

1 This rule was filed as 20 NMAC 4.3.

2
3 **TITLE 20 ENVIRONMENTAL PROTECTION**
4 **CHAPTER 4 HAZARDOUS WASTE**
5 **PART 3 ~~ANNUAL HAZARDOUS WASTE FEES~~**

6
7 **20.4.3.1 ISSUING AGENCY:** Environmental Improvement Board.
8 [11/30/1995; 12/31/1998; Recompiled 11/27/2001]

9
10 **20.4.3.2 SCOPE:** This part applies to generators of hazardous waste, and to owners and operators of
11 hazardous waste treatment, storage and disposal facilities which receive imported hazardous waste.
12 [11/30/1995; 12/31/1998; Recompiled 11/27/2001]

13
14 **20.4.3.3 STATUTORY AUTHORITY:** ~~Subsection J of~~ Section 74-4-4.2.1 NMSA 1978, directs the
15 board to provide a schedule of business fees for businesses engaged in regulated hazardous waste activity and a
16 schedule of generation fees for businesses generating hazardous waste.
17 [11/30/1995; 12/31/1998; Recompiled 11/27/2001]

18
19 **20.4.3.4 DURATION:** Permanent.
20 [11/30/1995; 12/31/1998; Recompiled 11/27/2001]

21
22 **20.4.3.5 EFFECTIVE DATE:** ~~November 30, 1995, unless a different date is cited at the end of a section~~
23 ~~or paragraph~~
24 ~~.[Compiler's note: The words or paragraph, above, are no longer applicable. Later dates are now cited only at the~~
25 ~~end of sections, in the history notes appearing in brackets.]~~
26 [11/30/1995; 12/31/1998; Recompiled 11/27/2001]

27
28 **20.4.3.6 OBJECTIVE:** The objective of ~~Part 3 of Chapter 4~~this part is to provide a schedule of annual
29 fees for hazardous waste generators and treatment, storage and disposal facilities which receive imported hazardous
30 waste, as well as business fees for specific activities or events. The annual and business fees collected will be
31 deposited in the hazardous waste fund to meet necessary expenses in the administration and operation of the state
32 hazardous waste program.
33 [11/30/1995; 12/31/1998; Recompiled 11/27/2001]

34
35 **20.4.3.7 DEFINITIONS:** Unless otherwise defined in this part, the words and phrases used in this part
36 have the same meanings as in ~~20 NMAC 4.1~~ ~~[now 20.4.1 NMAC]~~, Hazardous Waste Management. As used in this
37 part:

38 **A.** "Act" means the New Mexico Hazardous Waste Act, Sections 74-4-1 to 74-4-14 NMSA 1978;
39 **B.** ~~"Annual business fee" means the hazardous waste business fee in Subpart IV of this part [now~~
40 ~~20.4.3.400 NMAC through 20.4.3.402 NMAC];~~

41 **~~C~~B.** ~~"Annual generation fee" means the hazardous waste generation fee in Subpart II of this part~~
42 ~~[now 20.4.3.200 NMAC through 20.4.3.203 NMAC];~~

43 **~~D~~C.** ~~"Annual imported waste compensating fee" means the fee on imported hazardous waste in~~
44 ~~Subpart III of this part [now 20.4.3.300 NMAC through 20.4.3.302 NMAC];~~

45 **~~D~~.** ~~"Business fee" means the fee designated for specific activities or events in 20.4.3.400 NMAC~~
46 ~~through 20.4.3.402 NMAC;~~

47 **~~E~~.** ~~"CFR" means the most recent Code of Federal Regulations adopted by reference at 20 NMAC 4.1~~
48 ~~[now 20.4.1 NMAC];~~

49 **~~F~~.** ~~"Compliance assistance visit for salvage yards" means a pre-arranged inspection at a salvage~~
50 ~~yard in order for the salvage yard to acquire a New Mexico Motor Vehicle Division Auto Recycler's license;~~

51 **~~F~~G.** ~~"Cleanup" means any activities associated with the removal or remediation of hazardous waste at~~
52 ~~a site, but does not include closure of a solid or hazardous waste management unit;~~

53 **~~G~~H.** ~~"Department" means the New Mexico environment department;~~

54 **~~I~~.** ~~"Episodic generator" means a generator that has a planned or unplanned event that does not~~
55 ~~normally occur during generator operations, resulting in an increase in the generation of hazardous waste that~~
56 ~~exceeds the calendar month quantity limits for the generator's usual category;~~

