

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF RULEMAKING HEARING TO CONSIDER ADOPTION OF

PROPOSED NEW RULE 20.13.3 NMAC – AQUEOUS FILM FORMING FOAM CONTAINING

INTENTIONALLY ADDED PFAS

AND AMENDMENTS TO

20.1.1 NMAC – MODIFICATIONS, EXCEPTIONS AND OMISSIONS RELATED TO AQUEOUS FILM

FORMING FOAM

AND AMENDMENT TO

20.4.3 NMAC – HAZARDOUS WASTE FEES

(EIB Case No. 25-81)

The New Mexico Environmental Improvement Board (EIB) will hold a public hearing beginning on April 13, 2026 beginning at 9:00am and continuing for two (2) days to hear all testimony, evidence, and public comment, to consider EIB 25-81: In The Matter of Proposed Amendments to 20.4.1 NMAC - Modifications, Exceptions, and Omissions Related to Aqueous Film Forming Foam, and 20.4.3 NMAC – Hazardous Waste Fees, and the Adoption of 20.13.3 NMAC – Aqueous Film Forming Foam Containing Intentionally Added PFAS (“Petition”). The Proposed Amendments to 20.4.1 NMAC are attached as Exhibit B to the Petition. The Proposed Amendments to 20.4.3 NMAC are attached as Exhibit C to the Petition. Proposed New Rule 20.13.3 NMAC is attached as Exhibit D to the Petition. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation. The in-person hearing will be held at 490 Old Santa Fe Trail, Santa Fe, NM 87501, Room 321. The EIB may make a final decision on proposed new rule 20.13.3 NMAC, the amendments to 20.4.1 NMAC, and the amendments to 20.4.3 NMAC at the conclusion of the hearing or may convene a later meeting for that purpose. The hearing will be conducted in accordance with 20.1.1 NMAC, Rulemaking Procedures – Environmental Improvement Board; the Environmental Improvement Act, NMSA 1978, Section 74-1-9; and other applicable procedures, including pursuant to any orders from the EIB and appointed hearing officer.

Detailed information concerning the hearing, including the meeting room location, additional hearing details and access details such as times and how to participate or attend the hearing remotely, can be found on the New Mexico Environment Department (“NMED”) calendar (<https://www.env.nm.gov/events-calendar/>) under the calendar entry corresponding to the hearing start date. For more information, please contact the EIB Administrator at (505) 660-4305 or pamela.jones@env.nm.gov.

Additionally, the NMED Office of Public Facilitation maintains NMED’s docketed matters website, which includes the Petition, Statement of Reasons, and Proposed New Rule 20.13.3 NMAC, amended rule 20.4.1 NMAC, and amended rule 20.4.3 NMAC as well as any orders from the EIB and appointed hearing officer governing the conduct of the hearing. The docket for EIB 25-81 may be accessed by visiting the website (<https://www.env.nm.gov/opf/docketed-matters/>), navigating to the ‘Environmental Improvement Board’ dropdown menu, and then accessing the files under the ‘EIB 25-81: In the Matter of Proposed Amendments to 20.4.1 NMAC – Modifications, Exceptions and Omissions related to Aqueous Film Forming Foam, AND 20.4.3 NMAC – Hazardous Waste Fees, AND The Adoption of 20.13.3 NMAC – Aqueous Film Forming Foam Containing Intentionally Added PFAS’ dropdown menu. Paper copies of the Petition, Statement of Reasons, and Proposed New Rule 20.13.2 NMAC

are available at all of NMED's offices statewide. The Petition, Statement of Reasons, and Proposed New Rule 20.13.2 NMAC are available electronically at (<https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2025/12/2025-12-22-EIB-25-81-Petition-and-Request-for-Hearing-Final.pdf>).

The purpose of the hearing is for EIB to consider and take possible action on the Petition by NMED requesting the EIB to adopt the Proposed New Rule 20.13.3 NMAC, the amendments to 20.4.1 NMAC, and the amendment to 20.4.3 NMAC. The purpose of the Proposed New Rule is to develop an inventory that identifies and records AFFF products containing intentionally added PFAS, requires the proper labeling of containers, including tanks, totes, and drums of AFFF products containing intentionally added PFAS, require the use of AFFF products containing intentionally added PFAS for emergency purposes only, and require the cleanup of discarded AFFF products containing intentionally added PFAS pursuant to the New Mexico Hazardous Waste Act. The purpose of the amendments to 20.4.1 NMAC is twofold. First, a portion of the proposed amendments are necessary to implement changes to the New Mexico Hazardous Waste Act following the passage of House Bill 140 in the 2025 Regular Session of the New Mexico Legislature. Second, the remainder of the amendments are necessary to support the federal reauthorization of New Mexico's state-administered hazardous waste program and regulations. The purpose of the amendment to 20.4.3 NMAC is to correct a typographical error in the existing regulations. The EIB is authorized to adopt New Rule 20.13.3 NMAC, amend 20.4.1 NMAC, and amend 20.4.3 NMAC pursuant to the Environmental Improvement Act, NMSA Sections 74-1-1, et seq., the Per- and Poly-Fluoroalkyl Substances Protection Act, NMSA 1978, Sections 74-15-1, et seq., and the Hazardous Waste Act, NMSA 1978, Sections 74-4-1, et seq.

