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HOUSE BILL 213

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Bill B. O'Neill

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 17 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 environmental protection division,

25 which shall include:

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- 1 (a) the air quality bureau;  
2 (b) the environmental health bureau;  
3 (c) the occupational health and safety  
4 bureau;  
5 (d) the natural resources trustee  
6 bureau;  
7 (e) the petroleum storage tank bureau;  
8 and  
9 (f) the solid waste bureau;  
10 (4) the energy conservation and management  
11 division;  
12 (5) the forestry division;  
13 (6) the mining and minerals division, which  
14 shall include:  
15 (a) the abandoned mine lands bureau;  
16 (b) the mine regulatory bureau; and  
17 (c) the mining reclamation bureau;  
18 (7) the oil conservation division;  
19 (8) the state parks division;  
20 (9) the water and waste management division,  
21 which shall include:  
22 (a) the department of energy oversight  
23 bureau;  
24 (b) the ground water quality bureau;  
25 (c) the hazardous waste bureau; and

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1 (d) the surface water quality bureau;  
2 and

3 (10) the water and wastewater infrastructure  
4 development division.

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

9 Section 5. [NEW MATERIAL] ADMINISTRATIVELY ATTACHED  
10 AGENCIES.--The following boards, commissions, committees and  
11 councils are administratively attached to the department:

- 12 A. the environmental improvement board;
- 13 B. the mining commission;
- 14 C. the natural lands protection committee;
- 15 D. the oil conservation commission;
- 16 E. the radiation technical advisory council;
- 17 F. the water quality control commission; and
- 18 G. the youth conservation corps commission.

19 Section 6. [NEW MATERIAL] SECRETARY OF NATURAL RESOURCES  
20 AND ENVIRONMENT--APPOINTMENT.--

21 A. The administrative head of the natural resources  
22 and environment department is the "secretary of natural  
23 resources and environment", who shall be appointed by the  
24 governor with the consent of the senate and who shall serve in  
25 the executive cabinet.

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1           B. An appointed secretary shall serve and have all  
2 of the duties, responsibilities and authority of that office  
3 during the period of time prior to final action by the senate  
4 confirming or rejecting the appointment.

5           Section 7. DUTIES AND GENERAL POWERS.--

6           A. The secretary is responsible to the governor for  
7 the operation of the department. It is the secretary's duty to  
8 manage all operations of the department and to administer and  
9 enforce the laws with which the secretary or the department is  
10 charged.

11           B. To perform the duties, the secretary has every  
12 power expressly enumerated in the laws, whether granted to the  
13 secretary, the department or any division of the department,  
14 except where authority conferred upon any division is  
15 explicitly exempt from the secretary's authority by statute.  
16 In accordance with these provisions, the secretary shall:

17                   (1) except as otherwise provided in the  
18 Natural Resources and Environment Department Act, exercise  
19 general supervisory and appointing authority over all  
20 department employees, subject to any applicable personnel laws  
21 and rules;

22                   (2) delegate authority to subordinates as the  
23 secretary deems necessary and appropriate, clearly delineating  
24 that delegated authority and the limitations thereto;

25                   (3) organize the department into those

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1 organizational units the secretary deems will enable it to  
2 function most efficiently, subject to any provisions of law  
3 requiring or establishing specific organizational units;

4 (4) within the limitations of available  
5 appropriations and applicable laws, employ and fix the  
6 compensation of those persons necessary to discharge the duties  
7 of the department;

8 (5) take administrative action by issuing  
9 orders and instructions, consistent with the law, to assure  
10 implementation of and compliance with the provisions of law for  
11 which administration or execution the department or the  
12 secretary is responsible and to enforce those orders and  
13 instructions by appropriate administrative action or actions in  
14 the courts;

15 (6) conduct research and studies that will  
16 improve the operations of the department and the provision of  
17 services to the residents of the state;

18 (7) provide courses of instruction and  
19 practical training for employees of the department and other  
20 persons involved in the administration of programs with the  
21 objective of improving the operations and efficiency of  
22 administration;

23 (8) prepare an annual budget of the  
24 department; and

25 (9) appoint, with the governor's consent, a

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1 "director" for each division. These appointed positions are  
2 exempt from the provisions of the Personnel Act. Persons  
3 appointed to these positions shall serve at the pleasure of the  
4 secretary.

5 C. The secretary may apply for and receive, with  
6 the governor's approval and in the name of the department, any  
7 public or private funds, including United States government  
8 funds, available to the department to carry out its programs,  
9 duties or services.

10 D. The secretary may make and adopt such reasonable  
11 and procedural rules as necessary to carry out the duties of  
12 the department and its divisions. No rule promulgated by the  
13 director of any division in carrying out the functions and  
14 duties of the division shall be effective until approved by the  
15 secretary, unless otherwise provided by statute. Unless  
16 otherwise provided by statute, no procedural rules affecting  
17 any person or agency outside the department shall be adopted,  
18 amended or repealed without a public hearing on the proposed  
19 action before the secretary or a hearing officer designated by  
20 the secretary. The public hearing shall be held in Santa Fe  
21 unless otherwise permitted by statute. Notice of the subject  
22 matter of the rule, the action proposed to be taken, the time  
23 and place of the hearing, the manner in which interested  
24 persons may present their views and the method by which copies  
25 of the proposed rule, proposed amendment or repeal of an

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1 existing rule may be obtained shall be published once at least  
2 thirty days prior to the hearing date in a newspaper of general  
3 circulation and mailed at least thirty days prior to the  
4 hearing date to all persons who have made a written request for  
5 advance notice of hearing. All rules shall be filed in  
6 accordance with the State Rules Act.

7 Section 8. [NEW MATERIAL] DEPARTMENT--ADDITIONAL  
8 DUTIES.--The department shall develop a comprehensive watershed  
9 restoration strategy that sets guidelines for coordination with  
10 state and federal land management agencies and political  
11 subdivisions, including the soil and water conservation  
12 districts and other stakeholders. The strategy shall focus on  
13 removing the overabundance of woody vegetation, particularly  
14 non-native species of phreatophytes, that consume excessive  
15 amounts of water and on reestablishing the natural ecology of  
16 New Mexico. The strategy shall use:

- 17 A. incentives to encourage the formation of  
18 businesses to clear vegetation;  
19 B. incentives to encourage biomass energy use; and  
20 C. inmates from the corrections department to  
21 assist with watershed cleanup.

22 Section 9. [NEW MATERIAL] DIVISIONS--DIRECTORS.--The  
23 secretary shall appoint, with the approval of the governor,  
24 directors of the divisions established within the department.  
25 Division directors are exempt from the Personnel Act.

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1           Section 10. [NEW MATERIAL] BUREAUS--CHIEFS.--The  
2 secretary shall establish within each division such "bureaus"  
3 as deemed necessary to carry out the provisions of the Natural  
4 Resources and Environment Department Act. The secretary shall  
5 employ a "chief" to be the administrative head of each bureau.  
6 The chief and all subsidiary employees of the department shall  
7 be covered by the Personnel Act unless otherwise provided by  
8 law.

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

23           Section 12. [NEW MATERIAL] ADVISORY COMMITTEES.--

24           A. Advisory committees may be created. "Advisory"  
25 means furnishing advice, gathering information, making

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

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

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

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

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

23 C. mobilizing and coordinating necessary resources  
24 and expertise from government, education and the private sector  
25 to assist in clean alternative fuel transportation programs and

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1 projects.

2 Section 14. [NEW MATERIAL] WASTEWATER TREATMENT TECHNICAL  
3 ADVISORY COMMITTEE CREATED--DUTIES AND POWERS OF THE  
4 COMMITTEE.--

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

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

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

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

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

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

24 B. The term of appointed members shall be three  
25 years. Members shall serve until their successors are

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1 appointed and qualified. Vacancies occurring in the membership  
2 of an appointed member shall be filled by the secretary for the  
3 remainder of the unexpired term.

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

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

8 E. The committee shall:

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

11 (2) provide standardized objective evaluation  
12 of wastewater treatment and disposal technologies for both  
13 large- and small-flow domestic, commercial and agricultural  
14 wastewater systems and submit its findings to the secretary for  
15 final approval by the secretary, who shall add the wastewater  
16 treatment and disposal technologies to the list of approved  
17 technologies maintained by the department, including the ground  
18 water quality bureau and the liquid waste program of the water  
19 and waste management division of the department or their  
20 successors and their constituent agencies; and

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

24 F. Members of the committee are entitled to receive  
25 reimbursement for expenses incurred in the performance of their

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1 duties pursuant to the Per Diem and Mileage Act and shall  
2 receive no other compensation, perquisite or allowance.  
3 Expenditures for this purpose shall be made from the budgeted  
4 funds of the department.

5 Section 15. [NEW MATERIAL] COOPERATION WITH THE FEDERAL  
6 GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE STATUS.--

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

17 B. The governor or the secretary may by appropriate  
18 order designate the department or any organizational unit of the  
19 department as the single state agency for the administration  
20 of any natural resource, energy or environmental program when  
21 that designation is a condition of federal financial or other  
22 participation in the program under applicable federal law, rule  
23 or order. Whether or not a federal condition exists, the  
24 governor may designate the department or any organizational  
25 unit of the department as the single state agency for the

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1 administration of any natural resource, energy or environmental  
2 program. No designation of a single state agency under the  
3 authority granted in this section shall be made in  
4 contravention of state law.

