff designated by the secretary;

7 (3) the director of the department of game and
8 fish or a member of the director's staff designated by the
9 director;

10 (4) the state engineer or a member of the state
11 engineer's staff designated by the state engineer;

12 (5) the chair of the oil conservation commission
13 or a member of the chair's staff designated by the chair;

14 (6) the director of the state parks division of
15 the [~~energy, minerals and~~] natural resources and environment
16 department or a member of the director's staff designated by
17 the director;

18 (7) the director of the New Mexico department of
19 agriculture or a member of the director's staff designated by
20 the director;

21 (8) the chair of the soil and water conservation
22 commission or a soil and water conservation district supervisor
23 designated by the chair;

24 (9) the director of the bureau of geology and
25 mineral resources at the New Mexico institute of mining and

.184349.1

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1 technology or a member of the director's staff designated by
2 the director;

3 (10) a municipal or county government
4 representative; and

5 (11) four representatives of the public to be
6 appointed by the governor for terms of four years and who shall
7 be compensated from the budgeted funds of the natural resources
8 and environment department [~~of environment~~] in accordance with
9 the provisions of the Per Diem and Mileage Act. At least one
10 member appointed by the governor shall be a member of a New
11 Mexico Indian tribe or pueblo.

12 B. A member of the commission shall not receive, or
13 shall not have received during the previous two years, a
14 significant portion of the member's income directly or
15 indirectly from permit holders or applicants for a permit. A
16 member of the commission shall, upon the acceptance of the
17 member's appointment and prior to the performance of any of the
18 member's duties, file a statement of disclosure with the
19 secretary of state disclosing any amount of money or other
20 valuable consideration, and its source, the value of which is
21 in excess of ten percent of the member's gross personal income
22 in each of the preceding two years, that the member received
23 directly or indirectly from permit holders or applicants for
24 permits required under the Water Quality Act. A member of the
25 commission shall not participate in the consideration of an

.184349.1

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1 appeal if the subject of the appeal is an application filed or
2 a permit held by an entity that either employs the commission
3 member or from which the commission member received more than
4 ten percent of the member's gross personal income in either of
5 the preceding two years.

6 C. The commission shall elect a chair and other
7 necessary officers and shall keep a record of its proceedings.

8 D. A majority of the commission constitutes a quorum
9 for the transaction of business, but no action of the
10 commission is valid unless concurred in by six or more members
11 present at a meeting.

12 E. The commission is the state water pollution
13 control agency for this state for all purposes of the federal
14 act and the wellhead protection and sole source aquifer
15 programs of the federal Safe Drinking Water Act of 1974 and may
16 take all action necessary and appropriate to secure to this
17 state, its political subdivisions or interstate agencies the
18 benefits of that act and those programs.

19 F. The commission is administratively attached, as
20 defined in the Executive Reorganization Act, to the [~~department~~
21 ~~of~~] natural resources and environment department."

22 **SECTION 67.** Section 74-6A-3 NMSA 1978 (being Laws 1986,
23 Chapter 72, Section 3, as amended) is amended to read:

24 "74-6A-3. DEFINITIONS.--As used in the Wastewater
25 Facility Construction Loan Act:

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underscored material = new
[bracketed material] = delete

1 A. "administrative fee" means a fee assessed and
2 collected by the department from a local authority on each loan
3 and expressed as a percentage per year on the outstanding
4 principal amount of the loan, payable by the borrower on the
5 same date that principal and interest on the loan are due, for
6 deposit in the clean water administrative fund;

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

9 C. "division" or "department" means the [~~department~~
10 ~~of~~] natural resources and environment department;

11 D. "financial assistance" means loans, the purchase
12 or refinancing of existing local political subdivision
13 obligations, loan guarantees, credit enhancement techniques to
14 reduce interest on loans and bonds, bond insurance and bond
15 guarantees or any combination of these purposes;

16 E. "fund" means the wastewater facility construction
17 loan fund;

18 F. "local authority" means any municipality, county,
19 incorporated county, sanitation district, water and sanitation
20 district or any similar district, recognized Indian tribe or
21 other issuing agency created pursuant to a joint powers
22 agreement acting on behalf of any entity listed in this
23 subsection;

