# The Legislature

of the

# State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 125

SENATE BILL 155, as amended

Introduced by

SENATOR PHIL A. GRIEGO

Chapter 125

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE SOLID WASTE ACT TO PROVIDE FOR TERM OF PERMITS FOR PRIVATE LANDFILLS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 74-9-24 NMSA 1978 (being Laws 1990, Chapter 99, Section 24, as amended) is amended to read:

"74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING REQUIREMENT.--

A. The director, within one hundred eighty days after the application is deemed complete and after a public hearing, shall issue a permit, issue a permit with terms and conditions or deny a permit application. The director may deny a permit application on the basis of information in the application or evidence presented at the hearing, or both, if the director makes a finding that granting the permit would be contradictory to or in violation of the Solid Waste Act or any regulation adopted pursuant to the provisions of that act. The director may also deny a permit application if the applicant fails to meet the financial responsibility requirements established by the board pursuant to the provisions of Subsection A of Section 74-9-8 NMSA 1978 and Section 74-9-35 NMSA 1978.

B. The director may deny any permit application or revoke an existing permit if the director has reasonable cause to believe that a person required to be listed on the application pursuant to Section 74-9-20 NMSA 1978 has:

(1) knowingly misrepresented a material fact in application for a permit;

(2) refused to disclose or failed to disclose the information required pursuant to the provisions of Section 74-9-21 NMSA 1978;

(3) been convicted of a felony or other crime involving moral turpitude within ten years immediately preceding the date of the submission of the permit application;

(4) been convicted of a felony, within ten years immediately preceding the date of the submission of the permit application, in any court for any crime defined by state or federal statutes as involving or being restraint of trade, price-fixing, bribery or fraud;

(5) exhibited a history of willful disregard for environmental laws of any state or the United States; or

(6) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States.

C. In making a finding under Subsection B of this section, the director may consider aggravating and mitigating

factors presented by any party at the hearing.

D. If an applicant whose permit is being considered for denial or revocation on any basis provided in this section has submitted an affirmative action plan that has been approved in writing by the director and plan approval includes a period of operation under a conditional permit or license that will allow the applicant a reasonable opportunity to affirmatively demonstrate its rehabilitation, the director may issue a conditional license for a reasonable period of time of operation. In approving an affirmative action plan intended to affirmatively demonstrate rehabilitation, the director may consider the following factors:

(1) implementation by the applicant of formal policies;

(2) training programs and management control to minimize and prevent the occurrence of future violations;

(3) installation by the applicant of internal environmental auditing programs;

(4) the discharge of individuals convicted of any crimes set forth in Subsection B of this section; and

(5) such other factors as the director may deem relevant.

E. Within sixty days of the date of the closing of the hearing on a permit application, the director shall

notify the applicant by certified mail of the issuance, denial or issuance with conditions of a permit and the reasons for it. Any person who has made a written request to the director to be notified of the action taken on the application shall be given written notice of the director's action.

F. No permit for the operation of a solid waste facility shall be valid until the permit or a notice of the permit and a legal description of the property on which the facility is located are filed and recorded in the office of the county clerk in each county in which the facility is located.

G. Except as otherwise provided by law:

(1) each permit issued for a publicly owned and publicly or privately operated new or repermitted existing landfill, transfer station, recycling facility or composting facility shall remain in effect throughout the active life of the landfill, transfer station, recycling facility or composting facility as described in the approved permit or for twenty years, whichever is less. Each permit issued for a publicly owned landfill, transfer station, recycling facility or composting facility that is privately operated pursuant to a contract of no more than four years duration entered into in accordance with the state or local procurement code shall remain in effect throughout the active

life of the landfill, transfer station, recycling facility or composting facility as described in the approved permit or for twenty years, whichever is less. Each time the contract is renewed, the director shall review the contract to determine whether the term of the permit shall be governed by this paragraph or Paragraph (2) of this subsection. Each permit shall be reviewed by the department of environment at least once every ten years. The review shall address the operation, compliance history, financial assurance and technical requirements for the landfill, transfer station, recycling facility or composting facility. At the time of the review there shall be public notice in the manner prescribed by Section 74-9-22 NMSA 1978. If the secretary of environment determines that there is significant public interest, a nonadjudicatory hearing shall be held as part of the review. The secretary may require appropriate modifications of the permit, including modifications necessary to make the permit terms and conditions consistent with statutes, regulations or judicial decisions;

(2) each permit issued for a privately owned new or repermitted existing landfill, transfer station, recycling facility or composting facility shall remain in effect throughout the active life of the facility as described in the approved permit or for twenty years, whichever is less. Owners of privately owned facilities

1 permitted prior to July 1, 2011 shall submit in writing to
2 the division no later than September 1, 2011 their decision
3 to opt into the twenty-year permit cycle and provide
4 information that demonstrates that such period is less than
5 the remaining active life of the facility. If a privately
6 owned facility opts into the twenty-year permit cycle, the
7 twenty-year permit term shall be reduced by the number of
8 years the facility has operated under its current permit.
9 For privately owned facilities that opt into the twenty-year
10 permit term, the facility owners shall adjust financial
11 assurance coverage to accommodate requirements pursuant to
12 the solid waste management regulations. Each permit shall be
13 reviewed at least every five years by the department of
14 environment. Interested parties may petition the department
15 for review, in addition to the five-year review, provided
16 that the director has discretion to determine whether there
17 is good cause for such an additional review. The review
18 shall address the operation, compliance history, financial
19 assurance and technical requirements for the landfill,
20 transfer station, recycling facility or composting facility.
21 At the time of the review there shall be public notice in the
22 manner prescribed by Section 74-9-22 NMSA 1978. If the
23 secretary of environment determines that there is significant
24 public interest, a nonadjudicatory hearing shall be held as
25 part of the review. The secretary may require appropriate

modifications of the permit, including modifications necessary to make the permit terms and conditions consistent with statutes, regulations or judicial decisions; and

(3) the term of permits for facilities not specified by this subsection shall be governed by existing or amended regulations adopted by the board.

H. The director shall issue separate special waste permits for all solid waste facilities that transfer, process, transform, recycle or dispose of special waste pursuant to regulations adopted by the board."

John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Ben Lujan, Speaker
House of Representatives

Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 7th day of April, 2011

Governor Susana Martinez
State of New Mexico