

STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD



IN THE MATTER OF  
PROPOSED REVISIONS TO THE LIQUID  
WASTE DISPOSAL AND TREATMENT REGULATIONS,  
20.7.3 NMAC (SECTION 904)

No. EIB 11-03(R)

**STATEMENT OF REASONS FOR ADOPTION OF PROPOSED REVISIONS AS  
AMENDED BY THE BOARD**

This matter came before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed pursuant to 20.1.1 NMAC by the New Mexico Environment Department (“Department”) to amend 20.7.3 NMAC of the Liquid Waste Disposal and Treatment Regulations. The Department stated reason for the petition was to resolve legal and practical impediments to the implementation of 20.7.3 NMAC.

A public hearing was held in Santa Fe, New Mexico on July 11, 2011 with a quorum of the Board present during the hearing. Felicia Orth served as hearing officer for the purpose of conducting the hearing. The Board heard technical testimony from the Department, the Professional Onsite Wastewater Reuse Association (“POWRA”) and Mr. Link Summers and admitted exhibits into the record. The record was left open to allow the Department to submit supplemental materials as well as for the parties to submit written arguments on the topic of dual licensing.

In accordance with 20.1.1.406(C) NMAC, the Board deliberated and made amendments to the proposed revisions within 60 days on September 2, 2011. The Board unanimously adopted the Petitioners proposed revisions to 20.7.3 NMAC with several amendments as will be detailed in this statement.

The Board’s decision was based on the entire record in this matter, which includes the transcript of the hearing, Petitioner Exhibits 1 through 49; POWRA Exhibits 1 through 8; Link

Summers Exhibits 1 through 6 and Rebuttal 1 through 8, 12 through 13 and 15 through 17. The Board gave little or no weight to Link Summers's Rebuttal Exhibits in its decision.

Pursuant to 20.1.1.406(E) NMAC the Board issues this Statement of Reasons in support of its decision:

1. The Board has the authority to amend the Liquid Waste Rules under the Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(3).

2. In accordance with NMSA 1978, Section 74-1-9(D), 20.1.1.301 NMAC and other state law, a Notice of Public Hearing for the proposed regulations was properly published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on May 27, 2011; and in the Albuquerque Journal, a newspaper of general circulation, on May 31, 2011 and June 15, 2011.

3. All persons present at the hearing were given an opportunity to make a statement regarding the proposed regulations, and to cross-examine all witnesses.

4. Andrew Knight of the Office of General Counsel and Dennis McQuillan, Liquid Waste Program Manager provided support for the proposed revisions. The proposed revisions are contained in the Department's Petition for Public Hearing as Attachments A and B. NMED Exhibit 43 corrects some typographical errors in the proposed revisions.

5. Mr. Ralph Baker Dotson and Eugene Bassett participated on behalf of POWRA.

6. Mr. Summers participated pro se.

7. Section 904 was originally adopted by the Board after public hearings in December 2004 and April 2005 and became effective of September 1, 2005. The original regulation was to be developed and implemented by July 1, 2007. In January 2007, the Board

changed the deadline for implementation to July 1, 2009 while the development deadline remained the same. (Testimony of Dennis McQuillan pp. 1 – 2)

8. The Board’s revisions remove the certification requirements and add, instead, qualification requirements..

9. On August 31, 2007, the CID sent a letter to the Department expressing concerns that the certification of liquid waste system installers under Section 904 constitutes dual licensing under the Construction Industries Act (“CILA”). According to the CILA:

The purpose of the [CILA] ... is to promote the general welfare of the people of New Mexico by providing for the protection of life and property by adopting and enforcing codes and standards for construction, alteration, installation, connection, demolition and repair work. To effect this purpose, it is the intent of the legislature that ... there be eliminated the wasteful and inefficient administrative practices of dual licensing, duplication of inspection, nonuniform classification and examination of closely related trades or occupational activities and jurisdictional conflicts ...

NMSA 1978, § 60-13-1.1. *See* NMED Exhibit 20.

10. Under the CILA, “[c]ontracting includes constructing, altering, repairing, installing or demolishing any ... sewerage or water treatment facility ...[or] sewerage, water, gas or other pipeline ... ” NMSA 1978, § 60-13-3(A)(6) – (7). CID under the MM-1 classification regulates those who: “[i]nstall, alter, repair and service plumbing fixtures, and piping, including ... septic tanks, manholes and sewer lines.” CID under the MS-3 classification regulates those who: “Install, alter, repair or service septic tanks and systems, manholes and sewer lines, starting at a point five (5) feet beyond the outside wall of a building and ending at a connection to a public or private utility...” 14.6.6.11(B)(1)(a) NMAC.

11. The Board agrees that there may be a dual-licensing issue with the certification of liquid waste system installers and thus agreed to the alternative wording of “qualifications.”  
Deliberation Tr. 4:1 – 8:9.

12. The Board's revisions eliminate the Education Steering Committee. The Department encountered practical difficulties in its operation including insufficient number of volunteers to serve on the Committee and insufficient training curricula. (Testimony of Dennis McQuillan, pp. 5, 8-9)

13. The Governor's Small-Business Friendly Task Force report included the recommendation to repeal regulation 904. (Testimony of Dennis McQuillan, p. 6)

14. The Board's revisions require that manufacturers, or their authorized trainers, train the contractors who install and maintain liquid waste systems. In addition, they must submit a written training plan to NMED.

15. With regard to homeowner certification, the revisions are intended to ensure that permits are issued only for the home the applicant will reside in, and to prevent people from using homeowner permits to circumvent the requirement of using a licensed contractor if they are subdividing property or building homes for retail purposes. (Testimony of Dennis McQuillan, pp. 8-9).