24 G. "operate and maintain" means to perform all
25 necessary activities, including replacement of equipment or

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~~[bracketed material] = delete~~

1 appurtenances, to ensure the dependable and economical function
2 of a wastewater facility in accordance with its intended
3 purpose;

4 H. "wastewater facility" means a publicly owned
5 system for treating or disposing of sewage or wastes either by
6 surface or underground methods, including any equipment, plant,
7 treatment works, structure, machinery, apparatus or land, in
8 any combination, that is acquired, used, constructed or
9 operated for the storage, collection, reduction, recycling,
10 reclamation, disposal, separation or treatment of water or
11 wastes or for the final disposal of residues resulting from the
12 treatment of water or wastes, such as pumping and ventilating
13 stations, facilities, plants and works, outfall sewers,
14 interceptor sewers and collector sewers and other real or
15 personal property and appurtenances incident to their use or
16 operation. "Wastewater facility" also includes a nonpoint
17 source water pollution control project as eligible under the
18 Clean Water Act;

19 I. "account" means the wastewater suspense account;

20 J. "board" means the state board of finance;

21 K. "bonds" means wastewater bonds or other
22 obligations authorized by the commission to be issued by the
23 board pursuant to the Wastewater Facility Construction Loan
24 Act;

25 L. "Clean Water Act" means the federal Clean Water

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1 Act of 1977 and its subsequent amendments or successor
2 provisions;

3 M. "federal securities" means direct obligations of
4 the United States, or obligations the principal and interest of
5 which are unconditionally guaranteed by the United States, or
6 an ownership interest in either of the foregoing;

7 N. "force account construction" means construction
8 performed by the employees of a local authority rather than
9 through a contractor;

10 O. "holders" means persons who are owners of bonds,
11 whether registered or not, issued pursuant to the Wastewater
12 Facility Construction Loan Act;

13 P. "issuing resolution" means a formal statement
14 adopted by the board to issue bonds pursuant to the Wastewater
15 Facility Construction Loan Act, including any trust agreement,
16 trust indenture or similar instrument providing terms and
17 conditions for the bonds to be issued; and

18 Q. "recommending resolution" means a formal statement
19 adopted by the commission recommending to the board that bonds
20 be issued pursuant to the Wastewater Facility Construction Loan
21 Act, including any trust agreement, trust indenture or similar
22 instrument providing the terms and conditions for the bonds
23 that are issued."

24 **SECTION 68.** Section 74-6B-3 NMSA 1978 (being Laws 1990,
25 Chapter 124, Section 3, as amended) is amended to read:

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underscored material = new
[bracketed material] = delete

1 "74-6B-3. DEFINITIONS.--As used in the Ground Water
2 Protection Act:

3 A. "above ground storage tank" means a single tank or
4 a combination of tanks, including underground pipes connected
5 thereto, that ~~[are]~~ is used to contain petroleum, including
6 crude oil or any fraction thereof that is liquid at standard
7 conditions of temperature and pressure of sixty degrees
8 Fahrenheit and fourteen and seven-tenths pounds per square inch
9 absolute, and the volume of which is more than ninety percent
10 above the surface of the ground. The term does not include
11 any:

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

14 (2) pipeline facility, including gathering
15 lines, that ~~[are]~~ is regulated under the federal Natural Gas
16 Pipeline Safety Act of 1968 or the federal Hazardous Liquid
17 Pipeline Safety Act of 1979 or that is an intrastate pipeline
18 facility regulated under state laws comparable to either act;

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

20 (4) storm water or wastewater collection system;

21 (5) flow-through process tank;

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

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underscored material = new
[bracketed material] = delete

1 operations;

2 (7) tank used for storing heating oil for
3 consumptive use on the premises where stored;

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

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

10 B. "board" means the environmental improvement board;

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

15 D. "department" means the ~~[department of]~~ natural
16 resources and environment department;

17 E. "operator" means any person in control of or
18 having responsibility for the daily operation of a storage
19 tank;

20 F. "owner":

21 (1) means:

22 (a) in the case of a storage tank in use or
23 brought into use on or after November 8, 1984, a person who
24 owns a storage tank used for storage, use or dispensing of
25 regulated substances; and