1 J. “Emergency Environmental Protection Agency (“EPA”) identification number” means a
2 generator that meets the definition of a large quantity or small quantity generator due to an emergency and requires
3 an EPA identification number to dispose of the hazardous waste;

4 HK. “Generator” means a generator under 20 NMAC 4.1 [now 20.4.1 NMAC], Hazardous Waste
5 Management, who is ~~also either~~ a large quantity generator, ~~or~~ small quantity generator, or very small quantity
6 generator of hazardous waste under this part;

7 HL. “Hazardous waste” means all waste or material regulated as hazardous waste under 20 NMAC
8 4.1 [now 20.4.1 NMAC], Hazardous Waste Management;

9 JM. “Imported hazardous waste” means hazardous waste that was generated outside of the state of
10 New Mexico, including waste generated outside the United States, and that has been transported into the state for
11 treatment, storage ~~for longer than 90 days~~, or disposal;

12 KN. “Large quantity generator” means a generator who generates more than 1,000 kilograms (or
13 more than 2,204~~5~~ pounds) of hazardous waste during any month in the calendar year; or a generator who generates
14 more than 1 kilogram (or more than 2.2 pounds) of acutely toxic or “p-listed” hazardous waste in any month in the
15 calendar year; or a generator that accumulates more than 6,000 kilograms (or more than 13,227~~8~~ pounds) of
16 hazardous waste on site in any month in the calendar year;

17 LO. “Person” means any individual, trust, firm, joint stock company, federal agency, corporation,
18 including a government corporation, partnership, association, state, municipality, commission, political subdivision
19 of a state or any interstate body;

20 MP. “Recycled” means “used or reused” or “reclaimed” as those terms are defined in 40 CFR, Part
21 261.1(c);

22 NQ. “Secretary” means the secretary of environment;

23 OR. “Site” means an “individual generation site” as defined in 40 CFR, Part 260.10;

24 PS. “Small quantity generator” means a generator ~~who is not a large quantity generator and~~ who
25 generates more than 100 kilograms (or more than 220 pounds) but less than 1,000 kilograms (or less than 2,20~~54~~
26 pounds) of hazardous waste during any month in the calendar year; or a generator that accumulates more than 1,000
27 kilograms (or more than 2,20~~54~~ pounds) of hazardous waste on site in any month in the calendar year;-

28 T. “Very small quantity generator” means a generator who generates less than 100 kilograms (or
29 less than 220 pounds) in any month in the calendar year and never accumulates more than 1,000 kilograms (or more
30 than 2,20~~54~~ pounds) of hazardous waste on site in any month in the calendar year.

31 [2/18/1994; 11/30/1995; 12/31/1998; Recompiled 11/27/2001]

32
33 **20.4.3.8 - 20.4.3.107 [RESERVED]**

34
35 **20.4.3.108 SAVING CLAUSE:** Amendment of these fee regulations shall not affect any administrative or
36 judicial enforcement action pending on the effective date of this part.

37 [2/18/1994; 11/30/1995; 12/31/1998; Recompiled 11/27/2001]

38
39 ~~**20.4.3.109 FEES CUMULATIVE; SUBJECT TO LIMITS:**~~

40 ~~**A.** The fees provided for in this part are cumulative, subject to the limits set forth in Subsection B:~~

41 ~~**B.** The aggregate amount of the annual generation, imported waste compensating and business fees to~~
42 ~~be paid per person for any year based on this part shall be limited to:~~

43 ~~(1) in the case of persons for whom the cumulative total of the sites at which they generate~~
44 ~~hazardous waste, and the treatment, storage and disposal facilities they own or operate which receive imported~~
45 ~~hazardous waste located in the state, is one, \$35,000;~~

46 ~~(2) in the case of persons for whom the cumulative total of the sites at which they generate~~
47 ~~hazardous waste and the treatment, storage of disposal facilities they own or operate which receive imported~~
48 ~~hazardous waste located in the state, is two, \$50,000; and~~

49 ~~(3) in the case of persons for whom the cumulative total of the sites at which they generate~~
50 ~~hazardous waste and the treatment, storage or disposal facilities they own or operate which receive imported~~
51 ~~hazardous waste located in the state, is three or more, \$65,000.~~

