



This fact sheet from the New Mexico Environment Department's **Hazardous Waste Bureau** provides an explanation and reference for proposed regulatory changes with the passage of House Bill 140. State law now defines **discarded firefighting foam** that contains **PFAS** (called AFFF) as a **hazardous waste**. The law itself can be found under section 74-4-3 of the Hazardous Waste Act. The proposed rule will explain how to legally handle, cleanup, and dispose of discarded AFFF containing intentionally added PFAS. In late 2025, we intend to petition the EIB to adopt rules regarding the handling, cleanup, and abatement of discarded AFFF.

New Mexico Environment Department ensures protection of human health and the environment and the prevention of harmful chemicals entering the environment

As a state cabinet agency, the New Mexico Environment Department's mission is protection of human health and the environment, and it enforces several different environmental laws and regulations. NMED inspectors, permittees, and enforcement and operations staff of various programs regulate the activities of industry and commerce, and governmental entities, to ensure these activities do not negatively impact the environment or the health of New Mexicans. One of these programs, the Resource Protection Compliance and Enforcement Bureau ("RPCEB") Hazardous Waste Compliance and Technical Assistance Program ensures proper management of waste chemicals.

New Mexico's Hazardous Waste Act gives New Mexico's Environmental Improvement Board ("EIB"), a joint NM legislative-executive board appointed by the Governor, authority to adopt rules through the rulemaking process to list and identify hazardous wastes, and specify conditions for storage and disposal of those wastes. This law largely mirrors the federal Resource Conservation and Recovery Act, and most of the regulations that have been adopted by the EIB are sourced from the Code of Federal Regulations, with some state-specific regulations that are either more stringent or broader in scope from the federal regulations. These regulations are found in Chapter 20.4.1 of the New Mexico Administrative Code ("NMAC")

HB 140 signed into law during 2025 legislative session, provided EIB authority to list firefighting foam containing PFAS chemicals as hazardous wastes

Since 2015, NMED has been aware of groundwater contamination near Cannon Air Force Base and at other locations with a class of chemicals known as per- and poly-fluoroalkyl Substances ("PFAS"). This contamination was determined to be largely the result of the use and release of a type of firefighting foam known as aqueous film-forming foam ("AFFF") that contained PFAS and was used during responses and training activities at several military and commercial aircraft facilities. Available health studies show that

exposures of PFAS in drinking water is associated with the increase of the likelihood of kidney cancer, testicular cancer, pregnancy-induced hypertension, and other toxic health effects. Because of this, NMED has maintained that AFFF containing intentionally added PFAS, and it's affected environmental media, should be abated under the Hazardous Waste Act.

During the 2025 legislative session, the legislature passed HB140 which, among other things, amended the definition of hazardous waste to include AFFF containing intentionally added PFAS. Governor Michelle Lujan Grisham signed the bill into law on April 9, 2025.

Changes to NMAC codifying HB 140 **listing of AFFF containing PFAS as hazardous wastes**

NMED will petition the EIB for a rulemaking hearing to consider adopting amendments to the hazardous waste management regulations, 20.4.1 NMAC. If the EIB grants NMED a rulemaking hearing on its petition, NMED anticipates that it will be held in the spring or early summer of 2026. NMED will provide its proposed draft amendments to the public in accordance with applicable law, and plans to propose adding two new hazardous waste code designations: NMF1 and NMU1.

The two proposed waste codes mirror other types of hazardous waste as listed and identified in the NMAC, as adopted from the Code of Federal Regulations ("CFR"). Specifically, Chapter 40 Part 261 of the CFR provides the federal lists of hazardous wastes, sorted by a 4-digit waste code, that were adopted into the NMAC by the EIB. Those familiar with the hazardous waste listings will recognize the "F" and "U" letters as being for process wastes and disposals of unused chemicals, respectively, and that is by design. Through this process, NMED wished to ensure a familiar system of management for these wastes.

NMED's proposed amendments would add AFFF containing intentionally added PFAS, as reflected in the recently amended Hazardous Waste Act, to that list as a state-specific hazardous waste. Several other states have also taken similar actions for a variety of substances, including Colorado for some chemical munitions wastes, and Vermont for liquids containing PFAS. Classifying AFFF containing intentionally added PFAS in this way will ensure chemicals, wastes, and cleanups of these chemicals will be managed within New Mexico similar to other hazardous wastes, such as spent solvents and cleaning chemicals. Specifically:

1. On-site disposal or destruction of AFFF wastes containing intentionally added PFAS would require a hazardous waste facility permit.
2. Shipments of AFFF wastes containing intentionally added PFAS must be accompanied by a hazardous waste manifest listing those wastes with the appropriate waste code.
3. Generators of AFFF wastes containing intentionally added PFAS must adhere to all storage, waste characterization and counting, facility safety, accumulation time limits, and any other pertinent regulatory requirements as for other hazardous wastes.
4. Spills of AFFF containing intentionally added PFAS must be reported to NMED within 24 hours.
5. Any releases to the environment of AFFF containing intentionally added PFAS that cannot be immediately remedied during the course of the response would require Corrective Action under the Hazardous Waste Act, and may require a permit or remediation plan for this cleanup.

Additionally, NMED is also proposing amendments to the Land Disposal Restrictions (“LDR”) as adopted from Chapter 40 CFR Part 268 into the NMAC, by adding treatment standards to the relevant table that appears in these regulations. This section prohibits the land disposal of any hazardous waste until it has been treated to no longer pose a threat to human health and the environment. NMED is proposing that any such treatment achieve “non-detect” for concentrations of the identified PFAS constituents present in AFFF in the analysis of treatment residuals, before a treated waste can be considered to meet the LDR standard.

**NMED is beginning stakeholder engagement,
will provide notice of the public hearing**

Per applicable laws and regulations, NMED is beginning a period of stakeholder engagement in Fall 2025 prior to petitioning the EIB in late 2025 for a hearing sometime in Spring 2026. NMED will review and consider all comments received regarding this proposed rulemaking action and incorporate as appropriate into the proposed rulemaking before the EIB. During this process, NMED will make the best practicable effort to solicit the input of the public and the regulated community, in accordance with the NMED’s Public Involvement Plan for this rulemaking.

Comments and inquiries may be directed to the NMED’s Hazardous Waste Bureau at 505-690-5211, or in person/by mail at 2905 Rodeo Park Drive East, Building 1, Santa Fe NM, 87505. The main contact for this rulemaking is Aaron Coffman, who can be reached at aaron.coffman@env.nm.gov. NMED anticipates providing additional information in the form of a public notice announcing the petition for a hearing in front of the EIB by newspaper and potentially radio announcements, by mailings to interested parties, and during the stakeholder engagement process.