

**STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO 20.3.16 NMAC**

**No. EIB 23-75**

**New Mexico Environment Department,  
Environmental Protection Division,  
Radiation Control Bureau,**

*Petitioner.*

**FIRST AMENDED PETITION  
TO REPEAL AND REPLACE 20.3.16 NMAC  
OF THE RADIATION PROTECTION REGULATIONS AND  
REQUEST FOR HEARING**

COMES now the Environmental Protection Division (“Division”), Radiation Control Bureau (“Bureau”) of the New Mexico Environment Department (“Department”), by and through the undersigned counsel, and submits this First Amended Petition to Repeal and Replace 20.3.16 NMAC of the Radiation Protection Regulations and Request for Hearing (“First Amended Petition”). The reasons for this First Amended Petition are as follows:

1. On November 9, 2023, the Bureau filed a Petition to Repeal and Replace 20.3.16 NMAC of the Radiation Protection Regulations and Request for Hearing (“November 9, 2023 Petition”).
2. In the November 9, 2023 Petition, the Bureau stated that it “reserves the right to supplement this Petition and attach additional or amended exhibits”.
3. At the December 15, 2023 meeting of the Environmental Improvement Board (“EIB” or “Board”), counsel for the Bureau stated the intention:
  - a. to file an additional exhibit: a crosswalk that the Bureau calls a “matrix”. The matrix compares the proposed rule changes with the current rules; lists the

comparable U.S. Nuclear Regulatory Commission’s fiscal year 2021 fees; and briefly describes the explanation for the proposed rule changes; and

- b. to file an amended version of the proposed rules that corrects typographical errors. The Bureau filed the original version of the proposed rules as Exhibit 2 to the November 9, 2023 Petition.

4. After correcting typographical errors in the proposed rules, similar typographical corrections also were made to the Statement of Reasons, originally filed as Exhibit 1 to the November 9, 2023 Petition.

Therefore, the Bureau is filing the attached updated exhibits with this First Amended Petition, labeled as follows:

- a. Exhibit A: Statement of Reasons;
- b. Exhibit B: Proposed Rule Changes (20.3.16 NMAC); and
- c. Exhibit C: Matrix.

For clarity, the Bureau hereby restates the following substantive provisions from the November 9, 2023 Petition, with updates *italicized*:

1. *In* 1974, the State of New Mexico entered into an agreement with the U.S. Nuclear Regulatory Commission (“NRC”). Under the agreement with NRC, the State agreed to effectively operate a Radioactive Materials Program (“Program”).
2. The collection of fees is necessary to operate the Program, and the Department collects fees under the License Fee regulations published on or about May 19, 2002.

3. The 2002 fees have not kept pace with NRC's fee rules. According to the NRC webpage at <https://www.nrc.gov/about-nrc/regulatory/licensing/general-fee-questions.pdf>, NRC fees are adjusted annually. The NRC currently charges fees under a federal Fiscal Year (FY) 2023 fee rule. In contrast, the State's twenty-one-year-old fees have never been adjusted. The State's fees have not kept pace with the annual increases in Program costs and inflation and do not adequately support the Program.
4. To operate an effective Program, the Bureau proposes regulatory fee changes based on the NRC's federal FY 2021 fee rules.
5. Under the proposed regulations, the new fee structure would start on July 1, 2024.
6. Proposed changes to the State fee structure include: increasing license application and annual fees; providing for license amendment application fees and administrative compliance costs; collecting annual fees prospectively, instead of retrospectively under the 2002 rules; standardizing the annual fee due date to July 1; phasing in annual fees over 2 years (FY 25 and FY 26); and adjusting fees with Consumer Price Index increases starting in FY 2027 and continuing each year thereafter.
7. Qualified small entities would continue to receive a discount on annual fees.
8. The proposed changes to the State fee structure would help provide the budget needed for effective operation of the Program, without which the Program could revert to the NRC. Then the NRC would impose license fee increases in amounts far greater than the fees charged currently under the 2002 License Fee regulations.
9. Under the proposed changes to the State fee structure, all fees would continue to be deposited in the Radiation Protection Fund. *See* NMSA 1978, § 74-3-5 (2000) and NMSA 1978, § 74-3-5.1 (2000).