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

19 Section 17. [NEW MATERIAL] WATER QUALITY CONTROL  
20 COMMISSION--EXEMPTIONS FROM AUTHORITY OF SECRETARY.--The water  
21 quality control commission shall receive staff support from the  
22 natural resources and environment department. All powers,  
23 duties and responsibilities of the water quality control  
24 commission under Section 74-6-11 NMSA 1978 and the Water  
25 Quality Act are hereby explicitly exempted from the authority

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1 of the secretary under the provisions of Subsection B of  
2 Section 7 of the Natural Resources and Environment Department  
3 Act.

4 Section 18. Section 3-29-2 NMSA 1978 (being Laws 1965,  
5 Chapter 300, Section 14-28-2, as amended) is amended to read:

6 "3-29-2. DEFINITIONS.--As used in the Sanitary Projects  
7 Act:

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

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

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

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

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

25 F. "project" means a water supply or reuse, storm

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1 drainage or wastewater facility owned, constructed or operated  
2 by an association."

3 Section 19. Section 6-10-3 NMSA 1978 (being Laws 1923,  
4 Chapter 76, Section 2, as amended) is amended to read:

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

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1 following the receipt or collection thereof. Provided further  
2 that every official or person in charge of any state agency  
3 receiving any money, except as in Section 6-10-54 NMSA 1978  
4 provided, in cash or by check, draft or otherwise, on deposit,  
5 in escrow or in evidence of good faith to secure the  
6 performance of any contract or agreement with the state or with  
7 any department, institution or agency of the state, which money  
8 has not yet been earned so as to become the absolute property  
9 of the state, shall deliver or remit to the state treasurer  
10 within the times and in the manner in this section provided,  
11 which money shall be by the state treasurer deposited in a  
12 suspense account to the credit of the proper official, person,  
13 board or bureau in charge of any state agency so receiving the  
14 money; provided, however, that all money held by the  
15 commissioner of public lands on deposit, in escrow or in  
16 evidence of good faith to secure the performance of any  
17 contract or agreement with the state shall be delivered or  
18 remitted to the state treasurer within six months from the date  
19 this act is approved and, at those times, in the amounts and  
20 from the various banks in which it is deposited as may be  
21 directed by the state board of finance."

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

24 "6-21A-3. DEFINITIONS.--As used in the Drinking Water  
25 State Revolving Loan Fund Act:

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- 1           A. "authority" means the New Mexico finance  
2 authority;
- 3           B. "department" means the natural resources and  
4 environment department [~~of environment~~];
- 5           C. "drinking water facility construction project"  
6 means the acquisition, design, construction, improvement,  
7 expansion, repair or rehabilitation of all or part of any  
8 structure, facility or equipment necessary for a drinking water  
9 system or water supply system;
- 10          D. "drinking water supply facility" means any  
11 structure, facility or equipment necessary for a drinking water  
12 system or water supply system;
- 13          E. "financial assistance" means loans, the purchase  
14 or refinancing of debt obligation of a local authority at an  
15 interest rate that is less than or equal to the market interest  
16 rate in any case in which a debt obligation is incurred after  
17 July 1, 1993, loan guarantees, bond insurance or security for  
18 revenue bonds issued by the authority;
- 19          F. "fund" means the drinking water state revolving  
20 loan fund;
- 21          G. "local authority" means any municipality,  
22 county, incorporated county, sanitation district, water and  
23 sanitation district or any similar district, public or private  
24 water cooperative or association or any similar organization,  
25 public or private community water system or nonprofit

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1 noncommunity water system or any other agency created pursuant  
2 to a joint powers agreement acting on behalf of any entity  
3 listed in this subsection with a publicly owned drinking water  
4 system or water supply system that qualifies as a community  
5 water system or nonprofit noncommunity system as defined by the  
6 Safe Drinking Water Act. "Local authority" does not include  
7 systems owned by federal agencies;

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

13 I. "Safe Drinking Water Act" means the federal Safe  
14 Drinking Water Act as amended in 1996 and its subsequent  
15 amendments or successor provisions."

16 Section 21. Section 6-21D-2 NMSA 1978 (being Laws 2005,  
17 Chapter 176, Section 2) is amended to read:

18 "6-21D-2. DEFINITIONS.--As used in the Energy Efficiency  
19 and Renewable Energy Bonding Act:

20 A. "authority" means the New Mexico finance  
21 authority;

22 B. "bonds" means energy efficiency bonds;

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

25 D. "energy efficiency measure" means a modification

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1 or improvement to a building or complex of buildings that is  
2 designed to reduce energy consumption or operating costs or  
3 that provides a renewable energy source and may include:

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

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

11 (3) automated or computerized energy control  
12 systems;

13 (4) heating, ventilating or air conditioning  
14 system modifications or replacements;

15 (5) replacement or modification of lighting  
16 fixtures to increase the energy efficiency of the lighting  
17 system;

18 (6) energy recovery systems;

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

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

25 E. "fund" means the energy efficiency and renewable

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1 energy bonding fund;

2 F. "school district" means a political subdivision  
3 of the state established for the administration of public  
4 schools, segregated geographically for taxation and bonding  
5 purposes and governed by the Public School Code;

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

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

10 Section 22. Section 6-23-2 NMSA 1978 (being Laws 1993,  
11 Chapter 231, Section 2, as amended) is amended to read:

12 "6-23-2. DEFINITIONS.--As used in the Public Facility  
13 Energy Efficiency and Water Conservation Act:

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

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

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

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

6 (3) automated or computerized energy control  
7 systems;

8 (4) heating, ventilating or air conditioning  
9 system modifications or replacements;

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

17 (6) energy recovery systems;

18 (7) solar energy generating or heating and  
19 cooling systems or other renewable energy systems;

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

24 (9) energy conservation measures that provide  
25 long-term operating cost reductions;

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

3 (11) traffic control systems; or

4 (12) alternative fuel options or accessories  
5 for vehicles;

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

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

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

25 F. "utility cost savings" means the amounts saved

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1 by a governmental unit in the purchase of energy or water that  
2 are a direct result of energy or water conservation measures  
3 implemented pursuant to a guaranteed utility savings contract;  
4 and

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

9 Section 23. Section 7-29A-2 NMSA 1978 (being Laws 1992,  
10 Chapter 38, Section 2) is amended to read:

11 "7-29A-2. DEFINITIONS.--As used in the Enhanced Oil  
12 Recovery Act:

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

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

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

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

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

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

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

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

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

23           H. "primary recovery" means the displacement of  
24 crude oil from an oil well or pool classified by the division  
25 pursuant to Paragraph (11) of Subsection B of Section 70-2-12

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1 NMSA 1978 into the well bore by means of the natural pressure  
2 of the oil well or pool, including but not limited to  
3 artificial lift;

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

8 J. "secondary recovery project" means an enhanced  
9 recovery project that:

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

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

21 (3) encompasses a pool or portion of a pool  
22 the boundaries of which can be adequately defined and  
23 controlled;

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

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

3 M. "tertiary recovery project" means an enhanced  
4 recovery project that:

5 (1) occurs subsequent to the completion of a  
6 secondary recovery project;

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

16 (3) encompasses a pool or portion of a pool  
17 the boundaries of which can be adequately defined and  
18 controlled."

19 Section 24. Section 7-29B-2 NMSA 1978 (being Laws 1995,  
20 Chapter 15, Section 2, as amended by Laws 1999, Chapter 7,  
21 Section 2 and as further amended by Laws 1999, Chapter 256,  
22 Section 3) is amended to read:

23 "7-29B-2. DEFINITIONS.--As used in the Natural Gas and  
24 Crude Oil Production Incentive Act:

25 A. "average annual taxable value" means the average

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1 of the taxable value per barrel, determined pursuant to Section  
2 7-31-5 NMSA 1978, of all oil produced in New Mexico for the  
3 specified calendar year as determined by the department;

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

11 C. "department" means the taxation and revenue  
12 department;

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

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

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

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

24 H. "person" means any individual or other legal  
25 entity, including any group or combination of individuals or

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1 other legal entities acting as a unit;

2 I. "production restoration incentive tax exemption"  
3 means the tax exemption set forth in Subsection B of Section  
4 7-29-4 NMSA 1978 for natural gas or oil produced from a  
5 production restoration project;

6 J. "production restoration project" means the use  
7 of any process for returning to production a natural gas or oil  
8 well that had thirty days or less of production in any period  
9 of twenty-four consecutive months beginning on or after January  
10 1, 1993 as approved and certified by the division;

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

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

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

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

24 (3) if a property with wells that produce both  
25 crude oil and natural gas, produced an average daily production

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1 of less than ten barrels of oil per eligible well per day for  
2 the preceding calendar year, as determined by converting the  
3 volume of natural gas produced by the well to barrels of oil by  
4 using a ratio of six thousand cubic feet to one barrel of oil;

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

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

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

18 Section 25. Section 9-5B-3 NMSA 1978 (being Laws 1992,  
19 Chapter 91, Section 3) is amended to read:

20 "9-5B-3. DEFINITIONS.--As used in the New Mexico Youth  
21 Conservation Corps Act:

22 A. "commission" means the New Mexico youth  
23 conservation corps commission;

24 B. "corps" means the New Mexico youth conservation  
25 corps;

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1 C. "corps member" means a person enrolled in the  
2 corps;

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

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

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

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

18 H. "sponsor" means any local unit of government,  
19 state agency, federal agency, nonprofit organization or  
20 federally recognized Native American tribe."