52 ~~(4) These limits shall not apply to any late charges or penalties assessed under Section 600 of~~
53 ~~this part [now 20.4.3.600 NMAC] or otherwise under the act. These limits shall not apply to hazardous waste permit~~
54 ~~fees or any other fees which may be applicable to hazardous waste generators or facilities, other than the fees~~
55 ~~established pursuant to Subparts II, III and IV of this part [now 20.4.3.200 NMAC through 20.4.3.203 NMAC,~~
56 ~~20.4.3.300 NMAC through 20.4.3.302 NMAC and 20.4.3.400 NMAC through 20.4.3.402 NMAC].~~

1 ~~C. For purposes of the limits set forth in Subsection B, only:~~
2 ~~(1) the term "facility" shall not include a site created solely as a result of a discharge or~~
3 ~~cleanup of a discharge described in Paragraph B.1 or B.2 of Section 201 [now Paragraphs (1) or (2) of Subsection B~~
4 ~~of 20.4.3.201 NMAC];~~

5 ~~(2) a parent corporation and its wholly owned subsidiary corporations shall be a single~~
6 ~~person.~~

7 ~~D. If the owner and the operator of a facility are separate persons, only one person is required to pay~~
8 ~~the fees due, but both are liable in the event of noncompliance. Regardless of which person pays fees, the limits set~~
9 ~~forth in Subsection B, applicable to the owner and operator, shall be determined based on the characteristics of the~~
10 ~~operator.~~

11 ~~[2/18/1994; 11/30/1995; 12/31/1998; Recompiled 11/27/2001]~~

12
13 ~~20.4.3.110 QUANTITY CALCULATIONS: In computing fees under Subparts II and III of this part [now~~
14 ~~20.4.3.200 NMAC through 20.4.3.203 NMAC and 20.4.3.300 NMAC through 20.4.3.302 NMAC], all quantities of~~
15 ~~hazardous waste exceeding a quantity specified therein shall be rounded to the next highest whole number.~~
16 ~~[2/18/1994; 11/30/1995; Recompiled 11/27/2001]~~

17
18 **20.4.3.111 ORPHAN WASTE:** Nothing in this part is intended to require the payment of annual hazardous
19 waste fees on orphan hazardous waste or waste generated as a result of the cleanup of orphan hazardous waste.
20 "Orphan hazardous waste" means hazardous waste for which a responsible party cannot be identified. The
21 department may collect any fees otherwise owed from the person responsible for the creation of the orphan
22 hazardous waste, if later identified.

23 ~~[2/18/1994; Recompiled 11/27/2001]~~

24
25 **20.4.3.112 - 20.4.3.199 [RESERVED]**

26
27 ~~20.4.3.200 GENERATION ANNUAL FEES: ANNUAL GENERATION FEES: Every generator shall~~
28 ~~pay hazardous waste generation Based on activities as defined in 20.4.3.7 NMAC, facilities shall pay fees to the~~
29 ~~department annually, in accordance with the provisions of this part.~~

30 ~~[2/18/1994; 11/30/1995; Recompiled 11/27/2001]~~

31
32 **20.4.3.201 FEE SCHEDULE:**

33 **A.** Annual ~~generation~~ fees are set forth ~~in the schedules~~ below:

34 ~~(1) Very small quantity generator: \$100;~~

35 ~~(2) Small quantity generator: \$500;~~

36 ~~(3) Large quantity generators that generate 5,000 pounds or less of hazardous waste~~
37 ~~annually: \$5,000;~~

38 ~~(4) Large quantity generators that generate more than 5,000 pounds but less than 10,000~~
39 ~~pounds of hazardous waste annually: \$10,000;~~

40 ~~(5) Large quantity generators that generate 10,000 pounds or more of hazardous waste:~~
41 ~~\$20,000~~

42 ~~(1) A large quantity generator at a site shall pay:~~

43 ~~(a) \$.01 per pound of hazardous waste generated at the site, except waste specified~~
44 ~~in Paragraph 1.b of this Subsection A [now Subparagraph (b) of Paragraph (1) of Subsection A of 20.4.3.201~~
45 ~~NMAC], or in Subsection B of this section, during the previous calendar year; and~~

46 ~~(b) \$.01 per ton for:~~

47 ~~(i) wastewater generated by an oil refinery if it is designated as hazardous~~
48 ~~waste solely because it exhibits a hazardous characteristic as defined in 40 CFR, Part 261, Subpart C;~~

