

1 SENATE BILL 112

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Antoinette Sedillo Lopez and Debra M. Sariñana

5
6
7
8
9
10 AN ACT

11 RELATING TO NATURAL RESOURCES; AUTHORIZING THE NATURAL
12 RESOURCES TRUSTEE TO BRING SUIT FOR DAMAGES CAUSED BY RELEASE
13 OF AN INJURIOUS SUBSTANCE PURSUANT TO THE NATURAL RESOURCES
14 TRUSTEE ACT; PROVIDING FOR THE ADOPTION OF RULES FOR THE
15 ASSESSMENT AND COLLECTION OF FINES RELATED TO THE RELEASE OF
16 PETROLEUM-BASED INJURIOUS SUBSTANCES; PROVIDING LIMITATIONS;
17 AMENDING THE NATURAL RESOURCES TRUSTEE FUND; PROVIDING THAT THE
18 NATURAL RESOURCES TRUSTEE MAY JOIN A CIVIL ACTION PURSUANT TO
19 THE WATER QUALITY ACT, THE AIR QUALITY CONTROL ACT AND THE
20 HAZARDOUS WASTE ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA
21 1978; MAKING AN APPROPRIATION.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. Section 74-2-12 NMSA 1978 (being Laws 1992,
25 Chapter 20, Section 14, as amended) is amended to read:

.223082.1

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

1 "74-2-12. ENFORCEMENT--COMPLIANCE ORDERS--FIELD

2 CITATIONS.--

3 A. When, on the basis of any information, the
4 secretary or the director determines that a person has violated
5 or is violating a requirement or prohibition of the Air Quality
6 Control Act, a regulation promulgated pursuant to that act or a
7 condition of a permit issued under that act, the secretary or
8 the director may:

9 (1) issue a compliance order within one year
10 after the violation becomes known by the department or the
11 local agency stating with reasonable specificity the nature of
12 the violation and requiring compliance immediately or within a
13 specified time period or assessing a civil penalty for a past
14 or current violation, or both; or

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

18 B. An order issued pursuant to Subsection A of this
19 section may include a suspension or revocation of the permit or
20 portion thereof issued by the secretary or the director that is
21 alleged to have been violated. Any penalty assessed in the
22 order shall not exceed fifteen thousand dollars (\$15,000) per
23 day of noncompliance for each violation.

24 C. An order issued pursuant to Subsection A of this
25 section shall become final unless, no later than thirty days

.223082.1

1 after the order is served, the person named therein submits a
2 written request to the secretary or the director for a public
3 hearing. Upon such request, the secretary or the director
4 shall promptly conduct a public hearing. The secretary or the
5 director shall appoint an independent hearing officer to
6 preside over the public hearing. The hearing officer shall
7 make and preserve a complete record of the proceedings and
8 forward the hearing officer's recommendation based thereon to
9 the secretary or the director, who shall make the final
10 decision.

11 D. The environmental improvement board or the local
12 board may implement a field citation program through
13 regulations establishing appropriate minor violations for which
14 field citations assessing civil penalties not to exceed one
15 thousand dollars (\$1,000) per day of violation may be issued by
16 officers or employees of the department or the local agency as
17 designated by the secretary or the director.

18 E. A person to whom a field citation is issued
19 pursuant to Subsection D of this section may, within a
20 reasonable time as prescribed by regulation by the
21 environmental improvement board or the local board, elect to
22 pay the penalty assessment or to request a hearing by the
23 issuing agency on the field citation. If a request for hearing
24 is not made within the time specified in the regulation, the
25 penalty assessment in the field citation shall be final.

.223082.1

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

1 F. Payment of a civil penalty required by a field
2 citation issued pursuant to Subsection D of this section shall
3 not be a defense to further enforcement by the department or
4 the local agency to correct a violation or to assess the
5 maximum statutory penalty pursuant to other authorities in the
6 Air Quality Control Act if the violation continues.

7 G. In determining the amount of a penalty to be
8 assessed pursuant to this section, the secretary, the director
9 or the person issuing a field citation shall take into account
10 the seriousness of the violation, any good-faith efforts to
11 comply with the applicable requirements and other relevant
12 factors.

13 H. In connection with a proceeding under this
14 section, the secretary or the director may issue subpoenas for
15 the attendance and testimony of witnesses and the production of
16 relevant papers, books and documents and may adopt rules for
17 discovery procedures.