21 Section 26. Section 9-5B-5 NMSA 1978 (being Laws 1992,  
22 Chapter 91, Section 5) is amended to read:

23 "9-5B-5. COMMISSION CREATED--MEMBERSHIP--APPOINTMENTS--  
24 TERMS--VACANCIES--COMPENSATION.--

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

4 (1) the [~~superintendent of public instruction~~]  
5 secretary of public education or [~~his~~] the secretary's  
6 designee;

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

9 (3) the secretary of [~~energy, minerals and~~]  
10 natural resources and environment or [~~his~~] the secretary's  
11 designee;

12 (4) the secretary of [~~the youth authority~~]  
13 children, youth and families or [~~his~~] the secretary's designee;  
14 and

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

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

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1 C. The public members shall serve at the pleasure  
2 of the governor. Vacancies on the commission caused by the  
3 loss of a public member shall be filled by appointment by the  
4 governor for the unexpired term within sixty days of the  
5 vacancy. Public commission members shall serve until their  
6 successors have been appointed.

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

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

14 Section 27. Section 13-1B-2 NMSA 1978 (being Laws 1992,  
15 Chapter 58, Section 2, as amended) is amended to read:

16 "13-1B-2. DEFINITIONS.--As used in the Alternative Fuel  
17 Acquisition Act:

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

25 B. "conventional fuel" means gasoline or diesel

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1 fuel;

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

4 D. "fund" means the alternative fuel acquisition  
5 loan fund;

6 E. "political subdivision" means a county,  
7 municipality or school district; and

8 F. "vehicle" means a light duty vehicle under  
9 [~~8,500~~] eight thousand five hundred pounds."

10 Section 28. Section 16-2-2 NMSA 1978 (being Laws 1977,  
11 Chapter 254, Section 113, as amended) is amended to read:

12 "16-2-2. STATE PARKS ADVISORY BOARD CREATED--MEMBERSHIP--  
13 COMPENSATION--DUTIES.--

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

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

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

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1           D. Each member of the advisory board shall annually  
2 elect a [~~chairman~~] chair and vice [~~chairman~~] chair from its  
3 membership. The director of the state parks division shall  
4 serve as the executive secretary of the board."

5           Section 29. Section 16-2-3 NMSA 1978 (being Laws 1977,  
6 Chapter 254, Section 12, as amended) is amended to read:

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

16           Section 30. Section 16-3-2 NMSA 1978 (being Laws 1973,  
17 Chapter 372, Section 2, as amended) is amended to read:

18           "16-3-2. DEFINITIONS.--As used in the State Trails System  
19 Act:

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

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

underscored material = new  
[bracketed material] = delete

1           Section 31. Section 16-4-3 NMSA 1978 (being Laws 1977,  
2 Chapter 242, Section 3, as amended) is amended to read:

3           "16-4-3. DEFINITIONS.--As used in El Rio Chama Scenic and  
4 Pastoral Act:

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

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

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

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

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

22           Section 32. Section 16-4-11 NMSA 1978 (being Laws 1983,  
23 Chapter 18, Section 3, as amended) is amended to read:

24           "16-4-11. DEFINITIONS.--As used in the Rio Grande Valley  
25 State Park Act:

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1           A. "conservancy district" means the middle Rio  
2 Grande conservancy district;

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

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

7           Section 33. Section 25-1-2 NMSA 1978 (being Laws 1977,  
8 Chapter 309, Section 2, as amended) is amended to read:

9           "25-1-2. DEFINITIONS.--As used in the Food Service  
10 Sanitation Act:

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

13           B. "board" means the environmental improvement  
14 board;

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

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

22           E. "general public" includes beneficiaries of  
23 governmental feeding programs and private charitable feeding  
24 programs and residents and employees of institutions that  
25 provide meals to their residents and employees either with or

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1 without direct payment to the institution by the residents or  
2 employees;

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

8 [~~G. "person" means an individual or any other legal~~  
9 ~~entity;~~

10 H.] G. "food service establishment" means:

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

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

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

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

3           ~~[J.]~~ I. "dairy establishment" means a milk  
4 processing or milk producing facility."

5           Section 34. Section 25-2-2 NMSA 1978 (being Laws 1951,  
6 Chapter 169, Section 2, as amended) is amended to read:

7           "25-2-2. DEFINITIONS.--For the purpose of the New Mexico  
8 Food Act:

9           A. "board" means the environmental improvement  
10 board;

11           B. "dairy establishment" means a milk processing or  
12 milk producing facility;

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

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

18           E. "person" includes an individual, partnership,  
19 corporation and association;

20           F. "food" means:

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

23                   (2) chewing gum; and

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

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

10           H. "immediate container" does not include package  
11 liners;

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

14                   (1) upon an article or any of its containers  
15 or wrappers; or

16                   (2) accompanying such article;

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

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[bracketed material] = delete

1 such representations or material with respect to consequences  
2 [~~which~~] that may result from the use of the article to which  
3 the labeling or advertisement relates under the conditions of  
4 use prescribed in the labeling or advertisement thereof or  
5 under such conditions of use as are customary or usual;

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

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

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

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

24 Section 35. Section 25-5-1 NMSA 1978 (being Laws 1955,  
25 Chapter 244, Section 1, as amended) is amended to read:

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[bracketed material] = delete

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

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

5 (1) includes:

6 (a) white flour, also known as wheat  
7 flour or plain flour;

8 [~~2~~] (b) bromated flour;

9 [~~3~~] (c) self-rising flour, also known  
10 as self-rising white flour or self-rising wheat flour; and

11 [~~4~~] (d) phosphated flour, also known  
12 as phosphated white flour or phosphated wheat flour; [~~but~~] and

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

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

22 C. "rolls" includes plain white rolls and buns of  
23 the semi-bread dough type, namely: soft rolls such as  
24 hamburger rolls, hot dog rolls and Parker House rolls and hard  
25 rolls such as Vienna rolls and Kaiser rolls; but [~~shall~~]

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underscored material = new  
[bracketed material] = delete

1 "rolls" does not include yeast-raised sweet rolls or sweet buns  
2 made with fillings or coatings such as cinnamon rolls or buns  
3 and butterfly rolls;

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

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

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

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

15 Section 36. Section 30-8-7 NMSA 1978 (being Laws 1975,  
16 Chapter 199, Section 4) is amended to read:

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

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1 authorized to work with industry organizations in a joint anti-  
2 litter campaign so that additional effect may be given to the  
3 anti-litter effort in New Mexico."

4 Section 37. Section 33-13-2 NMSA 1978 (being Laws 1998,  
5 Chapter 57, Section 2) is amended to read:

6 "33-13-2. DEFINITIONS.--As used in the Inmate Forestry  
7 Work Camp Act:

8 A. "department" means the corrections department;

9 B. "forestry division" means the forestry division of  
10 the [~~energy, minerals and~~] natural resources and environment  
11 department;

12 C. "program" means the inmate forestry work camp  
13 program; and

14 D. "work camp" means a minimum security facility  
15 operated by the department that houses inmates training or  
16 working in the program."

17 Section 38. Section 50-9-1 NMSA 1978 (being Laws 1972,  
18 Chapter 63, Section 1, as amended) is amended to read:

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

22 Section 39. Section 50-9-3 NMSA 1978 (being Laws 1972,  
23 Chapter 63, Section 3, as amended) is amended to read:

24 "50-9-3. DEFINITIONS.--As used in the Occupational Health  
25 and Safety Act:

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1           A. "person" means any individual, partnership, firm,  
2 public or private corporation, association, trust, estate,  
3 political subdivision or agency or any other legal entity or  
4 their legal representatives, agents or assigns;

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

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

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

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

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

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

19          H. "chemical" means any element, chemical compound or  
20 mixture of elements or compounds;

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

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

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

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

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

21 Section 40. Section 61-14E-4 NMSA 1978 (being Laws 1983,  
22 Chapter 317, Section 4, as amended) is amended to read:

23 "61-14E-4. DEFINITIONS.--As used in the Medical Imaging  
24 and Radiation Therapy Health and Safety Act:

25 A. "advisory council" means the medical imaging and

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1 radiation therapy advisory council;

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

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

9 (1) the viscera of the thorax;

10 (2) extremities;

11 (3) radiation to humans for diagnostic purposes  
12 in the practice of dentistry;

13 (4) axial/appendicular skeleton; or

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

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

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

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

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underscoring material = new  
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1 G. "department" means the [~~department of~~] natural  
2 resources and environment department;

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

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

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

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

21 L. "licensed practitioner" means a person licensed to  
22 practice medicine, dentistry, podiatry, chiropractic or  
23 osteopathy in this state;

24 M. "licensure" means a grant of authority through a  
25 license or limited license to perform specific medical imaging

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1 and radiation therapy services pursuant to the Medical Imaging  
2 and Radiation Therapy Health and Safety Act;

3 N. "magnetic resonance technologist" means a person  
4 other than a licensed practitioner who performs magnetic  
5 resonance procedures under the supervision of a licensed  
6 practitioner using magnetic fields and radio frequency signals;

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

10 P. "medical imaging modality" means:

11 (1) diagnostic medical sonography and all of its  
12 subspecialties;

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

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

17 (4) radiation therapy and all of its  
18 subspecialties; and

19 (5) radiography and all of its subspecialties;

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

25 R. "non-ionizing radiation" means the optical

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1 radiations, including ultraviolet, visible, infrared and  
2 lasers, static and time-varying electric and magnetic fields  
3 and radio frequency, including microwave radiation and  
4 ultrasound;

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

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

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

14 V. "radiation therapy technologist" means a person  
15 other than a licensed practitioner whose application of  
16 radiation to humans is for therapeutic purposes;

17 W. "radiographer" means a person other than a  
18 licensed practitioner whose application of radiation to humans  
19 is for diagnostic purposes;