.184349.1

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

1 (b) in the case of a storage tank in use
2 before November 8, 1984 but no longer in use after that date, a
3 person who owned the tank immediately before the
4 discontinuation of its use; and

5 (2) excludes, for purposes of tank registration
6 requirements only, a person who:

7 (a) had an underground storage tank taken
8 out of operation on or before January 1, 1974;

9 (b) had an underground storage tank taken
10 out of operation after January 1, 1974 and removed from the
11 ground prior to November 8, 1984; or

12 (c) had an above ground storage tank taken
13 out of operation on or before July 1, 2001;

14 G. "person" means an individual or any legal entity,
15 including all governmental entities;

16 H. "regulated substance" means:

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

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

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underscored material = new
[bracketed material] = delete

1 I. "release" means a spilling, leaking, emitting,
2 discharging, escaping, leaching or disposing from a storage
3 tank into ground water, surface water or subsurface soils in
4 amounts exceeding twenty-five gallons;

5 J. "secretary" means the secretary of natural
6 resources and environment;

7 K. "site" means a place where there is or was at a
8 previous time one or more storage tanks and may include areas
9 contiguous to the actual location or previous location of the
10 tanks;

11 L. "storage tank" means an above ground storage tank
12 or an underground storage tank; and

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

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

23 (2) septic tank;

24 (3) pipeline facility, including gathering
25 lines, that is regulated under the federal Natural Gas Pipeline

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1 Safety Act of 1968 or the federal Hazardous Liquid Pipeline
2 Safety Act of 1979 or that is an intrastate pipeline facility
3 regulated under state laws comparable to either act;

- 4 (4) surface impoundment, pit, pond or lagoon;
- 5 (5) storm water or wastewater collection system;
- 6 (6) flow-through process tank;
- 7 (7) liquid trap, tank or associated gathering
8 lines directly related to oil or gas production and gathering
9 operations;

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

14 (9) tank used for storing heating oil for
15 consumptive use on the premises where stored;

16 (10) tank exempted by rule of the board after
17 finding that the type of tank is adequately regulated under
18 another federal or state law; or

19 (11) ~~[pipes]~~ pipe connected to any tank that is
20 described in Paragraphs (1) through (10) of this subsection."

21 **SECTION 69.** Section 74-7-3 NMSA 1978 (being Laws 1983,
22 Chapter 29, Section 3) is amended to read:

23 "74-7-3. DEFINITIONS.--As used in the Environmental
24 Compliance Act:

25 A. "board" means the environmental improvement board;

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~~[bracketed material] = delete~~

1 B. "director" means the director of the division;

2 C. "division" means the environmental [~~improvement~~]
3 protection division of the [~~health~~] natural resources and
4 environment department;

5 D. "environmental audit" means a systematic
6 assessment, analysis and evaluation by a regulated entity of
7 its compliance with environmental laws and [~~regulations~~] rules
8 administered by the board and the division, applicable to its
9 operation; and

10 E. "regulated entity" means any person, partnership,
11 corporation, firm, association, governmental or other entity
12 organized and engaging in any business or activity in the state
13 [~~which~~] that deals with or has an impact on the environment of
14 this state or [~~which~~] that must by law comply with federal or
15 state environmental protection [~~regulations~~] rules."

16 SECTION 70. Section 74-9-3 NMSA 1978 (being Laws 1990,
17 Chapter 99, Section 3) is amended to read:

18 "74-9-3. DEFINITIONS.--As used in the Solid Waste Act:

19 A. "agricultural" means all methods of production and
20 management of livestock, crops, vegetation and soil. This
21 includes, but is not limited to, raising, harvesting and
22 marketing. It also includes, but is not limited to, the
23 activities of feeding, housing and maintaining animals such as
24 cattle, dairy cows, sheep, goats, hogs, horses and poultry;

25 B. "board" means the environmental improvement board;

.184349.1

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1 C. "commercial hauler" means any person transporting
2 solid waste for hire by whatever means for the purpose of
3 disposing of the solid waste in a solid waste facility, except
4 that ~~[the term]~~ "commercial hauler" does not include an
5 individual transporting solid waste generated on or from ~~[his]~~
6 the person's residential premises for the purpose of disposing
7 of it in a solid waste facility;