Proposed New Rule 20.13.3 NMAC requires facilities that obtain, manufacture, store, or use AFFF containing intentionally added PFAS to provide NMED with an annual inventory of AFFF products containing intentionally added PFAS. Proposed New Rule 20.13.3 NMAC requires the labeling of all containers where AFFF products containing intentionally added PFAS are stored. Proposed New Rule 20.13.3 NMAC imposes recordkeeping requirements on facilities that obtain, manufacture, store, or use AFFF containing intentionally added PFAS. Proposed New Rule 20.13.3 NMAC imposes storage requirements for AFFF products containing intentionally added PFAS. Proposed New Rule 20.13.3 NMAC stipulates that AFFF products containing intentionally added PFAS may only be used for emergency purposes in New Mexico. Proposed New Rule requires that the cleanup of discarded firefighting foam be done pursuant to the New Mexico Hazardous Waste Act and the Per- and Poly-Fluoroalkyl Substances Protection Act.

The amendments to 20.4.1 NMAC add AFFF containing intentionally added PFAS to the list of hazardous wastes from non-specific sources. The amendments to 20.4.1 NMAC add AFFF containing intentionally added PFAS to the list of hazardous waste discarded chemical products, off-specification species, container residues, and spill residues. The amendments to 20.4.1 NMAC add hazardous constituents related to hazardous waste unused AFFF to various appendices incorporated by New Mexico law. The amendments to 20.4.1 NMAC add AFFF containing intentionally added PFAS to the treatment standards for hazardous wastes. The amendments to 20.4.1 NMAC add inclusions for on-site treatment of AFFF containing intentionally added PFAS and require a permit for generators or other facilities that perform on-site treatment of AFFF containing intentionally added PFAS. Finally, certain amendments to 20.4.1 NMAC are being made to support the federal reauthorization of New Mexico's hazardous waste program and regulations. Specifically, changes are proposed to clarify roles and responsibilities under the U.S. Environmental Protection Agency's E-manifest system, to allow for prospective adoption of applicable federal regulations, and to ensure consistency with federal aerosol can regulations.

The amendment to 20.4.3 NMAC proposes a single change to remedy a typographical error. The proposed change will clarify NMED's authority to adjust annual hazardous waste generation fees for inflation.

Additional information is available on NMED's Hazardous Waste Bureau webpage (<https://www.env.nm.gov/hazardous-waste/>). Technical information that served as the basis for the proposed rule may be viewed online at <https://www.env.nm.gov/public-notices/>.

PUBLIC PARTICIPATION: The EIB's hearings and meetings are open to the public, and the general public is encouraged to participate. All interested persons will be given a reasonable opportunity to participate by filing a notice of intent to present technical testimony, filing an entry of appearance, or participating as a member of the general public. "Technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the

hearing. "General public" includes any person attending a hearing who has not submitted a notice of intent to present technical testimony.

Any member of the general public may testify at the hearing. Any person who provides testimony at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. All testimony will be taken under oath or affirmation which may be accomplished in mass or individually.

No person may discuss ex parte the merits of the proceeding with any EIB member or the appointed hearing officer.

TECHNICAL TESTIMONY: Any person who intends to present technical testimony at the hearing shall file a notice of intent to present technical testimony with the EIB Administrator at least 20 days prior to the hearing date or in accordance with an order from the EIB or appointed hearing officer and shall be a party. In addition to any requirements a pre-hearing order may have, the notice of intent to present technical testimony shall: (1) identify the person for whom the witness(es) will testify; (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present; (4) include a copy of the direct testimony of each technical witness in narrative form; (5) include the text of any recommended modifications to the proposed regulatory change; and (6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (7) serve a copy on NMED.

ENTRY OF APPEARANCE: Any person may file an entry of appearance as a party. The entry of appearance shall be filed with the EIB Administrator no later than 20 days before the date of the hearing or in accordance with an order from the EIB or appointed hearing officer.

PUBLIC COMMENT: The general public may testify with a written public comment or orally at the hearing. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Those wishing to submit a written public comment prior to the hearing may submit the written public comment to the EIB Administrator: <https://nmed.commentinput.com/?id=cjx2tWDgsS; pamelajones@env.nm.gov>, or EIB Administrator, New Mexico Environment Department- Harold Runnels Building, P.O. Box 5469, Santa Fe, NM 87502. Additionally, there will be an opportunity each day of the hearing for oral testimony from members of the general public. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibits are not unduly repetitious of the testimony and comply with 20.1.1.402 NMAC. The appointed hearing officer shall determine the process and times for the general public to testify during the hearing.

ACCESSIBILITY: If any person requires assistance, an interpreter, or an auxiliary aid to participate in this process, please contact the EIB Administrator at least 14 days prior to the hearing date at 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502, telephone (505) 660-4305, or email pamelajones@env.nm.gov (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

NOTICE OF NONDISCRIMINATION: NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, 505-827-2855, nd.coordinator@env.nm.gov. If you believe that you have been discriminated against with respect to an NMED program or activity, you may contact the Non-Discrimination Coordinator identified above.