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

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1           Y. "radiologist" means a licensed practitioner  
2 certified by the American board of radiology, the British royal  
3 college of radiology, the American osteopathic board of  
4 radiology or the American chiropractic board of radiology; and

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

13           Section 41. Section 61-33-2 NMSA 1978 (being Laws 1992,  
14 Chapter 44, Section 2, as amended) is amended to read:

15           "61-33-2. DEFINITIONS.--As used in the Utility Operators  
16 Certification Act:

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

21           B. "commission" means the water quality control  
22 commission;

23           C. "department" means the [~~department of~~] natural  
24 resources and environment department;

25           D. "domestic liquid waste" means human excreta and

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1 water-carried waste from typical residential plumbing fixtures  
2 and activities, including waste from toilets, sinks, bath  
3 fixtures, clothes or dishwashing machines and floor drains;

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

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

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

25 H. "public wastewater facility" means a system of

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1 structures, equipment and processes designed to collect and  
2 treat domestic and industrial waste and dispose of the  
3 effluent, but does not include:

4 (1) any domestic liquid waste treatment unit; or  
5 (2) any industrial facility subject to an  
6 industrial pretreatment program regulated by the United States  
7 environmental protection agency under the requirements of the  
8 federal Clean Water Act of 1977; and

9 I. "public water supply system" means:

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

13 (a) has at least fifteen service  
14 connections; or

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

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

20 Section 42. Section 66-12-3 NMSA 1978 (being Laws 1959,  
21 Chapter 338, Section 3, as amended) is amended to read:

22 "66-12-3. DEFINITIONS.--As used in the Boat Act:

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

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

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

17           D. "waters of this state" means waters within the  
18 territorial limits of this state;

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

21           F. "operate" means to navigate or otherwise use a  
22 motorboat or a vessel;

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

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1 any state agency;

2 H. "subdivision of the state" means every county,  
3 county institution, board, bureau or commission, incorporated  
4 city, town or village, drainage, conservancy, irrigation or  
5 other district and every office or officer of any subdivision  
6 of this state;

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

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

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

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

25 M. "manufacturer" means any person engaged in the

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1 business of manufacturing or importing new and unused  
2 motorboats for the purpose of sale or trade;

3 N. "demonstration" means:

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

8 (2) the operation of a motorboat by a  
9 manufacturer for the purpose of testing the motorboat; and

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

15 Section 43. Section 68-2-31 NMSA 1978 (being Laws 1990,  
16 Chapter 96, Section 3, as amended) is amended to read:

17 "68-2-31. DEFINITION.--As used in the New Mexico Forest  
18 Re-Leaf Act:

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

22 B. "tree" means any living single-stemmed or multi-  
23 stemmed woody material."

24 Section 44. Section 69-25A-3 NMSA 1978 (being Laws 1979,  
25 Chapter 291, Section 3, as amended) is amended to read:

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1 "69-25A-3. DEFINITIONS.--As used in the Surface Mining

2 Act:

3 A. "commission" means the [~~coal surface~~] mining  
4 commission;

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

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

18 D. "approximate original contour" means that surface  
19 configuration achieved by backfilling and grading of the mined  
20 area so that the reclaimed area, including any terracing or  
21 access roads, closely resembles the general surface  
22 configuration of the land prior to mining and blends into and  
23 complements the drainage pattern of the surrounding terrain  
24 with all highwalls and spoil piles eliminated; water  
25 impoundments may be permitted where the director determines

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1 that they are in compliance with Paragraph (8) of Subsection B  
2 of Section 69-25A-19 NMSA 1978;

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

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

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

25 H. "permit" means a permit to conduct surface coal

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1 mining and reclamation operations issued by the director  
2 pursuant to the Surface Mining Act;

3 I. "permit applicant" or "applicant" means a person  
4 applying for a permit;

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

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

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

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

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

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1 O. "surface coal mining and reclamation operations"  
2 means surface coal mining operations and all activities  
3 necessary and incident to the reclamation of those operations  
4 after the date of enactment of the Surface Mining Act;

5 P. "surface coal mining operations" means:

6 (1) activities conducted on the surface of lands  
7 in connection with a surface coal mine or activities subject to  
8 the requirements of Section 69-25A-20 NMSA 1978 relating to  
9 surface operations and surface impacts incident to an  
10 underground coal mine. The activities include excavation for  
11 the purpose of obtaining coal, including such common methods as  
12 contour, strip, auger, mountaintop removal, box cut, open pit  
13 and area mining. These activities also include uses of  
14 explosives and blasting and in situ distillation or retorting,  
15 leaching or other chemical or physical processing and the  
16 cleaning, concentrating or other processing or preparation,  
17 including loading of coal at or near the mine site. [Provided]  
18 However, [~~that~~] such activities do not include the extraction  
19 of coal incidental to the extraction of other minerals where  
20 coal does not exceed sixteen and two-thirds percent of the  
21 tonnage of minerals removed for purposes of commercial use or  
22 sale or coal exploration subject to Section 69-25A-16 NMSA  
23 1978; and

24 (2) the areas upon which these activities occur  
25 or where the activities disturb the natural land surface.

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

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

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

22 Section 45. Section 69-25B-3 NMSA 1978 (being Laws 1980,  
23 Chapter 87, Section 3, as amended) is amended to read:

24 "69-25B-3. DEFINITIONS.--As used in the Abandoned Mine  
25 Reclamation Act:

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underscoring material = new  
[bracketed material] = delete

1           A. "director" means the director of the mining and  
2 minerals division of the [~~energy, minerals and~~] natural  
3 resources and environment department;

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

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

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

15           Section 46. A new section of the Surface Mining Act is  
16 enacted to read:

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

23           Section 47. Section 69-36-3 NMSA 1978 (being Laws 1993,  
24 Chapter 315, Section 3) is amended to read:

25           "69-36-3. DEFINITIONS.--As used in the New Mexico Mining

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1 Act:

2 A. "affected area" means the area outside of the  
3 permit area where the land surface, surface water, ground water  
4 and air resources are [~~impacted~~] affected by mining operations  
5 within the permit area;

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

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

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

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

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

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underscored material = new  
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1 carried or otherwise transported over the surface to perform  
2 magnetic, radioactive or other tests and measurements, boundary  
3 or claim surveying, location work or other work that causes no  
4 greater disturbance than is caused by ordinary lawful use of  
5 the area by persons not engaged in exploration, are excluded  
6 from the meaning of "exploration";

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

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

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1 aggregate in construction; the exploration and extraction of  
2 natural petroleum in a liquid or gaseous state by means of  
3 wells or pipes; the development or extraction of coal; the  
4 extraction of geothermal resources; smelting, refining,  
5 cleaning, preparation, transportation or other off-site  
6 operations not conducted on permit areas; or the extraction,  
7 processing or disposal of commodities, byproduct materials or  
8 wastes or other activities regulated by the federal nuclear  
9 regulatory commission;

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

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

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

25 Section 48. Section 69-36-14 NMSA 1978 (being Laws 1993,

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1 Chapter 315, Section 14, as amended) is amended to read:

2 "69-36-14. CITIZENS SUITS.--

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

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

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

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

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1 ~~of environment, the energy, minerals and natural resources~~  
2 ~~department]~~ division or the commission, a person whose interest  
3 may be adversely affected and who has provided notice pursuant  
4 to Subsection B of this section prior to the initiation of the  
5 action may intervene as a matter of right.

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

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

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

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

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

25 Section 49. Section 69-36-19 NMSA 1978 (being Laws 1993,

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1 Chapter 315, Section 19) is amended to read:

2 "69-36-19. FUNDS CREATED.--

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

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

23 Disbursements from the fund shall be made upon warrants drawn  
24 by the secretary of finance and administration pursuant to  
25 vouchers signed by the secretary of [~~energy, minerals and~~]

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1 natural resources and environment. Money in the fund is  
2 appropriated to the [~~energy, minerals and~~] natural resources  
3 and environment department to conduct reclamation activities on  
4 abandoned or inactive non-coal mining areas. Any unexpended or  
5 unencumbered balance remaining in the inactive or abandoned  
6 non-coal mine reclamation fund at the end of a fiscal year  
7 shall not revert to the general fund but shall remain and  
8 accrue to the benefit of the inactive or abandoned non-coal  
9 mine reclamation fund."

10 Section 50. Section 70-6-2 NMSA 1978 (being Laws 1963,  
11 Chapter 139, Section 2, as amended) is amended to read:

12 "70-6-2. DEFINITIONS.--As used in Chapter 70, Article 6  
13 NMSA 1978:

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

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

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

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

25 E. "commission" means the oil conservation

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1 commission;

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

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

16 Section 51. Section 70-7-3 NMSA 1978 (being Laws 1975,  
17 Chapter 293, Section 3, as amended) is amended to read:

18 "70-7-3. ADDITIONAL POWERS AND DUTIES OF THE OIL  
19 CONSERVATION DIVISION.--

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

23 B. Subject to the limitations of the Statutory  
24 Unitization Act, the ~~[oil conservation]~~ division ~~[of the~~  
25 ~~energy, minerals and natural resources department, hereinafter~~

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1 ~~referred to as the "division"~~ is vested with jurisdiction,  
2 power and authority and it shall be its duty to make and  
3 enforce such orders and do such things as may be necessary or  
4 proper to carry out and effectuate the purposes of the  
5 Statutory Unitization Act."