18 I. If a person fails to comply with an
19 administrative order, the secretary or director may initiate an
20 action to suspend or revoke the permit, or portion thereof,
21 alleged to have been violated or to commence a civil action in
22 district court to enforce the order, or to suspend or revoke
23 the permit, or both.

24 J. If a person fails to pay an assessment of a
25 civil penalty, the secretary or director may commence a civil

.223082.1

underscored material = new
[bracketed material] = delete

1 action in district court to collect the civil penalties
2 assessed in the order.

3 K. Penalties collected pursuant to this section
4 shall be deposited in the:

5 (1) municipal or county general fund, as
6 applicable, if the administrative order or field citation was
7 directed to a source located within a local authority; or

8 (2) state general fund if the administrative
9 order or field citation was directed to any other source.

10 L. The natural resources trustee may join a civil
11 action for the release of an air contaminant pursuant to the
12 Natural Resources Trustee Act."

13 SECTION 2. Section 74-4-10 NMSA 1978 (being Laws 1981
14 (1st S.S.), Chapter 8, Section 9, as amended) is amended to
15 read:

16 "74-4-10. ENFORCEMENT--COMPLIANCE ORDERS--CIVIL
17 PENALTIES.--

18 A. Whenever on the basis of any information the
19 secretary determines that any person has violated, is violating
20 or threatens to violate any requirement of the Hazardous Waste
21 Act, any rule adopted and promulgated pursuant to that act or
22 any condition of a permit issued pursuant to that act, the
23 secretary may:

24 (1) issue a compliance order stating with
25 reasonable specificity the nature of the violation or

.223082.1

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

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

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

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

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

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

24 D. Whenever on the basis of any information the
25 secretary determines that the immediate termination of a

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

1 research, development and demonstration permit is necessary to
2 protect human health or the environment, the secretary may
3 order an immediate termination of all research, development and
4 demonstration operations permitted pursuant to the Hazardous
5 Waste Act at the facility.

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

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

.223082.1

1 noncompliance with the order.

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

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

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

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

25 I. In connection with any proceeding under this

1 section, the secretary may issue subpoenas for the attendance
2 and testimony of witnesses and the production of relevant
3 papers, books and documents and may promulgate rules for
4 discovery procedures.

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

8 K. The natural resources trustee may join a civil
9 action for the release of a hazardous waste pursuant to the
10 Natural Resources Trustee Act."

11 SECTION 3. Section 74-6-10 NMSA 1978 (being Laws 1967,
12 Chapter 190, Section 9, as amended) is amended to read:

13 "74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--
14 PENALTIES--ASSURANCE OF DISCONTINUANCE.--

15 A. Whenever, on the basis of any information, a
16 constituent agency determines that a person violated or is
17 violating a requirement, regulation or water quality standard
18 adopted pursuant to the Water Quality Act or a condition of a
19 permit issued pursuant to that act, the constituent agency may:

20 (1) issue a compliance order requiring
21 compliance immediately or within a specified time period or
22 issue a compliance order assessing a civil penalty, or both; or

23 (2) commence a civil action in district court
24 for appropriate relief, including injunctive relief.

25 B. A compliance order issued pursuant to Paragraph
.223082.1

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

1 (1) of Subsection A of this section may include a suspension or
2 termination of the permit allegedly violated.

3 C. A compliance order shall state with reasonable
4 specificity the nature of the violation. Any penalty assessed
5 in the compliance order shall not exceed:

6 (1) fifteen thousand dollars (\$15,000) per day
7 of noncompliance with the provisions in Section 74-6-5 NMSA
8 1978, including a regulation adopted or a permit issued
9 pursuant to that section; or

10 (2) ten thousand dollars (\$10,000) per day for
11 each violation of a provision of the Water Quality Act other
12 than the provisions in Section 74-6-5 NMSA 1978 or of a
13 regulation or water quality standard adopted pursuant to the
14 Water Quality Act.

15 D. In assessing a penalty authorized by this
16 section, the constituent agency shall take into account the
17 seriousness of the violation, any good faith efforts to comply
18 with the applicable requirements and other relevant factors.

19 E. For purposes of this section, a single
20 operational event that leads to simultaneous violations of more
21 than one standard shall be treated as a single violation.