8 D. "construction and demolition debris" means
9 materials generally considered to be not water soluble and
10 nonhazardous in nature, including, but not limited to, steel,
11 glass, brick, concrete, asphalt roofing materials, pipe, gypsum
12 wallboard and lumber from the construction or destruction of a
13 structure as part of a construction or demolition project, and
14 includes rocks, soil, tree remains, trees and other vegetative
15 matter that normally results from land clearing or land
16 development operations for a construction project, but if
17 construction and demolition debris is mixed with any other
18 types of solid waste, whether or not originating from the
19 construction project, it loses its classification as
20 construction and demolition debris;

21 E. "densified-refuse-derived fuel" means a product
22 resulting from the processing of mixed municipal solid waste in
23 a manner that produces a fuel suitable for combustion in
24 existing or new solid-fuel-fired boilers;

25 F. "director" means the director of the

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1 ~~[environmental improvement]~~ division ~~[of the health and~~
2 ~~environment department]~~;

3 G. "division" means the environmental ~~[improvement]~~
4 protection division of the ~~[health]~~ natural resources and
5 environment department;

6 H. "municipality" means any incorporated city, town
7 or village, whether incorporated under general act, special act
8 or special charter, incorporated counties and H class counties;

9 I. "person" means an individual or any entity,
10 including federal, state and local governmental entities,
11 however organized;

12 J. "plan" or "state plan" means the solid waste
13 management plan required to be developed under Section ~~[4 of~~
14 ~~the Solid Waste Act]~~ 74-9-4 NMSA 1978;

15 K. "program" or "state program" means the
16 comprehensive state solid waste management program described in
17 Section ~~[12 of the Solid Waste Act]~~ 74-9-12 NMSA 1978;

18 L. "recyclable materials" means materials that would
19 otherwise become solid waste if not recycled and that can be
20 collected, separated or processed and placed in use in the form
21 of raw materials, products or densified-refuse-derived fuels;

22 M. "recycling" means any process by which recyclable
23 materials are collected, separated or processed and reused or
24 returned to use in the form of raw materials or products;

25 N. "solid waste" means any garbage, refuse, sludge

.184349.1

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~~[bracketed material] = delete~~

1 from a waste treatment plant, water supply treatment plant or
2 air pollution control facility and other discarded material,
3 including solid, liquid, semisolid or contained gaseous
4 material resulting from industrial, commercial, mining and
5 agricultural operations and from community activities. "Solid
6 waste" does not include:

7 (1) drilling fluids, produced waters and other
8 nondomestic wastes associated with the exploration, development
9 or production, transportation, storage, treatment or refinement
10 of crude oil, natural gas, carbon dioxide gas or geothermal
11 energy;

12 (2) fly ash waste, bottom ash waste, slag waste
13 and flue gas emission control waste generated primarily from
14 the combustion of coal or other fossil fuels and wastes
15 produced in conjunction with the combustion of fossil fuels
16 that are necessarily associated with the production of energy
17 and that traditionally have been and actually are mixed with
18 and are disposed of or treated at the same time with fly ash,
19 bottom ash, boiler slag or flue gas emission control wastes
20 from coal combustion;

21 (3) waste from the extraction, beneficiation and
22 processing of ores and minerals, including phosphate rock and
23 overburden from the mining of uranium ore, coal, copper,
24 molybdenum and other ores and minerals;

25 (4) agricultural waste, including, but not

.184349.1

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1 limited to, manures and crop residues returned to the soil as
2 fertilizer or soil conditioner;

3 (5) cement kiln dust waste;

4 (6) sand and gravel;

5 (7) solid or dissolved material in domestic
6 sewage or solid or dissolved materials in irrigation return
7 flows or industrial discharges that are point sources subject
8 to permits under Section 402 of the Federal Water Pollution
9 Control Act, 33 U.S.C. Section 1342 or source, special nuclear
10 or by-product material as defined by the Atomic Energy Act of
11 1954, 42 U.S.C. Section 2011 et seq.;

12 (8) densified-refuse-derived fuel; or

13 (9) any material regulated by Subtitle C of the
14 federal Resource Conservation and Recovery Act of 1976,
15 substances regulated by the federal Toxic Substances Control
16 Act or low-level radioactive waste;