6 Section 52. Section 70-11-2 NMSA 1978 (being Laws 1989,  
7 Chapter 189, Section 2) is amended to read:

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

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

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

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

23 D. employ legal counsel and initiate or enter  
24 lawsuits as appropriate for the purpose of protecting and  
25 promoting the public interest in matters involving interstate

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1 natural gas markets;

2 E. initiate or intervene in cases before the federal  
3 energy regulatory commission, the California public utility  
4 commission and other regulatory agencies lying outside New  
5 Mexico to protect and promote the public interest of the state;

6 F. present two progress reports to the legislative  
7 finance committee each year; and

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

12 Section 53. Section 70-11-5 NMSA 1978 (being Laws 1989,  
13 Chapter 189, Section 5) is amended to read:

14 "70-11-5. TECHNICAL ADVISORY COMMITTEE--COMPOSITION--  
15 DUTIES.--

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

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

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

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

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1 (4) the director of the oil conservation  
2 division of the [~~energy, minerals and~~] natural resources and  
3 environment department or [~~his~~] the director's designee.

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

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

16 Section 54. Section 71-5-3 NMSA 1978 (being Laws 1975,  
17 Chapter 272, Section 3, as amended) is amended to read:

18 "71-5-3. DEFINITIONS.--As used in the Geothermal  
19 Resources Conservation Act:

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

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1 found below the surface of the earth, but excluding oil,  
2 hydrocarbon gas and other hydrocarbon substances;

3 B. "commission" means the oil conservation  
4 commission;

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

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

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

24 F. "geothermal field" means the general area [~~which~~]  
25 that is underlaid or reasonably appears to be underlaid by at

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1 least one geothermal reservoir;

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

9 H. "person" means:

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

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

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

24 J. "potash" means the naturally occurring bedded  
25 deposits of the salts of the element potassium."

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1           Section 55. Section 71-6-6 NMSA 1978 (being Laws 1981,  
2 Chapter 379, Section 16, as amended) is amended to read:

3           "71-6-6. DEFINITIONS.--As used in the Solar Collector  
4 Standards Act:

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

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

19           Section 56. Section 71-7-4 NMSA 1978 (being Laws 2004,  
20 Chapter 55, Section 4) is amended to read:

21           "71-7-4. DEFINITIONS.--As used in the Advanced Energy  
22 Technologies Economic Development Act:

23           A. "alternative fuel" means natural gas, liquefied  
24 petroleum gas, electricity, hydrogen, a fuel mixture containing  
25 not less than eighty-five percent ethanol or methanol, a fuel

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1 mixture containing not less than twenty percent vegetable oil  
2 or a water-phased hydrocarbon fuel emulsion consisting of a  
3 hydrocarbon base and water in an amount not less than twenty  
4 percent by volume of the total water-phased fuel emulsion;

5 B. "clean energy" means alternative fuels, energy  
6 efficiency, renewable energy and fuel cells;

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

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

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

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

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

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

21 Section 57. Section 74-1-3 NMSA 1978 (being Laws 1971,  
22 Chapter 277, Section 3, as amended) is amended to read:

23 "74-1-3. DEFINITIONS.--As used in the Environmental  
24 Improvement Act:

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

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1           B. "department" or "environmental improvement  
2 department" means the [~~department of~~] natural resources and  
3 environment department;

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

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

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

21           F. "secretary" means the secretary of natural  
22 resources and environment."

23           Section 58. Section 74-1-7 NMSA 1978 (being Laws 1971,  
24 Chapter 277, Section 10, as amended by Laws 2000, Chapter 86,  
25 Section 1 and also by Laws 2000, Chapter 96, Section 1) is

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1 amended to read:

2 "74-1-7. DEPARTMENT--DUTIES.--

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

7 (1) food protection;

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

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

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

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

25 (6) noise control;

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1 (7) nuisance abatement;  
2 (8) vector control;  
3 (9) occupational health and safety as provided  
4 in the Occupational Health and Safety Act;

5 (10) sanitation of public swimming pools and  
6 public baths;

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

10 (12) medical radiation, health and safety  
11 certification and standards for radiologic technologists as  
12 provided in the Medical Imaging and Radiation Therapy Health  
13 and Safety Act;

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

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

18 (15) any other area assigned by law.

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

24 Section 59. Section 74-1-8 NMSA 1978 (being Laws 1971,  
25 Chapter 277, Section 11, as amended by Laws 2000, Chapter 86,

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1 Section 2 and also by Laws 2000, Chapter 96, Section 2) is  
2 amended to read:

3 "74-1-8. BOARD--DUTIES.--

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

7 (1) food protection;

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

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

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

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

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1 Act;

2 (6) noise control;

3 (7) nuisance abatement;

4 (8) vector control;

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

7 (10) sanitation of public swimming pools and  
8 public baths;

9 (11) plumbing, drainage, ventilation and  
10 sanitation of public buildings in the interest of public  
11 health;

12 (12) medical radiation, health and safety  
13 certification and standards for radiologic technologists 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 60. 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 61. 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 62. 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

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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 63. 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 a 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 or heating oil for noncommercial purposes;

5 (2) pipeline facility, including gathering  
6 lines, that is regulated under the federal Natural Gas Pipeline  
7 Safety Act of 1968 or the federal Hazardous Liquid Pipeline  
8 Safety Act of 1979 or that is an intrastate pipeline facility  
9 regulated 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 ~~[the]~~ oil field service industry  
17 operations;

18 (7) tank associated with an emergency generator  
19 system;

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

22 (9) ~~[tanks]~~ tank or related ~~[pipelines]~~ pipeline  
23 and ~~[facilities]~~ facility owned or used by a refinery, natural  
24 gas processing plant or pipeline company in the regular course  
25 of ~~[their]~~ its refining, 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 [~~his~~] the licensed activity by [~~any~~]  
25 a person licensed pursuant to the Pesticide Control Act or

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1 [any] hazardous waste designated as hazardous agricultural  
2 waste by the board, but does not include animal excrement in  
3 connection with farm, 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;

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[bracketed material] = delete

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 ~~any~~ an individual, trust, firm,  
17 joint 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) ~~any~~ a substance defined in Section 101(14)  
23 of the federal Comprehensive Environmental Response,  
24 Compensation, and Liability Act of 1980, but not including  
25 ~~any~~ a substance regulated as a hazardous waste under Subtitle

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1 C of the federal Resource Conservation and Recovery Act of  
2 1976, as amended; and

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

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

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

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

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

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

6 T. "treatment" means any method, technique or  
7 process, including neutralization, designed to change the  
8 physical, chemical or biological character or composition of  
9 [any] a hazardous waste so as to neutralize [~~such~~] the waste or  
10 so as to render [~~such~~] the waste nonhazardous, safer for  
11 transport, amenable to recovery, amenable to storage or reduced  
12 in volume. "Treatment" includes any activity or processing  
13 designed to change the physical form or chemical composition of  
14 hazardous waste so as to render it nonhazardous;

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

21 "Underground storage tank" does not include any:

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

25 (2) septic tank;

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

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

7 (5) storm water or wastewater collection system;

8 (6) flow-through process tank;

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

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

16 (9) tank associated with an emergency generator  
17 system;

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

21 (11) ~~[pipes]~~ pipe connected to any tank that is  
22 described in Paragraphs (1) through (10) of this subsection;  
23 and

24 V. "used oil" means any oil that ~~[has been]~~ is either  
25 refined from crude oil or ~~[any]~~ is synthetic ~~[oil]~~ and that has

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1       been used and as a result of such use is contaminated by  
2       physical or chemical impurities."

3               Section 64. Section 74-4C-3 NMSA 1978 (being Laws 1985  
4       (1st S.S.), Chapter 4, Section 3) is amended to read:

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

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

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

12              C. "hazardous waste" means garbage, refuse, sludge  
13       from a waste treatment plant, water supply treatment plant or  
14       air pollution control facility or other discarded material,  
15       including solid, liquid or semisolid material or containing  
16       gaseous material resulting from industrial, commercial, mining  
17       or agricultural operations, other than waste pesticides  
18       disposed of by a farmer pursuant to Section 74-4-3.1 NMSA 1978,  
19       or from community activities [~~which~~] that, because of its  
20       quantity, concentration or physical, chemical or infectious  
21       characteristics, may cause or significantly contribute to an  
22       increase in mortality or an increase in serious irreversible or  
23       incapacitating reversible illness, or pose a substantial  
24       present or potential hazard to human health or the environment  
25       when improperly treated, stored, transported, disposed of or

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1 otherwise managed. [~~The term~~] "Hazardous waste" does not  
2 include solid or dissolved material in domestic sewage, or  
3 animal excrement in connection with farm, ranch or feedlot  
4 operations, or solid or dissolved materials in irrigation  
5 return flows or industrial discharges [~~which~~] that are point  
6 sources subject to permits under Section 402 of the Federal  
7 Water Pollution Control Act, as amended, as the provisions  
8 exist on January 1, 1981; or source, special or byproduct  
9 material as defined in the Atomic Energy Act of 1954, as  
10 amended, as these definitions exist on January 1, 1981; or any  
11 of the following, until the environmental improvement board  
12 determines that they are subject to Subtitle C of the Resource  
13 Conservation and Recovery Act, as amended (42 U.S.C. 6921 et  
14 seq.): drilling fluids, produced waters and other wastes  
15 associated with the exploration, development or production of  
16 crude oil or natural gas or geothermal energy; any fly ash  
17 waste, bottom ash waste, slag waste or flue gas emission  
18 control waste generated primarily from the combustion of coal  
19 or other fossil fuels; solid waste from the extraction,  
20 beneficiation or processing of ores and minerals, including  
21 phosphate rock and overburden from the mining of uranium ore;  
22 cement kiln dust waste; or pesticide waste disposed of by any  
23 farmer from [~~his~~] the farmer's own use, provided that [~~he~~] the  
24 farmer triple rinses each emptied pesticide container and  
25 disposes of the pesticide residues on [~~his~~] the farmer's own

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1 farm in a manner consistent with the disposal instructions on  
2 the pesticide label; and

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

6 Section 65. Section 74-4G-3 NMSA 1978 (being Laws 1997,  
7 Chapter 38, Section 3) is amended to read:

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

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

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

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

18 (1) solid waste;

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

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

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

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

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

7 E. "enforcement action" means:

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

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

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

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

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

25 G. "participant" means an applicant that has been

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1 approved by the department as eligible for and that signs and  
2 performs an agreement pursuant to the provisions of the  
3 Voluntary Remediation Act;

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

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

14 J. "remediation" means:

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

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

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

25 L. "voluntary remediation" means remediation taken

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1 [under and] in compliance with the Voluntary Remediation Act."

