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August 24, 2009

Joyce Medina, Administrator
New Mexico Environmental Improvement Board
Harold Runnels Building, Rm N2150
1190 St. Francis Drive
Santa Fe, New Mexico 87505

EIB 09-12(R)

Re: Petition for Public Hearing to Consider a Proposed Amendment to the Liquid Waste Treatment and Disposal Fees in Title 20, Chapter 7, Part 11 of the New Mexico Administrative Code.

Dear Ms. Medina:

The Professional On- Site Wastewater Re-Use Association of New Mexico ("POWRA") and Link Summers, Pro Se, respectfully request a hearing before the Environmental Improvement Board ("EIB") on proposed amendments to the Liquid Waste Treatment and Disposal Fees, 20.7.11 NMAC. The purpose of the proposed amendments is to make corrections to the current regulations, to clarify various definitions and provisions and to provide accurate accounting and accountability so that the citizens and consumers who pay fees to the Liquid Waste Program are adequately protected. We respectfully request that the Board consider this Petition at its meeting on September 8, 2009, and set the proposed amended rule for hearing in January of 2010, or as soon thereafter as is practical. POWRA and Summers expect that the hearing will take 2 days. Scheduling a hearing in January of 2010 or later will allow for 60 days notice to the public pursuant to NMSA 1978, §74-1-9D (1985).

The proposed amendments include:

Section 20.7.11.6 OBJECTIVE:

Amend to insert the word "education" after the word "administration" and before the words "and operation".

Section 20.7.11.7 DEFINITIONS:

B.

(2) Amend to delete the word "not" after the words "that is" and before the words "recognized".

(6) amend to insert the phrase "Liquid waste includes nonhuman animal excreta and other animal waste but shall be treated in a separate, properly - designed liquid waste treatment unit dedicated to the treatment of that waste only;" after the words "floor drains" and before the words "Liquid waste also includes"; insert the words "funeral home process discharges" after the words "roof drainage" and before the words "Mine or mill tailings".

(7) amend to insert new (g)
(g) to change the name on the permit of the person or contractor who performs the site evaluation, system design, or installation of an on-site liquid waste system.

Amend to add a new definition (10) -

(10) "report" means a printed document provided to the Environment Improvement Board as provided for Section 20.7.11.14 NMAC and to assure that the Environment Improvement Board fulfills its responsibility for consumer protection as provided in 74-1-8 A (3) NMSA 1978. A "report" shall include items in sufficient detail to prove by a preponderance of the evidence that the amounts of the Liquid Waste Treatment and Disposal Fees have been calculated in compliance with 74-1-8 A (3) NMSA 1978. A "report" shall include at least:

(a) An updated report from the appropriate authority in each of the states contiguous to New Mexico including Texas, Oklahoma, Colorado, Utah, and Arizona which includes:

- i) Types of permits issued and the amount of the fee for each
- ii) Services rendered that are included in the fees including:
 - (a) Reports issued to other units of Government including Legislatures which indicate the success or failure of the program to complete its mission
 - (b) Licenses, certification, or training required for employment in the program - including inspectors.
 - (c) Continuing education and additional training requirements for employees of the program - including inspectors
 - (d) Itemization of costs for the different types of permits, both completed and rejected, including appeals.
 - (e) Whether inspections are performed, how many and what procedures they include and what percentage of total permits are inspected
 - (f) Costs to implement the program
 - (g) Costs to administer the program
 - (h) Sources of funding for the program

b) An updated report from the New Mexico Environment Department which includes at least:

- i) Types of permits issued and the amount of the fee for each
- ii) Services rendered that are included in the fees including:
 - (a) Reports issued to other units of Government including Legislatures which indicate the success or failure of the program to complete its mission
 - (b) Licenses, certification, or training required for employment in the program - including inspectors.
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 - (f) Itemized costs to implement the program
 - (g) Itemized costs to administer the program

(h) itemized sources of funding for the program

(c) A statement that the information contained in the report is true and accurate with regards to data generated in New Mexico and that the information concerning contiguous states was obtained from the appropriate named source with authority to release the information.

(d) Comments and explanations where appropriate

(10) Amend to renumber existing number (10) to become number (11).