16. The Board made several amendments to the proposed revisions which are detailed below.

#### **AMENDMENTS TO PROPOSED REVISIONS**

1. The Board amended 20.7.3.7(Q)(1) to read:

“qualified homeowner” means a person who is the landowner of record residing at the property who has been provided homeowner installation training materials and who has passed an exam administered by the department.

2. The Board moved the following part of proposed Section 401(C) into a new Section 904(A)(7):

A qualified homeowner who self-installs a system shall not compensate any person to perform any phase of the system construction, unless that person holds a

valid and appropriate classification of contractor's license issued by the New Mexico construction industries division.

3. The Board also amended the remaining text of proposed Section 401(C). As amended, Section 401(C) shall read:

No person shall construct, install, or modify an on-site liquid waste system unless that person holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division, except that a qualified homeowner may install or modify permitted septic tanks and conventional trench or bed disposal fields pursuant to Section 904. Obtaining a permit from the department for the installation or modification of an on-site liquid waste system does not relieve any person from the responsibility of obtaining any other approval, license or permit required by state, city or county regulations or ordinances or other requirements of state or federal laws.

4. The Board amended proposed Section 401(L) to read:

If the department finds that specific requirements in addition to, or more stringent than, those specifically provided in 20.7.3 NMAC are necessary to prevent a hazard to public health or the degradation of a body of water, the department shall issue permit conditions with more stringent requirements or additional specific requirements. Such additional or more stringent requirements may apply to system design, siting, construction, inspection, operation and monitoring.

5. The Board amended proposed Section 904(A)(1) to read:

A homeowner must become qualified to install an on-site liquid waste system by passing an exam administered by the department.

6. The Board amended proposed Section 904(A)(3) to read:

A qualified homeowner may apply for a permit to install or modify a conventional on-site liquid waste treatment and disposal system serving the qualified homeowner's personal residence in accordance with Subsection C of 20.7.3.401 NMAC.

7. The Board amended proposed Section 904(A)(4) to read:

A qualified homeowner shall not install or modify an on-site liquid waste system serving a rental unit, or other property that is not the qualified homeowner's personal residence.

Punctuation was added to make clear how this section should be interpreted.

8. The Board amended proposed Section 904(A)(5) to read:

A homeowner qualification shall be valid for one year from the date of issuance of qualification; the department may extend the qualification beyond one year for good cause shown.

This amendment clarifies the duration of validity of a qualification and how such qualification may be extended.

9. The Board amended proposed Section 904(A)(6) to read:

A qualified homeowner may install no more than one liquid waste system during a twelve-month period.

This amendment is designed to restrict the amount of systems a homeowner may install on his or her own.

10. The Board amended proposed Section 904(B)(1) to read:

Inspections of liquid waste systems prior to property transfers are required by Subsection E of 20.7.3.902 NMAC. The department shall inspect unpermitted liquid waste systems. Third party inspectors shall inspect permitted liquid waste systems.

11. The Board amended proposed Section 904(B)(2)(b) to read:

certification as a registered professional engineer in the State of New Mexico with a specialty sub-discipline of on-site wastewater engineering.

This amendment is to clarify that the engineer must be registered in New Mexico.

12. The Board amended proposed Section 904(B)(2)(e) to read:

demonstration of a similar accreditation or certification and/or a combination of training and experience as approved by the department.

This amendment is designed to broaden the way in which a person can become qualified.

13. The Board re-numbered and amended proposed Section 904(B)(2)(f) to become Section 904(B)(3) and to read:

Inspection of advanced wastewater treatment systems shall be performed only by persons qualified pursuant to Subsection C of 20.7.3.904.

This amendment is to provide clarification of the proper NMAC section.

14. The Board amended proposed Section 904(C)(2) to read:

In order to obtain approval by the department, and in addition to receiving a recommendation for approval by the wastewater technical advisory committee, manufacturers or their authorized trainers of advanced treatment systems shall provide a written training and certification program, for approval by the department, for installers and maintenance service providers of their systems. Installers and maintenance service providers of advanced treatment systems shall receive the training approved by the department at least once per year. Department representatives may audit training classes provided by the manufacturers for the purpose of evaluating the training provided.

The added language regarding authorized trainers is to account for manufacturers who may be based in foreign jurisdictions.

15. The Board voted not to delete existing Section 904(B)(7) as proposed in Petitioner's NOI and to make it Subsection D(1) of proposed 904. The Board also added language suggested by Member Casciano. Section 904(D) should now read:

**D. Septage Pumpers.**

(1) Septage pumpers shall demonstrate familiarity with applicable regulations and demonstrate competence in locating and exposing septic tanks, measuring septic sludge and scum levels, the complete pumping of septic tank sludge, maintenance of pumping equipment in a sanitary condition, prevention of pathogen transmission and preparation of an appropriate safety plan for normal operations.

(2) Septage pumpers shall maintain his or her equipment to ensure no sewage spills occur during transport or storage and that his or her employees or the public are not subjected to undue health hazards.

Since the rule refers to septage pumped the Board believed it was prudent to retain the existing definition.

16. The Board renumbered proposed Section 904(G) to be Section 904(E) and amended new Section 904(E)(2) to read:

The department, at any time, may suspend or revoke a qualification for cause to include fraud, misrepresentation, failure to provide required documentation,

failure to provide service in accordance with the qualification or failure to comply with 20.7.3 NMAC. Suspension or revocation shall be by issuance of an order by the Department.

This change clarifies what entity issues the order.

**ORDER**

By a unanimous vote the Board adopted Petitioner's proposed revisions to 20.7.3 NMAC with the foregoing amendments. Pursuant to NMSA 1978, Section 74-2-6(F) these revisions will not become effective until thirty days after filing with the State Records Center.



Deborah Peacock, Chair  
New Mexico Environmental Improvement Board

10/3/11  
Date