22 F. If a person fails to take corrective actions
23 within the time specified in a compliance order, the
24 constituent agency may:

25 (1) assess a civil penalty of not more than

.223082.1

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

1 twenty-five thousand dollars (\$25,000) for each day of
2 continued noncompliance with the compliance order; and

3 (2) suspend or terminate the permit violated
4 by the person.

5 G. ~~[Any]~~ A compliance order issued by a constituent
6 agency pursuant to this section shall become final unless, no
7 later than thirty days after the compliance order is served,
8 ~~[any]~~ a person named in the compliance order submits a written
9 request to the commission for a public hearing. The commission
10 shall conduct a public hearing within ninety days after receipt
11 of a request.

12 H. The commission may appoint an independent
13 hearing officer to preside over ~~[any]~~ a public hearing held
14 pursuant to Subsection ~~[F]~~ G of this section. The hearing
15 officer shall:

16 (1) make and preserve a complete record of the
17 proceedings; and

18 (2) forward to the commission a report that
19 includes recommendations if recommendations are requested by
20 the commission.

21 I. The commission shall consider the findings of
22 the independent hearing officer, and based on the evidence
23 presented at the hearing, the commission shall make a final
24 decision regarding the compliance order.

25 J. In connection with any proceeding ~~[under]~~

.223082.1

underscored material = new
[bracketed material] = delete

1 provided for in this section, the commission may:

2 (1) adopt rules for discovery procedures; and

3 (2) issue subpoenas for the attendance and
4 testimony of witnesses and for relevant papers, books and
5 documents.

6 K. Penalties collected pursuant to this section
7 shall be deposited in the general fund.

8 L. As an additional means of enforcing the Water
9 Quality Act or any regulation or standard of the commission,
10 the commission may accept an assurance of discontinuance of any
11 act or practice deemed in violation of the Water Quality Act,
12 or any regulation or standard adopted pursuant to that act,
13 from any person engaging in, or who has engaged in, such act or
14 practice, signed and acknowledged by the [~~chairman~~] chair of
15 the commission and the party affected. Any such assurance
16 shall specify a time limit during which the discontinuance is
17 to be accomplished.

18 M. The natural resources trustee may join a civil
19 action for the release of a water contaminant pursuant to the
20 Natural Resources Trustee Act."

21 SECTION 4. A new section of the Natural Resources Trustee
22 Act is enacted to read:

23 "[NEW MATERIAL] LEGISLATIVE FINDINGS.--The legislature
24 finds that:

25 A. the people of the state, including future

.223082.1

underscored material = new
[bracketed material] = delete

1 generations, have the right to a clean and healthy environment,
2 including pure water, clean air, healthy ecosystems and a
3 stable climate and to the preservation of the natural,
4 cultural, scenic and healthful qualities of the environment;

5 B. the natural resources of the state are assets
6 held in trust for the benefit of the people of the state,
7 including future generations;

8 C. the protection and preservation of natural
9 resources promote the well-being of the people of this state,
10 including future generations; and

11 D. the release of injurious substances into the
12 environment constitutes a threat to natural resources and the
13 well-being of the people of this state."

14 SECTION 5. A new section of the Natural Resources Trustee
15 Act is enacted to read:

16 "[NEW MATERIAL] DEFINITIONS.--As used in the Natural
17 Resources Trustee Act:

18 A. "assessment costs" means the costs of
19 restoration and the costs of collecting, compiling and
20 analyzing information, statistics or data to determine damages
21 for injuries to natural resources;

22 B. "facility" means:

23 (1) a building, structure, installation,
24 equipment, pipe or pipeline, including a pipe into a sewer or
25 publicly owned treatment works, well, pit, pond, lagoon,

.223082.1

1 impoundment, ditch, landfill, storage container, motor vehicle,
2 rolling stock or aircraft; or

3 (2) a site or area where an injurious
4 substance has been deposited, stored, disposed of, placed or
5 otherwise come to be located;

6 C. "injurious substance" includes:

7 (1) an air contaminant substance, including
8 any particulate matter, fly ash, dust, fumes, gas, mist, smoke,
9 vapor, microorganisms, radioactive material, any combination
10 thereof or any decay or reaction product thereof;

11 (2) a hazardous waste substance, including any
12 solid waste or combination of solid wastes that because of
13 their quantity, concentration or physical, chemical or
14 infectious characteristics may:

15 (a) cause or significantly contribute to
16 an increase in mortality or an increase in serious irreversible
17 or incapacitating reversible illness; or

18 (b) pose a substantial present or
19 potential hazard to human health or the environment when
20 improperly treated, stored, transported, disposed of or
21 otherwise managed;

22 (3) a substance listed by the federal
23 environmental protection agency in:

24 (a) 40 C.F.R., Part 261, Subpart D;

25 (b) 40 C.F.R., Part 261, Appendix VIII;

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

1 or

2 (c) 40 C.F.R., Part 264, Appendix IX;

3 (4) a solid waste or combination of solid
4 wastes that:

5 (a) exceeds the toxicity characteristics
6 listed by the federal environmental protection agency in Table
7 1 of 40 C.F.R. 261.24; or

8 (b) because of quantity, concentration
9 or physical, chemical or infectious characteristics may: 1)
10 cause or significantly contribute to an increase in mortality
11 or an increase in serious irreversible or incapacitating
12 reversible illness; or 2) pose a substantial present or
13 potential hazard to human health or the environment when
14 improperly treated, stored, transported, disposed of or
15 otherwise managed;

16 (5) a water contaminant substance, including
17 any substance that could alter, if discharged or spilled, the
18 physical, chemical, biological or radiological qualities of
19 water, but does not include a source, special nuclear or
20 byproduct material as defined by the federal Atomic Energy Act
21 of 1954;

22 (6) a petroleum product, including gasoline,
23 crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil
24 sludge or refuse, or a petroleum-related product or waste
25 fraction of the product or waste that is liquid at standard

.223082.1

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

1 conditions of temperature and pressure;

2 (7) per- and polyfluoroalkyl substances,
3 including their salts and structural isomers; and

4 (8) any other substance that, based on its
5 toxicity, persistence and degradability in nature; its
6 potential for accumulation in tissue; and other related factors
7 such as flammability, corrosiveness or other injurious
8 characteristic, is injurious to natural resources;

9 D. "natural resources" includes land; minerals;
10 soils; sediments; geologic resources; air; surface waters;
11 ground waters; drinking water supplies; aquifers; perennial,
12 seasonal and ephemeral drainage; arroyos; watersheds; biota;
13 fish; wildlife; supporting habitats; and vegetation; and

14 E. "restoration" means the actions necessary to
15 return an injured natural resource to baseline condition as
16 measured in terms of the injured natural resource's physical,
17 chemical or biological properties and the services it
18 previously provided."

19 SECTION 6. Section 75-7-2 NMSA 1978 (being Laws 1993,
20 Chapter 292, Section 2, as amended) is amended to read:

21 "75-7-2. NATURAL RESOURCES TRUSTEE--OFFICE OF NATURAL
22 RESOURCES TRUSTEE.--

23 A. The "natural resources trustee" is created. The
24 trustee is appointed by and serves at the pleasure of the
25 governor pursuant to the provisions of:

.223082.1

underscored material = new
[bracketed material] = delete

1 (1) the Natural Resources Trustee Act and
2 other applicable state law; and

3 (2) the federal Comprehensive Environmental
4 Response, Compensation, and Liability Act of 1980, as amended
5 by the federal Superfund Amendments and Reauthorization Act of
6 1986, the Federal Water Pollution Control Act and any other
7 applicable federal law.

8 B. The natural resources trustee shall act on
9 behalf of the public as trustee of natural resources within the
10 state or belonging to, managed by, controlled by or
11 appertaining to the state, including protecting and
12 representing the state's interest under applicable state and
13 federal laws regarding injury to, destruction of or loss of
14 natural resources in the state.

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

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

24 "75-7-3. NATURAL RESOURCES TRUSTEE POWERS AND DUTIES.--

25 A. The natural resources trustee shall take all

.223082.1

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

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

8 (1) act on behalf of the public to protect New
9 Mexico's natural resources by recovering damages for injury to,
10 destruction of or loss of those resources, including for past
11 releases with a continuing and present injury to natural
12 resources;

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

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

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

19 (5) adopt and enforce rules for the assessment
20 and collection of fines for natural resources damages resulting
21 from the release of petroleum-based injurious substances;

22 [~~+5~~] (6) assess and collect damages for
23 injury to, destruction of or loss of natural resources,
24 including bringing legal actions and collecting the costs of
25 assessing and collecting the damages; and

.223082.1

underscored material = new
[bracketed material] = delete

1 [~~6~~] (7) expend money for the purposes set
2 forth in the Natural Resources Trustee Act.