Section 20.7.11.9 SEPTIC TANK MANUFACTURER CERTIFICATION FEE:

Amend to add the phrase "Prior to certification or recertification, the department engineer shall conduct a scheduled on-site inspection of in - state septic tank manufacturing facilities at least once a year and such unannounced inspections as are needed to assure product quality and provide consumer protection. The department shall not recertify septic tanks manufactured within the state nor collect the fees for recertification unless the inspection has been performed within one year of the recertification date. The engineer performing the inspection for certification or recertification shall prepare, date and sign a written report documenting compliance with each individual requirement of 20.7.3.501."

Section 20.7.11.12 PAYMENT OF FEES:

Amend to add the phrase "Penalties for violation of this Section 20.7.11.12 shall be in accordance with 74-1-10 A NMSA 1978" after the words "are non-refundable".

Section 20.7.11.14:

Amend to add the following language: "The department shall petition the Board to review, adjust, and reauthorize the fees based upon the report. The department shall demonstrate to the Board that the fees charged meet the requirements of 74-1-8 A (3) NMSA 1978. No fee shall be charged unless the Board reviews, adjusts, and reauthorizes the fee in compliance with 20.7.11.14 and 74-1-8 A (3) NMSA 1978. Penalties for violation of this Section 20.7.11.14 shall be in accordance with 74-1-10 A NMSA 1978" after the words "every six months thereafter".

Summers and POWRA have diligently attempted to obtain accurate information concerning the accounting and disposition of funds in 20.7.11 with NMED. Recent events indicate to Summers and POWRA that NMED's response has been inadequate based upon Summers and POWRA's understanding of the original intent of 74-1-8 A (3) NMSA 1978 and 20.7.11 NMAC . Consequently Summers and POWRA believe that more explicit language is in order.

These proposed amendments will also be posted on the POWRA website (www.powranm.org).

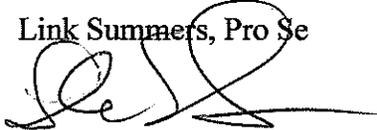
Thank you for your consideration of this request.

Sincerely,



Ralph Baker Dotson
President
Professional On-Site Wastewater Re-Use
Association of New Mexico, Inc.

Link Summers, Pro Se



TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 7 LIQUID WASTE
PART 11 LIQUID WASTE TREATMENT AND DISPOSAL FEES

20.7.11.1 ISSUING AGENCY: Environmental Improvement Board.
[20.7.11.1 NMAC - N, x/x/2001]

20.7.11.2 SCOPE: All persons required to obtain a permit, modification to a permit, tank certification or re-inspection under 20.7.3 NMAC.
[20.7.11.2 NMAC - N, x/x/2001]

20.7.11.3 STATUTORY AUTHORITY: Environmental Improvement Act, Section 74-1-1 through 74 -1-10 NMSA 1978.
[20.7.11.3 NMAC - N, x/x/2001]

20.7.11.4 DURATION: Permanent.
[20.7.11.4 NMAC - N, x/x/2001]

20.7.11.5 EFFECTIVE DATE: x/x/2001.
[20.7.11.5 NMAC - N, x/x/2001]

20.7.11.6 OBJECTIVE: The objective of this rule is to provide for liquid waste treatment and disposal fees to meet expenses in the administration, education, and operation of the state liquid waste treatment and disposal program. The purpose of the state liquid waste treatment and disposal program is to protect the health and welfare of present and future citizens by providing for the prevention and abatement of hazards to public health and surface and ground water contamination from on-site liquid waste disposal practices.
[20.7.11.6 NMAC - N, x/x/2001]

20.7.11.7 DEFINITIONS:

A. Unless otherwise defined in this Part, the words and phrases used in this Part have the same meanings as in 20.7.3.7 NMAC, Liquid Waste Treatment and Disposal.