10. There are approximately 196 Radioactive Materials (“RAM”) licensees who would be affected by the proposed changes to the State fee structure.
11. Under 1.24.11.9(C) NMAC, Part 16 must be repealed and replaced instead of amended because the 2002 fee regulations do not meet current style and formatting requirements established by the State Records Center and Archives.
12. The Radiation Protection Act, NMSA 1978, § 74-3-5(A) (2000), provides that, with the advice and consent of the Radiation Technical Advisory Council (“RTAC”), the EIB shall “have the authority, after considering the facts and circumstances ... to promulgate rules ... prescribing license, registration and other related fees, all of which shall be deposited in the radiation protection fund.” *See generally*, Radiation Protection Act, Sections 74-3-1 to -16 (1953, as amended).
13. Pursuant to NMSA 1978, Section 74-3-5(A) (2000), the proposed regulations *were provided* to the Radiation Technical Advisory Council (“RTAC”) for its advice and consent on this rulemaking *at its December 19, 2023 meeting. During the December 19, 2023 meeting, the members of the RTAC who were present voted to approve the proposed rules attached hereto as Exhibit B.*
14. The EIB’s authority to promulgate rules includes repealing and replacing (or amending) the License Fee regulations. *See* NMSA 1978, §§ 74-1-5 (1997), 74-1-8(A)(5) (2020), 74-1-9 (1985), and 74-3-5(A)(2) (2000).
15. Under the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 to -17, the proposed regulations are in the public interest, technically practicable, necessary, and economically reasonable. *See* NMSA 1978, § 74-1-9 (1985).

16. For the reasons stated above, it is necessary and appropriate to repeal and replace the 2002 License Fee regulations to align with NRC fees and Program operation requirements.
17. Pursuant to NMSA 1978, Section 74-1-9(A) (1985) and 20.1.1.300(A) NMAC, any person may petition the EIB for an amendment of regulations within the jurisdiction of the EIB. The EIB shall determine whether to hold a hearing for the proposed regulations. *See* NMSA 1978, Section 74-1-9(A) (1985); *see also*, 20.1.1.300(C) NMAC.
18. For the Program to cover costs starting in FY 2025, the Bureau intends to begin implementing the new fee structure beginning May 1, 2024, with fee changes starting on July 1, 2024.

In the November 9, 2023 Petition, the Bureau requested that the EIB order a hearing, appoint a hearing officer, and schedule a two-day public hearing to occur prior to March 12, 2024. During the December 15, 2023 EIB meeting, the EIB voted to conduct the hearing on February 29, 2024, to be continued, if necessary, at the direction of the chair. The EIB also selected EIB member William Honker as the hearing officer.

Respectfully submitted,

NEW MEXICO ENVIRONMENT  
DEPARTMENT

/s/ Lisa Chai

Lisa Chai

Assistant General Counsel

Office of General Counsel

121 Tijeras Ave. NE, Ste. 1000

Albuquerque, NM 87102-3400

Phone: (505) 500-7628

Email: [lisa.chai1@env.nm.gov](mailto:lisa.chai1@env.nm.gov)

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2023, a copy of the foregoing was sent via electronic mail to the persons listed below. A hard copy will be mailed upon request.

Emily Bowen  
Office of the Attorney General  
Counsel for EIB  
[ebowen@nmag.gov](mailto:ebowen@nmag.gov)

Nicholas R. Maxwell  
[inspector@sunshineaudit.com](mailto:inspector@sunshineaudit.com)

*/s/ Lisa Chai* \_\_\_\_\_