

**NOTICE OF THE ENVIRONMENTAL IMPROVEMENT BOARD'S  
DECISION TO AMEND RULES RELATED TO  
HAZARDOUS WASTE PERMIT AND CORRECTIVE ACTION FEES (20.4.2 NMAC)  
AND ANNUAL HAZARDOUS WASTE FEES (20.4.3 NMAC)**

The Environmental Improvement Board (“Board”) voted unanimously to adopt those amendments to 20.4.2 NMAC which proposed new unit types and associated new definitions and new review times, as proposed by the New Mexico Environment Department (“NMED”) in Exhibit C of the NMED’s Notice of Intent to Present Technical Testimony (“Exhibit C”) filed in docketed rulemaking EIB 19-35. The Board voted 5 to 1 in favor of adopting the remaining amendments to 20.4.2 NMAC, minus the increase in review times, as proposed by NMED in Exhibit C. The Board voted 5 to 1 in favor of adopting the amendments to 20.4.3 NMAC, as proposed by NMED in Exhibit G of NMED’s Notice of Intent to Present Technical Testimony. Chair Volkerding signed the Order reflecting the adoption of the above-stated amendments on February 3, 2020.

**CONCISE EXPLANATORY STATEMENT**

(1) Date the Board Adopted the Rules:

February 3, 2019

(2) Statutory Authority for Rule Promulgation:

The Environmental Improvement Act, NMSA 1978, Section 74-1-8 and the Hazardous Waste Act, NMSA 1978, Sections 74-4-4.2(J) provide authority to the Board to amend the hazardous waste fee regulations after proper public notice and a hearing. The Hazardous Waste Act NMSA 1978, Sections 74-4-1 to -14, provides authorization for the Hazardous Waste Permit and Corrective Action Fees at 20.4.2 NMAC and the Annual Hazardous Waste Fees at 20.4.3 NMAC. Under Section 74-4-4.2(J) of the Environmental Improvement Act, the Board “shall provide a schedule of fees for businesses generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste.” NMSA 1978, § 74-4-4.2(J).

(3) Reasons for Adopting Rule:

The purpose of the *Hazardous Waste Permit and Corrective Action Fees* (20.4.2 NMAC) and the *Annual Hazardous Waste Fees* (20.4.3 NMAC) is to support regulatory oversight of hazardous waste facilities by the NMED through the Hazardous Waste Bureau. The amendments to 20.4.2 NMAC are necessary to adjust the *Hazardous Waste Permit and Corrective Action Fees* to reflect current operational costs. Current fee regulations are based on 2002 costs for conducting document reviews and estimated review timeframes. The current fees are inadequate to support the Permits Management Program. The Amendments to 20.4.3 NMAC are necessary to revise and update the Annual Hazardous Waste Fees, which have not been updated since 1995. The current fees do not reflect current operational costs and are

inadequate to support the Compliance and Technical Assistance Management Program of the Bureau.

Amendments to 20.4.2 NMAC were proposed by NMED to more accurately represent document review times based on data acquired since the regulations became effective in August 2006, with average review times based on staff time tracking for document reviews between Fiscal Year 2008 and Fiscal Year 2018. The Board relied on public comment, technical testimony presented by the Department of Defense, and testimony by the NMED which conveyed that the NMED had never surpassed the existing review times for corrective action review, to find that adoption of the new document review times for existing unit types, as proposed by the NMED in Exhibit C, would not be in the public interest.

The Board considered all facts and circumstances and concluded that the proposed amendments as adopted by the Board do not cause injury or interference with health, welfare, animal and plant life, property and the environment. The Board found the proposed amendments as adopted by the Board are technically practical, economically reasonable, and in the public interest.