B. As used in this Part:

(1) "advanced treatment" means any process of water renovation that upgrades liquid waste to meet specific reuse requirements. Advanced treatment may include general cleanup of wastewater or removal of specific types of wastes, such as nitrates or other nitrogen compounds, insufficiently removed by primary or secondary treatment processes. Advanced treatment may include physical or chemical treatments;

(2) "alternative system" means any on-site liquid waste system utilizing a method of liquid waste treatment and disposal used in lieu of, including modifications to, a conventional system that is not recognized and allowed by 20.7.3.7 NMAC or by the New Mexico Design Standards;

(3) "commercial unit" means a structure without bedrooms but which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers, or floor drains for receiving liquid waste;

(4) "conventional system" means an on-site liquid waste system consisting of a septic tank and a subsurface soil absorption system with gravity distribution of the effluent constructed in accordance with the standards set forth in 20.7.3 NMAC;

(5) "hazard to public health" means the indicated presence in water or soil of biological, chemical or other contaminants under such conditions that could adversely impact human health, including without limitation surfacing liquid waste, damage to a domestic water supply source, presence of a cesspool or an open tank, or exposure of liquid waste or septage in a manner that allows possible transmission of disease;

(6) "liquid waste" means graywater or blackwater which may contain without limitation human excreta and water carried waste from typical residential plumbing fixtures and activities, including, but not limited to, wastes from toilets, sinks, showers, baths, clothes- and dish-washing machines, and floor drains. Liquid waste includes nonhuman animal excreta and other animal waste but shall be treated in a separate, properly - designed

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liquid waste treatment unit dedicated to the treatment of that waste only;"Liquid waste" also includes non-water carried wastes discharged into holding tanks and vaults. Specifically excluded from the definition of "liquid waste" are commercial process wastewaters, roof drainage, funeral home process discharges , mine or mill tailings or wastes, and wastes containing high concentrations of stabilizing or deodorizing agents;

(7) "modify" means:

- (a) to change the method of on-site liquid waste treatment or disposal;
- (b) to expand the on-site liquid waste system;
- (c) to alter the horizontal or vertical location of the on-site liquid waste system;
- (d) to increase the amount of design flow or load received by the on-site liquid waste system above the original design flow or load;
- (e) to remove or replace component materials in a disposal system; or
- (f) to change the size or boundaries of a lot with an existing on-site liquid waste system so that the total design flow for the lot exceeds the total design flow limitation provided by the formula in Subsection 111.C.1 of 20.7.3 NMAC.
- (g) to change the name on the permit of the person or contractor who performs the site evaluation, system design, or installation of an on-site liquid waste system.

(8) "notice of non-approval" means notification that inspection of a permitted liquid waste system is not in compliance with 20.7.3 NMAC.

(9) "on-site liquid waste system" means a liquid waste system, or part thereof, serving a dwelling, establishment or group, and using a liquid waste treatment unit designed to receive liquid waste followed by either a soil treatment or other type of disposal system. On-site liquid waste systems include enclosed systems and privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

(10) Amend to add new definition for "report"

Amend to add a new definition (10) -

(10) "report" means a printed document provided to the Environment Improvement Board as provided for Section 20.7.11.14 NMAC and to assure that the Environment Improvement Board fulfills its responsibility for consumer protection as provided in 74-1-8 A (3) NMSA 1978. A "report" shall include items in sufficient detail to prove by a preponderance of the evidence that the amounts of the Liquid Waste Treatment and Disposal Fees have been calculated in compliance with 74-1-8 A (3) NMSA 1978. A "report" shall include at least:

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i) Types of permits issued and the amount of the fee for each

ii) Services rendered that are included in the fees including:

(a) Reports issued to other units of Government including Legislatures which indicate the success or failure of the program to complete its mission

(b) Licenses, certification, or training required for employment in the program - including inspectors.

(c) Continuing education and additional training requirements for employees of the program - including inspectors

(d) Itemization of costs for the different types of permits, both completed and rejected, including appeals.

(e) Whether inspections are performed, how many and what procedures they include and what percentage of total permits are inspected

(f) Costs to implement the program

(g) Costs to administer the program

(h) Sources of funding for the program

b) An updated report from the New Mexico Environment Department which includes at least:

i) Types of permits issued and the amount of the fee for each

ii) Services rendered that are included in the fees including:

(a) Reports issued to other units of Government including Legislatures which indicate the success or failure of the program to complete its mission

(b) Licenses, certification, or training required for employment in the program - including inspectors.

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(d) Itemization of costs for the different types of permits, both completed and rejected, including appeals.