2 Section 66. Section 74-6-2 NMSA 1978 (being Laws 1967,  
3 Chapter 190, Section 2, as amended) is amended to read:

4 "74-6-2. DEFINITIONS.--As used in the Water Quality Act:

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

11 B. "water contaminant" means any substance that could  
12 alter, if discharged or spilled, the physical, chemical,  
13 biological or radiological qualities of water. "Water  
14 contaminant" does not mean source, special nuclear or by-  
15 product material as defined by the federal Atomic Energy Act of  
16 1954;

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

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

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1           E. "sewer system" means pipelines, conduits, pumping  
2 stations, force mains or any other structures, devices,  
3 appurtenances or facilities used for collecting or conducting  
4 wastes to an ultimate point for treatment or disposal;

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

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

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

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

22           J. "commission" means the water quality control  
23 commission;

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

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

3 (2) the state engineer and the interstate stream  
4 commission;

5 (3) the department of game and fish;

6 (4) the oil conservation commission;

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

9 (6) the New Mexico department of agriculture;

10 (7) the soil and water conservation commission;

11 and

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

14 L. "new source" means:

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

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

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

25 N. "septage" means the residual wastes and water

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1 periodically pumped from a liquid waste treatment unit or from  
2 a holding tank for maintenance or disposal purposes;

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

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

11 (1) to human beings; or

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

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

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

24 Section 67. Section 74-6-3 NMSA 1978 (being Laws 1967,  
25 Chapter 190, Section 3, as amended) is amended to read:

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1 "74-6-3. WATER QUALITY CONTROL COMMISSION CREATED.--

2 A. [~~There is created~~] The "water quality control  
3 commission" is created, consisting of:

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

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

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

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

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

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

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

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

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1 (9) the director of the bureau of geology and  
2 mineral resources at the New Mexico institute of mining and  
3 technology or a member of the director's staff designated by  
4 the director;

5 (10) a municipal or county government  
6 representative; and

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

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

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1 permits required under the Water Quality Act. A member of the  
2 commission shall not participate in the consideration of an  
3 appeal if the subject of the appeal is an application filed or  
4 a permit held by an entity that either employs the commission  
5 member or from which the commission member received more than  
6 ten percent of the member's gross personal income in either of  
7 the preceding two years.

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

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

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

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

24 Section 68. Section 74-6A-3 NMSA 1978 (being Laws 1986,  
25 Chapter 72, Section 3, as amended) is amended to read:

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1 "74-6A-3. DEFINITIONS.--As used in the Wastewater  
2 Facility Construction Loan Act:

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

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

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

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

18 E. "fund" means the wastewater facility construction  
19 loan fund;

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

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underscoring material = new  
[bracketed material] = delete

1           G. "operate and maintain" means to perform all  
2 necessary activities, including replacement of equipment or  
3 appurtenances, to ensure the dependable and economical function  
4 of a wastewater facility in accordance with its intended  
5 purpose;

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

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

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

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

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1 Act;

2 L. "Clean Water Act" means the federal Clean Water  
3 Act of 1977 and its subsequent amendments or successor  
4 provisions;

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

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

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

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

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

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1 Section 69. Section 74-6B-3 NMSA 1978 (being Laws 1990,  
2 Chapter 124, Section 3, as amended) is amended to read:

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

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

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

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

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

22 (4) storm water or wastewater collection system;

23 (5) flow-through process tank;

24 (6) liquid trap, tank or associated gathering  
25 lines or other storage methods or devices related to oil, gas

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1 or mining exploration, production, transportation, refining,  
2 processing or storage, or ~~[the]~~ oil field service industry  
3 operations;

4 (7) tank associated with an emergency generator  
5 system;

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

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

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

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

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

20 E. "operator" means any person in control of or  
21 having responsibility for the daily operation of a storage  
22 tank;

23 F. "owner" means:

24 (1) in the case of a storage tank in use or  
25 brought into use on or after November 8, 1984, a person who

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1 owns the storage tank; and

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

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

8 H. "regulated substance" means:

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

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

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

22 J. "secretary" means the secretary of natural  
23 resources and environment;

24 K. "site" means a place where there is or was at a  
25 previous time one or more storage tanks and may include areas

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1 contiguous to the actual location or previous location of the  
2 tanks;

3 L. "storage tank" means an above ground storage tank  
4 or an underground storage tank; and

5 M. "underground storage tank" means a single tank or  
6 a combination of tanks, including underground pipes connected  
7 thereto, that [~~are~~] is used to contain an accumulation of  
8 regulated substances and the volume of which, including the  
9 volume of the underground pipes connected thereto, is ten  
10 percent or more beneath the surface of the ground. The term  
11 does not include any:

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

15 (2) septic tank;

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

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

22 (5) storm water or wastewater collection system;

23 (6) flow-through process tank;

24 (7) liquid trap, tank or associated gathering  
25 lines directly related to oil or gas production and gathering

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1 operations;

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

6 (9) tank associated with an emergency generator  
7 system;

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

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

13 Section 70. Section 74-7-3 NMSA 1978 (being Laws 1983,  
14 Chapter 29, Section 3) is amended to read:

15 "74-7-3. DEFINITIONS.--As used in the Environmental  
16 Compliance Act:

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

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

19 C. "division" means the environmental [~~improvement~~]  
20 protection division of the [~~health~~] natural resources and  
21 environment department;

22 D. "environmental audit" means a systematic  
23 assessment, analysis and evaluation by a regulated entity of  
24 its compliance with environmental laws and [~~regulations~~] rules  
25 administered by the board and the division, applicable to its



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1 operation; and

2 E. "regulated entity" means any person, partnership,  
3 corporation, firm, association, governmental or other entity  
4 organized and engaging in any business or activity in the state  
5 [~~which~~] that deals with or has an impact on the environment of  
6 this state or [~~which~~] that must by law comply with federal or  
7 state environmental protection [~~regulations~~] rules."

8 Section 71. Section 74-9-3 NMSA 1978 (being Laws 1990,  
9 Chapter 99, Section 3) is amended to read:

10 "74-9-3. DEFINITIONS.--As used in the Solid Waste Act:

11 A. "agricultural" means all methods of production and  
12 management of livestock, crops, vegetation and soil. This  
13 includes, but is not limited to, raising, harvesting and  
14 marketing. It also includes, but is not limited to, the  
15 activities of feeding, housing and maintaining animals such as  
16 cattle, dairy cows, sheep, goats, hogs, horses and poultry;

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

18 C. "commercial hauler" means any person transporting  
19 solid waste for hire by whatever means for the purpose of  
20 disposing of the solid waste in a solid waste facility, except  
21 that [~~the term~~] "commercial hauler" does not include an  
22 individual transporting solid waste generated on or from [~~his~~]  
23 the person's residential premises for the purpose of disposing  
24 of it in a solid waste facility;

25 D. "construction and demolition debris" means

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1 materials generally considered to be not water soluble and  
2 nonhazardous in nature, including, but not limited to, steel,  
3 glass, brick, concrete, asphalt roofing materials, pipe, gypsum  
4 wallboard and lumber from the construction or destruction of a  
5 structure as part of a construction or demolition project, and  
6 includes rocks, soil, tree remains, trees and other vegetative  
7 matter that normally results from land clearing or land  
8 development operations for a construction project, but if  
9 construction and demolition debris is mixed with any other  
10 types of solid waste, whether or not originating from the  
11 construction project, it loses its classification as  
12 construction and demolition debris;

13 E. "densified-refuse-derived fuel" means a product  
14 resulting from the processing of mixed municipal solid waste in  
15 a manner that produces a fuel suitable for combustion in  
16 existing or new solid-fuel-fired boilers;

17 F. "director" means the director of the environmental  
18 [~~improvement~~] protection division of the [~~health~~] natural  
19 resources and environment department;

20 G. "division" means the environmental [~~improvement~~]  
21 protection division of the [~~health~~] natural resources and  
22 environment department;

23 H. "municipality" means any incorporated city, town  
24 or village, whether incorporated under general act, special act  
25 or special charter, incorporated counties and H class counties;

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1 I. "person" means an individual or any entity,  
2 including federal, state and local governmental entities,  
3 however organized;

4 J. "plan" or "state plan" means the solid waste  
5 management plan required to be developed under Section [~~4 of~~  
6 ~~the Solid Waste Act~~] 74-9-4 NMSA 1978;

7 K. "program" or "state program" means the  
8 comprehensive state solid waste management program described in  
9 Section [~~12 of the Solid Waste Act~~] 74-9-12 NMSA 1978;