3 B. The natural resources trustee may, in accordance
4 with the State Rules Act, adopt and enforce rules for the
5 assessment and collection of fines for natural resources
6 damages resulting from the release of petroleum-based injurious
7 substances. A person who is or may be affected by a rule
8 adopted pursuant to this section may file direct appeal to the
9 New Mexico court of appeals in the manner provided by law.

10 [~~B.~~] C. The natural resources trustee may:

11 (1) hire staff, in accordance with the
12 Personnel Act, to carry out the provisions of the Natural
13 Resources Trustee Act;

14 (2) contract with economists, consultants and
15 other experts; and

16 (3) accept gifts and grants to carry out the
17 provisions of the Natural Resources Trustee Act. Gifts and
18 grants accepted by the natural resources trustee shall be
19 deposited in the natural resources trustee fund.

20 [~~C.~~] D. The attorney general shall provide legal
21 counsel and representation to the natural resources trustee and
22 the office of [~~the~~] natural resources trustee."

23 SECTION 8. Section 75-7-4 NMSA 1978 (being Laws 1993,
24 Chapter 292, Section 4) is amended to read:

25 "75-7-4. NATURAL RESOURCES DAMAGE--LIABILITY--AWARDS FOR
.223082.1

underscored material = new
[bracketed material] = delete

1 DAMAGES.-- ~~[Awards for damage to natural resources in the state~~
2 ~~shall consist of those amounts calculated in accordance with~~
3 ~~federal law, including:~~

4 ~~A. the cost of restoration, replacement or~~
5 ~~acquisition of equivalent resources, plus compensation for the~~
6 ~~loss of use or enjoyment of the natural resources; and~~

7 ~~B. compensation for the state's expenses in~~
8 ~~investigating, assessing and collecting damages and enforcing~~
9 ~~the state's rights.]~~

10 A. The natural resources trustee may bring a suit
11 on behalf of the state for damages caused by a release of an
12 injurious substance pursuant to the provisions of the Natural
13 Resources Trustee Act.

14 B. Before initiating a suit under this section, the
15 natural resources trustee shall make reasonable efforts to
16 conduct a cooperative assessment of the nature and extent of
17 the damages and of methods to achieve resolution of the natural
18 resources trustee's claim in cooperation with the responsible
19 party and, upon initiating suit, shall certify that, in the
20 natural resources trustee's judgment, the efforts have not
21 succeeded in resolving the claim.

22 C. Venue for a claim brought under this section
23 shall be in the district court for Santa Fe county or in the
24 district court for a county in which damages were sustained.

25 D. Except as provided in Subsection F of this

underscored material = new
[bracketed material] = delete

1 section, with respect to a facility from which there is an
2 intentional or unintentional release of an injurious substance
3 into the environment, including a release within the facility,
4 the following persons shall be jointly and severally liable for
5 all damages resulting from the release:

6 (1) the owner or operator of the facility at
7 the time of the release;

8 (2) a person who previously owned or operated
9 the facility during a time in which the injurious substance was
10 released, placed, disposed of or treated;

11 (3) a person who by agreement or otherwise
12 arranged for release, placement, disposal or treatment of the
13 injurious substance at the facility or arranged with a
14 transporter for transport of the injurious substance to or from
15 the facility whether or not the injurious substance was owned
16 or possessed by the person; and

17 (4) a person who accepted the injurious
18 substance for transport to a disposal or treatment facility or
19 site selected by that person.

20 E. Damages owed to the state under this section
21 include:

22 (1) damages for injury to natural resources,
23 including the destruction or loss of natural resources;

24 (2) interim losses incurred after the release
25 and before the completion of restoration;

underscored material = new
[bracketed material] = delete

1 (3) residual losses remaining after completion
2 of restoration of the natural resources; and

3 (4) the reasonable costs of assessing the
4 injury resulting from the release and implementing restoration
5 activities.

6 F. Damages owed to the state under this section may
7 be recovered regardless of prospective or ongoing remediation
8 efforts; provided that the expected results of the remediation
9 are sufficiently understood to enable the calculation of
10 damages."