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(f) Itemized costs to implement the program

(g) Itemized costs to administer the program

(h) itemized sources of funding for the program

(c) A statement that the information contained in the report is true and accurate with regards to data generated in New Mexico and that the information concerning contiguous states was obtained from the appropriate named source with authority to release the information.

(d) Comments and explanations where appropriate

(40) (11) "septic tank" means liquid waste treatment units designed to provide primary treatment and anaerobic treatment prior to disposal.

[20.7.11.7 NMAC - N, x/x/2001]

20.7.11.8 PERMIT FEE: Payment of the fee is due upon issuance of a permit meeting all the requirements of 20.7.3 NMAC.

- A. The permit fee for a conventional system is \$100.00.
- B. The permit fee for modification of a conventional system is \$50.00.
- C. The permit fee for construction or modification of a commercial unit is \$150.00.
- D. The permit fee for construction of an advanced treatment or alternative system is \$150.00.
- E. The permit fee for modification of an advanced treatment or alternative system is \$75.00.

[20.7.11.8 NMAC - N, x/x/2001]

20.7.11.9 SEPTIC TANK MANUFACTURER CERTIFICATION FEE: The annual fee for the certification/re-certification of septic tank designs as required in 20.7.3 NMAC is \$100.00. Prior to certification or recertification, the department engineer shall conduct a scheduled on-site inspection of in - state septic tank manufacturing facilities at least once a year and such unannounced inspections as are needed to assure product quality and provide consumer protection. The department shall not recertify septic tanks manufactured within the state nor collect the fees for recertification unless the inspection has been performed within one year of the recertification date. The engineer performing the inspection for certification or recertification shall prepare, date and sign a written report documenting compliance with each individual requirement of 20.7.3.501.

[20.7.11.9 NMAC - N, x/x/2001]

20.7.11.10 RE-INSPECTION FEE: If a site inspection results in an issuance of a notice of non-approval, a fee of \$50.00 shall be assessed for the re-inspection of the system. The re-inspection fee shall be remitted to the Department prior to a subsequent inspection being conducted.

[20.7.11.10 NMAC - N, x/x/2001]

20.7.11.11 VARIANCE FEE: If a variance is requested as provided for in 20.7.3 NMAC, a fee of \$50.00 shall be submitted upon issuance of the variance in addition to the permit fee required in Section 8 of this Part.

[20.7.11.11 NMAC - N, x/x/2001]

20.7.11.12 PAYMENT OF FEES:

A. The Department shall not issue a permit, variance or tank design certification until payment is received by the Department. The fees required in this Part are non-refundable. Penalties for violation of this Section 20.7.11.12 shall be in accordance with 74-1-10 A NMSA 1978"

B. All fees shall be remitted to the Department in the form of a certified check or money order made payable to the Environment Department liquid waste fund. All fees collected pursuant to this Part shall be transmitted to the State Treasurer for deposit in the liquid waste fund.

[20.7.11.12 NMAC - N, x/x/2001]

20.7.11.13 APPLICABILITY:

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A. The requirement for payment of the permit application fee shall apply only to those applications received on or after the effective date of this Part.

B. The annual tank certification fee shall apply on or after the effective date of this Part. The annual fee shall be received by the Department no later than March 1 of each year.

C. The requirements concerning payment of a re-inspection fee shall apply only to those re-inspections occurring on or after the effective date of this Part.

[20.7.11.13 NMAC - N, x/x/2001]

20.7.11.14 PERIODIC REVIEW: Every three years beginning in 2004, the Department shall review the fees in this Part and shall provide a report to the Environmental Improvement Board. The Department shall revise the fees as necessary in accordance with Section 74-1-7 (A), NMSA 1978.

[20.7.11.14 NMAC - N, x/x/2001]

20.7.11.15 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this Part does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.7.11.15 NMAC - N, x/x/2001]

20.7.11.16 CONSTRUCTION: This Part shall be liberally construed to implement the purpose of the Act.

[20.7.11.16 NMAC - N, x/x/2001]

20.7.11.17 SEVERABILITY: If any provision or application of this Part is held invalid, the remainder shall not be affected.

[20.7.11.17 NMAC - N, x/x/2001]