17 O. "solid waste district" means a geographical area
18 designated by the board as a solid waste district under Section
19 [~~11 of the Solid Waste Act~~] 74-9-11 NMSA 1978;

20 P. "solid waste facility" means any public or private
21 system, facility, location, improvements on the land,
22 structures or other appurtenances or methods used for
23 processing, transformation, recycling or disposal of solid
24 waste, including landfill disposal facilities, transfer
25 stations, resource recovery facilities, incinerators and other

.184349.1

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~~[bracketed material] = delete~~

1 similar facilities not specified, but does not include
2 equipment specifically approved by order of the director to
3 render medical waste noninfectious or a facility [~~which~~] that
4 is permitted pursuant to the provisions of the Hazardous Waste
5 Act and does not apply to a facility fueled by a densified-
6 refuse-derived fuel that accepts no other solid waste;

7 Q. "source reduction" means any action that causes a
8 net reduction in the generation, volume or toxicity of solid
9 waste;

10 R. "special waste" means solid waste that has unique
11 handling, transportation or disposal requirements to assure
12 protection of the environment and the public health and safety;

13 S. "transformation" means incineration, pyrolysis,
14 distillation, gasification or biological conversion other than
15 composting; and

16 T. "yard refuse" means vegetative matter resulting
17 from landscaping, land maintenance and land clearing
18 operations."

19 **SECTION 71.** Section 74-13-3 NMSA 1978 (being Laws 2005,
20 Chapter 171, Section 3) is amended to read:

21 "74-13-3. DEFINITIONS.--As used in the Recycling and
22 Illegal Dumping Act:

23 A. "abatement" means to reduce in amount, degree or
24 intensity or to eliminate;

25 B. "agricultural use" means the beneficial use of

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[bracketed material] = delete

1 scrap tires in conjunction with the operations of a farm or
2 ranch that includes construction projects and aids in the
3 storage of feed;

4 C. "alliance" means the recycling and illegal dumping
5 alliance;

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

7 E. "civil engineering application" means the use of
8 scrap tires or other recycled material in conjunction with
9 other aggregate materials in engineering applications;

10 F. "composting" means the process by which biological
11 decomposition of organic material is carried out under
12 controlled conditions and the process stabilizes the organic
13 fraction into a material that can be easily and safely stored,
14 handled and used in an environmentally acceptable manner;

15 G. "cooperative association" means a refuse disposal
16 district created pursuant to the Refuse Disposal Act, a
17 sanitation district created pursuant to the Water and
18 Sanitation District Act, a special district created pursuant to
19 the Special District Procedures Act or other associations
20 created pursuant to the Joint Powers Agreements Act or the
21 Solid Waste Authority Act;

22 H. "department" means the natural resources and
23 environment department [~~of environment~~];

24 I. "dispose" means to deposit scrap tires or solid
25 waste into or on any land or water;

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1 J. "household" means any single and multiple
2 residence, hotel or motel, bunkhouse, ranger station, crew
3 quarters, campground, picnic ground or day-use recreation area;

4 K. "illegal dumping" means disposal of trash, scrap
5 tires or any solid waste in a manner that violates the Solid
6 Waste Act or the Recycling and Illegal Dumping Act;

7 L. "illegal dumpsite" means a place where illegal
8 dumping has occurred except as stated in Subsection A of
9 Section [~~4 of the Recycling and Illegal Dumping Act~~] 74-13-4
10 NMSA 1978;

11 M. "market development" means activities to expand or
12 create markets for recyclable and reusable materials;

13 N. "motor vehicle" means a vehicle or device that is
14 propelled by an internal combustion engine or electric motor
15 power that is used or may be used on the public highways for
16 the purpose of transporting persons or property and includes
17 any connected trailer or semitrailer;

18 O. "processing" means techniques to change physical,
19 chemical or biological character or composition of solid waste
20 but does not include composting, transformation or open
21 burning;

22 P. "recycling" means any process by which recyclable
23 materials are collected, separated or processed and reused or
24 returned to use in the form of raw materials or products;

25 Q. "reuse" means the return of a commodity into the

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1 economic stream without a change to its original form;

2 R. "scrap tire" means a tire that is no longer
3 suitable for its originally intended purpose because of wear,
4 damage or defect;