10 L. "recyclable materials" means materials that would  
11 otherwise become solid waste if not recycled and that can be  
12 collected, separated or processed and placed in use in the form  
13 of raw materials, products or densified-refuse-derived fuels;

14 M. "recycling" means any process by which recyclable  
15 materials are collected, separated or processed and reused or  
16 returned to use in the form of raw materials or products;

17 N. "solid waste" means any garbage, refuse, sludge  
18 from a waste treatment plant, water supply treatment plant or  
19 air pollution control facility and other discarded material,  
20 including solid, liquid, semisolid or contained gaseous  
21 material resulting from industrial, commercial, mining and  
22 agricultural operations and from community activities. "Solid  
23 waste" does not include:

24 (1) drilling fluids, produced waters and other  
25 nondomestic wastes associated with the exploration, development

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1 or production, transportation, storage, treatment or refinement  
2 of crude oil, natural gas, carbon dioxide gas or geothermal  
3 energy;

4 (2) fly ash waste, bottom ash waste, slag waste  
5 and flue gas emission control waste generated primarily from  
6 the combustion of coal or other fossil fuels and wastes  
7 produced in conjunction with the combustion of fossil fuels  
8 that are necessarily associated with the production of energy  
9 and that traditionally have been and actually are mixed with  
10 and are disposed of or treated at the same time with fly ash,  
11 bottom ash, boiler slag or flue gas emission control wastes  
12 from coal combustion;

13 (3) waste from the extraction, beneficiation and  
14 processing of ores and minerals, including phosphate rock and  
15 overburden from the mining of uranium ore, coal, copper,  
16 molybdenum and other ores and minerals;

17 (4) agricultural waste, including, but not  
18 limited to, manures and crop residues returned to the soil as  
19 fertilizer or soil conditioner;

20 (5) cement kiln dust waste;

21 (6) sand and gravel;

22 (7) solid or dissolved material in domestic  
23 sewage or solid or dissolved materials in irrigation return  
24 flows or industrial discharges that are point sources subject  
25 to permits under Section 402 of the Federal Water Pollution

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1 Control Act, 33 U.S.C. Section 1342 or source, special nuclear  
2 or by-product material as defined by the Atomic Energy Act of  
3 1954, 42 U.S.C. Section 2011 et seq.;

4 (8) densified-refuse-derived fuel; or

5 (9) any material regulated by Subtitle C of the  
6 federal Resource Conservation and Recovery Act of 1976,  
7 substances regulated by the federal Toxic Substances Control  
8 Act or low-level radioactive waste;

9 O. "solid waste district" means a geographical area  
10 designated by the board as a solid waste district under Section  
11 [~~11 of the Solid Waste Act~~] 74-9-11 NMSA 1978;

12 P. "solid waste facility" means any public or private  
13 system, facility, location, improvements on the land,  
14 structures or other appurtenances or methods used for  
15 processing, transformation, recycling or disposal of solid  
16 waste, including landfill disposal facilities, transfer  
17 stations, resource recovery facilities, incinerators and other  
18 similar facilities not specified, but does not include  
19 equipment specifically approved by order of the director to  
20 render medical waste noninfectious or a facility [~~which~~] that  
21 is permitted pursuant to the provisions of the Hazardous Waste  
22 Act and does not apply to a facility fueled by a densified-  
23 refuse-derived fuel that accepts no other solid waste;

24 Q. "source reduction" means any action that causes a  
25 net reduction in the generation, volume or toxicity of solid

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1 waste;

2 R. "special waste" means solid waste that has unique  
3 handling, transportation or disposal requirements to assure  
4 protection of the environment and the public health and safety;

5 S. "transformation" means incineration, pyrolysis,  
6 distillation, gasification or biological conversion other than  
7 composting; and

8 T. "yard refuse" means vegetative matter resulting  
9 from landscaping, land maintenance and land clearing  
10 operations."

11 Section 72. Section 74-13-3 NMSA 1978 (being Laws 2005,  
12 Chapter 171, Section 3) is amended to read:

13 "74-13-3. DEFINITIONS.--As used in the Recycling and  
14 Illegal Dumping Act:

15 A. "abatement" means to reduce in amount, degree or  
16 intensity or to eliminate;

17 B. "agricultural use" means the beneficial use of  
18 scrap tires in conjunction with the operations of a farm or  
19 ranch that includes construction projects and aids in the  
20 storage of feed;

21 C. "alliance" means the recycling and illegal dumping  
22 alliance;

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

24 E. "civil engineering application" means the use of  
25 scrap tires or other recycled material in conjunction with

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1 other aggregate materials in engineering applications;

2 F. "composting" means the process by which biological  
3 decomposition of organic material is carried out under  
4 controlled conditions and the process stabilizes the organic  
5 fraction into a material that can be easily and safely stored,  
6 handled and used in an environmentally acceptable manner;

7 G. "cooperative association" means a refuse disposal  
8 district created pursuant to the Refuse Disposal Act, a  
9 sanitation district created pursuant to the Water and  
10 Sanitation District Act, a special district created pursuant to  
11 the Special District Procedures Act or other associations  
12 created pursuant to the Joint Powers Agreements Act or the  
13 Solid Waste Authority Act;

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

16 I. "dispose" means to deposit scrap tires or solid  
17 waste into or on any land or water;

18 J. "household" means any single and multiple  
19 residence, hotel or motel, bunkhouse, ranger station, crew  
20 quarters, campground, picnic ground or day-use recreation area;

21 K. "illegal dumping" means disposal of trash, scrap  
22 tires or any solid waste in a manner that violates the Solid  
23 Waste Act or the Recycling and Illegal Dumping Act;

24 L. "illegal dumpsite" means a place where illegal  
25 dumping has occurred except as stated in Subsection A of

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1 Section [~~4 of the Recycling and Illegal Dumping Act~~] 74-13-4  
2 NMSA 1978;

3 M. "market development" means activities to expand or  
4 create markets for recyclable and reusable materials;

5 N. "motor vehicle" means a vehicle or device that is  
6 propelled by an internal combustion engine or electric motor  
7 power that is used or may be used on the public highways for  
8 the purpose of transporting persons or property and includes  
9 any connected trailer or semitrailer;

10 O. "processing" means techniques to change physical,  
11 chemical or biological character or composition of solid waste  
12 but does not include composting, transformation or open  
13 burning;

14 P. "recycling" means any process by which recyclable  
15 materials are collected, separated or processed and reused or  
16 returned to use in the form of raw materials or products;

17 Q. "reuse" means the return of a commodity into the  
18 economic stream without a change to its original form;

19 R. "scrap tire" means a tire that is no longer  
20 suitable for its originally intended purpose because of wear,  
21 damage or defect;

22 S. "scrap tire baling" means the process by which  
23 scrap tires are mechanically compressed and bound into block  
24 form;

25 T. "scrap tire generator" means a person who

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1 generates scrap tires, including retail tire dealers,  
2 retreaders, scrap tire processors, automobile dealers,  
3 automobile salvage yards, private company vehicle maintenance  
4 shops, garages, service stations and city, county and state  
5 government, but does not include persons who generate scrap  
6 tires in a household or in agricultural operations;

7 U. "scrap tire hauler" means a person who transports  
8 scrap tires for hire for the purpose of recycling, disposal,  
9 transformation or use in a civil engineering application;

10 V. "secretary" means the secretary of natural  
11 resources and environment;

12 W. "tire" means a continuous solid or pneumatic  
13 rubber covering that encircles the wheel of a motor vehicle;

14 X. "tire-derived fuel" means whole or chipped tires  
15 that produce a low sulfur, high-heating-value fuel;

16 Y. "tire-derived product" means a usable product  
17 produced from the processing of a scrap tire but does not  
18 include baled tires;

19 Z. "tire recycling" means a process in which scrap  
20 tires are collected, stored, separated or reprocessed for reuse  
21 as a different product or shredded into a form suitable for use  
22 in rubberized asphalt or as raw material for the manufacture of  
23 other products; and

24 AA. "tire recycling facility" means a place operated  
25 or maintained for tire recycling but does not include:

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1 (1) retail business premises where tires are  
2 sold, if no more than five hundred loose scrap tires or two  
3 thousand scrap tires, if left in a closed conveyance or  
4 enclosure, are kept on the premises at one time;

5 (2) the premises of a tire retreading business,  
6 if no more than three thousand scrap tires are kept on the  
7 premises at one time;

8 (3) premises where tires are removed from motor  
9 vehicles in the ordinary course of business, if no more than  
10 five hundred scrap tires are kept on the premises at one  
11 time;

12 (4) a solid waste facility having a valid permit  
13 or registration issued pursuant to the provisions of the Solid  
14 Waste Act or regulations adopted pursuant to that act or  
15 registration issued pursuant to the Environmental Improvement  
16 Act; or

17 (5) a site where tires are stored or used for  
18 agricultural uses."

19 Section 73. Section 75-1-2 NMSA 1978 (being Laws 1973,  
20 Chapter 333, Section 2, as amended) is amended to read:

21 "75-1-2. DEFINITIONS.--As used in the Rural  
22 Infrastructure Act:

23 A. "department" means the natural resources and  
24 environment department [~~of environment~~];

25 B. "fund" means the rural infrastructure revolving

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1 loan fund;

2 C. "local authority" means a mutual domestic  
3 association or water and sanitation district that supplies  
4 water, wastewater or solid waste services to, or a municipality  
5 that has, a population of less than twenty thousand or a county  
6 with a population of less than two hundred thousand;

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

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

13 F. "solid waste facility" includes transfer and  
14 convenience facilities, landfills or other equipment or systems  
15 used for the processing, transformation, recycling or disposal  
16 of solid waste;

17 G. "wastewater facility" includes collection lines,  
18 pumping equipment, treatment works and disposal piping or  
19 process units; and

20 H. "water supply facility" includes the source of  
21 supply of water, pumping equipment, storage facilities,  
22 transmission lines, treatment works and distribution systems."