11 SECTION 9. A new section of the Natural Resources Trustee
12 Act is enacted to read:

13 "[NEW MATERIAL] LIMITATION ON ACTIONS.--A claim for
14 damages under the Natural Resources Trustee Act shall be
15 brought no later than five years after the date that the
16 natural resources trustee became aware of the nature and extent
17 of the injury."

18 SECTION 10. Section 75-7-5 NMSA 1978 (being Laws 1993,
19 Chapter 292, Section 5, as amended) is amended to read:

20 "75-7-5. NATURAL RESOURCES TRUSTEE FUND.--

21 A. The "natural resources trustee fund" is created
22 in the state treasury. Money appropriated to the fund or
23 accruing to it through gifts, grants, fees, penalties, bequests
24 or any other source shall be delivered to the state treasurer
25 and deposited in the fund. Money recovered for the state by or

.223082.1

underscoring material = new
[bracketed material] = delete

1 on behalf of the natural resources trustee shall be deposited
2 in the natural resources trustee fund. The fund shall be
3 administered by the natural resources trustee as a separate
4 account and may consist of subaccounts that the natural
5 resources trustee deems necessary to carry out the purposes of
6 the fund. Disbursements from the fund shall be made upon
7 warrants drawn by the secretary of finance and administration
8 pursuant to vouchers signed by the natural resources trustee or
9 the trustee's designated representative. Money in the fund
10 shall not revert to the general fund at the end of a fiscal
11 year.

12 B. Pursuant to the following criteria, money in the
13 natural resources trustee fund shall be used to carry out the
14 provisions of the Natural Resources Trustee Act by restoring,
15 replacing or acquiring natural resources [~~in an area where~~
16 ~~natural resources have been injured, destroyed or lost,~~
17 ~~provided that money deposited in the fund because of injury to,~~
18 ~~destruction of or loss of natural resources in an area shall be~~
19 ~~disbursed to restore, replace or acquire natural resources in~~
20 ~~that same area~~]:

21 (1) if an expenditure from the fund is
22 necessary to comply with a court order or court-approved
23 settlement or to match federal funds, then, pursuant to
24 Sections 6-3-23 through 6-3-25 NMSA 1978, the natural resources
25 trustee may request a budget increase and, if approved, the

.223082.1

underscored material = new
[bracketed material] = delete

1 amount of the expenditure is appropriated;

2 (2) ~~[if money is received for reimbursement of~~
3 ~~assessment costs, then the natural resources trustee may expend~~
4 ~~money for injury assessment, and money is appropriated in that~~
5 ~~amount for that purpose; and]~~ money received for past or future
6 assessment costs shall be placed in an assessment costs
7 subaccount and is appropriated for that purpose;

8 (3) money deposited in the fund from injury
9 to, destruction of or loss of natural resources in an area
10 shall only be expended to restore, replace or acquire natural
11 resources in that same area; provided that the natural
12 resources trustee may undertake a restoration action outside
13 the area where the natural resources were injured, destroyed or
14 lost if, in the natural resources trustee's judgment, action
15 within the area would be infeasible or ineffective;

16 (4) money deposited in the fund from injury,
17 destruction of or loss of natural resources in an area shall
18 only be expended to restore, replace or acquire natural
19 resources; and

20 ~~[(3)]~~ (5) any other expenditures from the fund
21 shall be made only pursuant to appropriation by the
22 legislature.

23 C. In addition to expenditures made pursuant to
24 Subsection B of this section, money shall be appropriated
25 annually by the legislature from the general fund for the

.223082.1

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

1 purpose of providing for necessary personnel and other costs of
2 the natural resources trustee, the attorney general and the
3 office of natural resources trustee in carrying out the
4 provisions of the Natural Resources Trustee Act, including the
5 cost of investigation, assessment, collection or enforcement.

6 ~~[D. For purposes of this section, "assessment~~
7 ~~costs" means the costs of restoration and the costs of~~
8 ~~collecting, compiling and analyzing information, statistics or~~
9 ~~data to determine damages for injuries to natural resources~~
10 ~~pursuant to the Natural Resources Trustee Act.~~

11 ~~E.]~~ D. Money in the natural resources trustee fund
12 shall be invested as other state funds are invested, and
13 interest and earnings from the fund shall not revert to the
14 general fund but shall be credited to the natural resources
15 trustee fund."

16 - 25 -