5 S. "scrap tire baling" means the process by which
6 scrap tires are mechanically compressed and bound into block
7 form;

8 T. "scrap tire generator" means a person who
9 generates scrap tires, including retail tire dealers,
10 retreaders, scrap tire processors, automobile dealers,
11 automobile salvage yards, private company vehicle maintenance
12 shops, garages, service stations and city, county and state
13 government, but does not include persons who generate scrap
14 tires in a household or in agricultural operations;

15 U. "scrap tire hauler" means a person who transports
16 scrap tires for hire for the purpose of recycling, disposal,
17 transformation or use in a civil engineering application;

18 V. "secretary" means the secretary of natural
19 resources and environment;

20 W. "tire" means a continuous solid or pneumatic
21 rubber covering that encircles the wheel of a motor vehicle;

22 X. "tire-derived fuel" means whole or chipped tires
23 that produce a low sulfur, high-heating-value fuel;

24 Y. "tire-derived product" means a usable product
25 produced from the processing of a scrap tire but does not

underscored material = new
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1 include baled tires;

2 Z. "tire recycling" means a process in which scrap
3 tires are collected, stored, separated or reprocessed for reuse
4 as a different product or shredded into a form suitable for use
5 in rubberized asphalt or as raw material for the manufacture of
6 other products; and

7 AA. "tire recycling facility" means a place operated
8 or maintained for tire recycling but does not include:

9 (1) retail business premises where tires are
10 sold, if no more than five hundred loose scrap tires or two
11 thousand scrap tires, if left in a closed conveyance or
12 enclosure, are kept on the premises at one time;

13 (2) the premises of a tire retreading business,
14 if no more than three thousand scrap tires are kept on the
15 premises at one time;

16 (3) premises where tires are removed from motor
17 vehicles in the ordinary course of business, if no more than
18 five hundred scrap tires are kept on the premises at one
19 time;

20 (4) a solid waste facility having a valid permit
21 or registration issued pursuant to the provisions of the Solid
22 Waste Act or regulations adopted pursuant to that act or
23 registration issued pursuant to the Environmental Improvement
24 Act; or

25 (5) a site where tires are stored or used for

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1 agricultural uses."

2 SECTION 72. Section 75-1-2 NMSA 1978 (being Laws 1973,
3 Chapter 333, Section 2, as amended) is amended to read:

4 "75-1-2. DEFINITIONS.--As used in the Rural
5 Infrastructure Act:

6 A. "department" means the natural resources and
7 environment department [~~of environment~~];

8 B. "fund" means the rural infrastructure revolving
9 loan fund;

10 C. "local authority" means a mutual domestic
11 association or water and sanitation district that supplies
12 water, wastewater or solid waste services to, or a municipality
13 that has, a population of less than twenty thousand or a county
14 with a population of less than two hundred thousand;

15 D. "operate and maintain" means all necessary
16 activities, including replacement of equipment or appurtenances
17 to assure the dependable and economical function of a facility
18 in accordance with its intended purpose;

19 E. "secretary" means the secretary of natural
20 resources and environment;

21 F. "solid waste facility" includes transfer and
22 convenience facilities, landfills or other equipment or systems
23 used for the processing, transformation, recycling or disposal
24 of solid waste;

25 G. "wastewater facility" includes collection lines,

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[bracketed material] = delete

1 pumping equipment, treatment works and disposal piping or
2 process units; and

3 H. "water supply facility" includes the source of
4 supply of water, pumping equipment, storage facilities,
5 transmission lines, treatment works and distribution systems."

6 SECTION 73. Section 75-7-2 NMSA 1978 (being Laws 1993,
7 Chapter 292, Section 2, as amended) is amended to read:

8 "75-7-2. NATURAL RESOURCES TRUSTEE--OFFICE OF NATURAL
9 RESOURCES TRUSTEE.--~~[A.]~~ The "natural resources trustee" is
10 created. The ~~[trustee is appointed by and serves at the~~
11 ~~pleasure of the governor]~~ secretary of natural resources and
12 environment shall serve as the natural resources trustee
13 pursuant to the provisions of the federal Comprehensive
14 Environmental Response, Compensation, and Liability Act of
15 1980, as amended by the federal Superfund Amendments and
16 Reauthorization Act of 1986, the Federal Water Pollution
17 Control Act and any other applicable federal law. The natural
18 resources trustee shall act on behalf of the public as trustee
19 of natural resources within the state or belonging to, managed
20 by, controlled by or appertaining to the state, including
21 protecting and representing the state's interest under
22 applicable federal laws regarding injury to, destruction of or
23 loss of natural resources in the state.