23 Section 74. Section 75-7-2 NMSA 1978 (being Laws 1993,  
24 Chapter 292, Section 2, as amended) is amended to read:

25 "75-7-2. NATURAL RESOURCES TRUSTEE--OFFICE OF NATURAL

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1 RESOURCES TRUSTEE.--~~[A.]~~ The "natural resources trustee" is  
2 created. The ~~[trustee is appointed by and serves at the~~  
3 ~~pleasure of the governor]~~ secretary of natural resources and  
4 environment shall serve as the natural resources trustee  
5 pursuant to the provisions of the federal Comprehensive  
6 Environmental Response, Compensation, and Liability Act of  
7 1980, as amended by the federal Superfund Amendments and  
8 Reauthorization Act of 1986, the Federal Water Pollution  
9 Control Act and any other applicable federal law. The natural  
10 resources trustee shall act on behalf of the public as trustee  
11 of natural resources within the state or belonging to, managed  
12 by, controlled by or appertaining to the state, including  
13 protecting and representing the state's interest under  
14 applicable federal laws regarding injury to, destruction of or  
15 loss of natural resources in the state.

16 ~~[B. The "office of natural resources trustee" is~~  
17 ~~created. The office shall be administratively attached to the~~  
18 ~~department of environment. The administrative head of the~~  
19 ~~office of natural resources trustee is the natural resources~~  
20 ~~trustee. For purposes of this subsection, the term~~  
21 ~~"administratively attached" means the same as specified in~~  
22 ~~Section 9-1-7 NMSA 1978.]"~~

23 Section 75. Section 75-7-3 NMSA 1978 (being Laws 1993,  
24 Chapter 292, Section 3, as amended) is amended to read:

25 "75-7-3. NATURAL RESOURCES TRUSTEE POWERS AND DUTIES.--

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1           A. The natural resources trustee shall take all  
2 actions necessary to carry out the responsibilities of the  
3 natural resources trustee as provided in the federal  
4 Comprehensive Environmental Response, Compensation, and  
5 Liability Act of 1980, as amended by the federal Superfund  
6 Amendments and Reauthorization Act of 1986, the Federal Water  
7 Pollution Control Act and any other applicable federal law,  
8 including the responsibility to:

9                   (1) act on behalf of the public to protect New  
10 Mexico's natural resources by recovering damages for injury to,  
11 destruction of or loss of those resources;

12                   (2) investigate injury to, destruction of or  
13 loss of natural resources;

14                   (3) determine the amount and cause of injury to,  
15 destruction of or loss of natural resources;

16                   (4) determine the liability of any person for  
17 injury to, destruction of or loss of natural resources;

18                   (5) assess and collect damages for injury to,  
19 destruction of or loss of natural resources, including bringing  
20 legal actions and collecting the costs of assessing and  
21 collecting the damages; and

22                   (6) expend money for the purposes set forth in  
23 the Natural Resources Trustee Act.

24           B. The natural resources trustee may:

25                   (1) hire staff, in accordance with the Personnel

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1 Act, to carry out the provisions of the Natural Resources  
2 Trustee Act;

3 (2) contract with economists, consultants and  
4 other experts; and

5 (3) accept gifts and grants to carry out the  
6 provisions of the Natural Resources Trustee Act. Gifts and  
7 grants accepted by the natural resources trustee shall be  
8 deposited in the natural resources trustee fund.

9 C. The attorney general shall provide legal counsel  
10 and representation to the natural resources trustee [~~and the~~  
11 ~~office of the natural resources trustee~~]."

12 Section 76. Section 75-7-5 NMSA 1978 (being Laws 1993,  
13 Chapter 292, Section 5, as amended) is amended to read:

14 "75-7-5. NATURAL RESOURCES TRUSTEE FUND.--

15 A. The "natural resources trustee fund" is created in  
16 the state treasury. Money appropriated to the fund or accruing  
17 to it through gifts, grants, fees, penalties, bequests or any  
18 other source shall be delivered to the state treasurer and  
19 deposited in the fund. Money recovered for the state by or on  
20 behalf of the natural resources trustee shall be deposited in  
21 the natural resources trustee fund. The fund shall be  
22 administered by the natural resources trustee as a separate  
23 account and may consist of subaccounts that the natural  
24 resources trustee deems necessary to carry out the purposes of  
25 the fund. Disbursements from the fund shall be made upon

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1 warrants drawn by the secretary of finance and administration  
2 pursuant to vouchers signed by the natural resources trustee or  
3 the trustee's designated representative. Money in the fund  
4 shall not revert to the general fund at the end of a fiscal  
5 year.

6 B. Pursuant to the following criteria, money in the  
7 natural resources trustee fund shall be used to carry out the  
8 provisions of the Natural Resources Trustee Act by restoring,  
9 replacing or acquiring natural resources in an area where  
10 natural resources have been injured, destroyed or lost,  
11 provided that money deposited in the fund because of injury to,  
12 destruction of or loss of natural resources in an area shall be  
13 disbursed to restore, replace or acquire natural resources in  
14 that same area:

15 (1) if an expenditure from the fund is necessary  
16 to comply with a court order or court-approved settlement or to  
17 match federal funds, then, pursuant to Sections 6-3-23 through  
18 6-3-25 NMSA 1978, the natural resources trustee may request a  
19 budget increase and, if approved, the amount of the expenditure  
20 is appropriated;

21 (2) if money is received for reimbursement of  
22 assessment costs, then the natural resources trustee may expend  
23 money for injury assessment, and money is appropriated in that  
24 amount for that purpose; and

25 (3) any other expenditures from the fund shall

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1 be made only pursuant to appropriation by the legislature.

2 C. In addition to expenditures made pursuant to  
3 Subsection B of this section, money shall be appropriated  
4 annually by the legislature from the general fund for the  
5 purpose of providing for necessary personnel and other costs of  
6 the natural resources trustee and the attorney general [~~and the~~  
7 ~~office of natural resources trustee~~] in carrying out the  
8 provisions of the Natural Resources Trustee Act, including the  
9 cost of investigation, assessment, collection or enforcement.

10 D. For purposes of this section, "assessment  
11 costs" means the costs of restoration and the costs of  
12 collecting, compiling and analyzing information, statistics or  
13 data to determine damages for injuries to natural resources  
14 pursuant to the Natural Resources Trustee Act.

15 E. Money in the natural resources trustee fund  
16 shall be invested as other state funds are invested, and  
17 interest and earnings from the fund shall not revert to the  
18 general fund but shall be credited to the natural resources  
19 trustee fund."

20 Section 77. TEMPORARY PROVISION--TRANSFERS--CONTRACTUAL  
21 OBLIGATIONS--STATUTORY REFERENCES.--

22 A. On the effective date of this act, all  
23 functions, appropriations, money, records, furniture,  
24 equipment and other property of the following agencies shall  
25 be transferred to the natural resources and environment

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1 department:

2 (1) the energy, minerals and natural resources  
3 department;

4 (2) the department of environment; and

5 (3) the natural resources trustee.

6 B. On the effective date of this act, all  
7 functions, appropriations, money, records, furniture,  
8 equipment and other property of the:

9 (1) occupational health and safety review  
10 commission shall be transferred to the environmental  
11 improvement board; and

12 (2) coal surface mining commission shall be  
13 transferred to the mining commission.

14 C. On the effective date of this act, all  
15 contractual obligations of the:

16 (1) energy, minerals and natural resources  
17 department, the department of environment and the natural  
18 resources trustee shall be binding on the natural resources  
19 and environment department;

20 (2) occupational health and safety review  
21 commission shall be binding on the environmental improvement  
22 board; and

23 (3) coal surface mining commission shall be  
24 binding on the mining commission.

25 D. On the effective date of this act, all

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1 references in law to the:

2 (1) energy, minerals and natural resources  
3 department and the department of environment shall be deemed  
4 to be references to the natural resources and environment  
5 department;

6 (2) natural resources trustee shall be deemed  
7 to be references to the secretary of natural resources and  
8 environment;

9 (3) occupational health and safety review  
10 commission shall be deemed to be references to the  
11 environmental improvement board; and

12 (4) coal surface mining commission shall be  
13 deemed to be references to the mining commission.

14 Section 78. REPEAL.--

15 A. Sections 9-5A-1 through 9-5A-10 NMSA 1978 (being  
16 Laws 1987, Chapter 234, Sections 1 through 6, Laws 1997,  
17 Chapter 149, Section 3, Laws 1987, Chapter 234, Section 7,  
18 Laws 1992, Chapter 58, Section 8, Laws 2003, Chapter 129,  
19 Section 1 and Laws 2003, Chapter 133, Section 1, as amended)  
20 are repealed.

21 B. Sections 9-7A-1 through 9-7A-15 NMSA 1978 (being  
22 Laws 1991, Chapter 25, Sections 1 through 12, Laws 1977,  
23 Chapter 253, Sections 77 and 78 and Laws 2003, Chapter 99,  
24 Section 1, as amended) are repealed.

25 C. Section 50-9-9 NMSA 1978 (being Laws 1975,

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1 Chapter 290, Section 6) is repealed.

2 D. Section 69-25A-4 NMSA 1978 (being Laws 1979,  
3 Chapter 291, Section 4, as amended) is repealed.

4 Section 79. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2010.

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