24 ~~[B. The "office of natural resources trustee" is~~
25 ~~created. The office shall be administratively attached to the~~

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~~[bracketed material] = delete~~

1 ~~department of environment. The administrative head of the~~
2 ~~office of natural resources trustee is the natural resources~~
3 ~~trustee. For purposes of this subsection, the term~~
4 ~~"administratively attached" means the same as specified in~~
5 ~~Section 9-1-7 NMSA 1978.]"~~

6 SECTION 74. Section 75-7-3 NMSA 1978 (being Laws 1993,
7 Chapter 292, Section 3, as amended) is amended to read:

8 "75-7-3. NATURAL RESOURCES TRUSTEE POWERS AND DUTIES.--

9 A. The natural resources trustee shall take all
10 actions necessary to carry out the responsibilities of the
11 natural resources trustee as provided in the federal
12 Comprehensive Environmental Response, Compensation, and
13 Liability Act of 1980, as amended by the federal Superfund
14 Amendments and Reauthorization Act of 1986, the Federal Water
15 Pollution Control Act and any other applicable federal law,
16 including the responsibility to:

17 (1) act on behalf of the public to protect New
18 Mexico's natural resources by recovering damages for injury to,
19 destruction of or loss of those resources;

20 (2) investigate injury to, destruction of or
21 loss of natural resources;

22 (3) determine the amount and cause of injury to,
23 destruction of or loss of natural resources;

24 (4) determine the liability of any person for
25 injury to, destruction of or loss of natural resources;

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1 (5) assess and collect damages for injury to,
2 destruction of or loss of natural resources, including bringing
3 legal actions and collecting the costs of assessing and
4 collecting the damages; and

5 (6) expend money for the purposes set forth in
6 the Natural Resources Trustee Act.

7 B. The natural resources trustee may:

8 (1) hire staff, in accordance with the Personnel
9 Act, to carry out the provisions of the Natural Resources
10 Trustee Act;

11 (2) contract with economists, consultants and
12 other experts; and

13 (3) accept gifts and grants to carry out the
14 provisions of the Natural Resources Trustee Act. Gifts and
15 grants accepted by the natural resources trustee shall be
16 deposited in the natural resources trustee fund.

17 C. The attorney general shall provide legal counsel
18 and representation to the natural resources trustee [~~and the~~
19 ~~office of the natural resources trustee~~]."

20 SECTION 75. Section 75-7-5 NMSA 1978 (being Laws 1993,
21 Chapter 292, Section 5, as amended) is amended to read:

22 "75-7-5. NATURAL RESOURCES TRUSTEE FUND.--

23 A. The "natural resources trustee fund" is created in
24 the state treasury. Money appropriated to the fund or accruing
25 to it through gifts, grants, fees, penalties, bequests or any

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underscoring material = new
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1 other source shall be delivered to the state treasurer and
2 deposited in the fund. Money recovered for the state by or on
3 behalf of the natural resources trustee shall be deposited in
4 the natural resources trustee fund. The fund shall be
5 administered by the natural resources trustee as a separate
6 account and may consist of subaccounts that the natural
7 resources trustee deems necessary to carry out the purposes of
8 the fund. Disbursements from the fund shall be made upon
9 warrants drawn by the secretary of finance and administration
10 pursuant to vouchers signed by the natural resources trustee or
11 the trustee's designated representative. Money in the fund
12 shall not revert to the general fund at the end of a fiscal
13 year.

14 B. Pursuant to the following criteria, money in the
15 natural resources trustee fund shall be used to carry out the
16 provisions of the Natural Resources Trustee Act by restoring,
17 replacing or acquiring natural resources in an area where
18 natural resources have been injured, destroyed or lost,
19 provided that money deposited in the fund because of injury to,
20 destruction of or loss of natural resources in an area shall be
21 disbursed to restore, replace or acquire natural resources in
22 that same area:

23 (1) if an expenditure from the fund is necessary
24 to comply with a court order or court-approved settlement or to
25 match federal funds, then, pursuant to Sections 6-3-23 through
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underscored material = new
[bracketed material] = delete

1 6-3-25 NMSA 1978, the natural resources trustee may request a
2 budget increase and, if approved, the amount of the expenditure
3 is appropriated;

4 (2) if money is received for reimbursement of
5 assessment costs, then the natural resources trustee may expend
6 money for injury assessment, and money is appropriated in that
7 amount for that purpose; and

8 (3) any other expenditures from the fund shall
9 be made only pursuant to appropriation by the legislature.

10 C. In addition to expenditures made pursuant to
11 Subsection B of this section, money shall be appropriated
12 annually by the legislature from the general fund for the
13 purpose of providing for necessary personnel and other costs of
14 the natural resources trustee and the attorney general [~~and the~~
15 ~~office of natural resources trustee~~] in carrying out the
16 provisions of the Natural Resources Trustee Act, including the
17 cost of investigation, assessment, collection or enforcement.

18 D. For purposes of this section, "assessment
19 costs" means the costs of restoration and the costs of
20 collecting, compiling and analyzing information, statistics or
21 data to determine damages for injuries to natural resources
22 pursuant to the Natural Resources Trustee Act.

23 E. Money in the natural resources trustee fund
24 shall be invested as other state funds are invested, and
25 interest and earnings from the fund shall not revert to the

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1 general fund but shall be credited to the natural resources
2 trustee fund."

3 SECTION 76. TEMPORARY PROVISION--TRANSFERS--CONTRACTUAL
4 OBLIGATIONS--STATUTORY REFERENCES.--

5 A. On July 1, 2011, all functions, appropriations,
6 money, records, furniture, equipment and other property of
7 the following agencies shall be transferred to the natural
8 resources and environment department:

9 (1) the energy, minerals and natural resources
10 department;

11 (2) the department of environment; and

12 (3) the natural resources trustee.

13 B. On July 1, 2011, all functions, appropriations,
14 money, records, furniture, equipment and other property of
15 the:

16 (1) occupational health and safety review
17 commission shall be transferred to the environmental
18 improvement board; and

19 (2) coal surface mining commission shall be
20 transferred to the mining commission.

21 C. On July 1, 2011, all contractual obligations of
22 the:

23 (1) energy, minerals and natural resources
24 department, the department of environment and the natural
25 resources trustee shall be binding on the natural resources

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1 and environment department;

2 (2) occupational health and safety review
3 commission shall be binding on the environmental improvement
4 board; and

5 (3) coal surface mining commission shall be
6 binding on the mining commission.

7 D. On July 1, 2011, all references in law to the:

8 (1) energy, minerals and natural resources
9 department and the department of environment shall be deemed
10 to be references to the natural resources and environment
11 department;

12 (2) natural resources trustee shall be deemed
13 to be references to the secretary of natural resources and
14 environment;

15 (3) occupational health and safety review
16 commission shall be deemed to be references to the
17 environmental improvement board; and

18 (4) coal surface mining commission shall be
19 deemed to be references to the mining commission.

20 **SECTION 77. REPEAL.--**

21 A. Sections 9-5A-1 through 9-5A-10 NMSA 1978 (being
22 Laws 1987, Chapter 234, Sections 1 through 6, Laws 1997,
23 Chapter 149, Section 3, Laws 1987, Chapter 234, Section 7,
24 Laws 1992, Chapter 58, Section 8, Laws 2003, Chapter 129,
25 Section 1 and Laws 2003, Chapter 133, Section 1, as amended)

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1 are repealed.

2 B. Sections 9-7A-1 through 9-7A-15 NMSA 1978 (being
3 Laws 1991, Chapter 25, Sections 1 through 12, Laws 1977,
4 Chapter 253, Sections 77 and 78 and Laws 2003, Chapter 99,
5 Section 1, as amended) are repealed.

6 C. Section 50-9-9 NMSA 1978 (being Laws 1975,
7 Chapter 290, Section 6) is repealed.

8 D. Section 69-25A-4 NMSA 1978 (being Laws 1979,
9 Chapter 291, Section 4, as amended) is repealed.

10 SECTION 78. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2011.