49 ~~(ii) any other waste water if it is designated as hazardous waste solely~~
50 ~~because it exhibits a hazardous characteristic as defined in 40 CFR, Part 261, Subpart C;~~

51 ~~(iii) generated at the site during the previous calendar year and subsequently~~
52 ~~rendered non-hazardous.~~

53 ~~(2) A small quantity generator at a site shall pay the following fee based upon the average~~
54 ~~monthly amount of hazardous waste generated at the site, not including waste specified in Subsection B of this~~
55 ~~section, during the previous calendar year:~~

56 ~~lbs/month fee (per year)~~

1	1,001 2,205	\$250
2	501 1,000	\$100
3	1 500	\$ 35

4 ~~B.~~ The annual generation fee shall not apply to the following:

5 ~~(1)~~ waste generated as a result of, or in connection with, an accidental discharge of a

6 hazardous waste or of a material that, when discharged, becomes a hazardous waste, and any waste generated by the

7 cleanup of such a discharge; the annual generation fee, however, must be paid by a person who accidentally

8 discharges a hazardous waste, or a material that, when discharged, becomes a hazardous waste if the person has not

9 taken all actions reasonably necessary to prevent the discharge, or has not taken all actions reasonably necessary to

10 discontinue a discharge after they became aware of the discharge; and the department may also collect the fee that,

11 but for this paragraph, would be owed on waste generated by the cleanup of such discharge from such person;

12 ~~(2)~~ waste generated by the cleanup of any discharge of hazardous waste or a material that,

13 when discharged, became a hazardous waste, if the discharge occurred prior to January 1, 1993, or if the waste was

14 not discharged by the generator; the department, however, may collect the fee that otherwise would be owed on

15 waste that was not discharged by the generator from the person responsible for the discharge;

16 ~~(3)~~ waste generated as a result of, or in connection with, the closure of a solid or hazardous

17 waste management unit that stopped receiving waste prior to January 1, 1993;

18 ~~(4)~~ waste that has been recycled (generators excluding recycled waste from their fee

19 calculations shall document and demonstrate to the satisfaction of the department that their waste was recycled); and

20 ~~(5)~~ waste upon which an annual generation fee has already been paid; in the event media or

21 debris becomes a hazardous waste as a result of contamination by waste on which an annual generation fee has

22 already been paid, the generator shall pay the fee due only on the newly generated waste.

23 ~~C.~~ Any generator that was a large quantity generator at a site during the calendar year prior to the

24 year in which the fee is to be paid, must compute its annual generation fee for the site in accordance with Paragraph

25 A.1 [now Paragraph (1) of Subsection A of 20.4.3.201 NMAC]. Any generator that was a small quantity generator

26 at a site during the calendar year prior to the year in which the fee is to be paid must calculate the average waste

27 generated per month to determine the fee due under Paragraph A.2 [now Paragraph (2) of Subsection A of

28 20.4.3.201 NMAC].

29 [2/18/1994; Recompiled 11/27/2001]

30

31 **20.4.3.202 FEE CALCULATION:**

32 ~~A.~~ The annual generation fee shall be determined based on the amount of hazardous waste generated

33 at a site during the calendar year prior to the year in which the fee is to be paid.

34 ~~B.~~ Where no records of the amount of waste generated exist, the generator may estimate the amount,

35 using reasonable efforts to estimate the amount accurately based on the best available information.

36 ~~C.A.~~ Nothing herein is intended to affect the generator's obligations with respect to reporting or record

37 keeping under other applicable laws and regulations.

38 ~~DB.~~ The total annual generation fees due are the cumulative total of the fees for all sites at which the

39 person paying the fees generated hazardous waste engaged in activities as defined in 20.4.3.7 NMAC during the

40 calendar year prior to the year in which the fee is to be paid, subject to the limits set forth in Section 109 of this part

41 [now 20.4.3.109 NMAC];

42 ~~C.~~ Beginning January 1 following the effective date of these fee regulations, the fees listed in

43 20.4.3.401 NMAC shall be adjusted annually to account for inflation. The amounts shall be adjusted by the

44 percentage of the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U),

45 United States City Average for All Items, published by the United States Department of Labor. The amount of

46 change in the fee shall be rounded to the nearest \$1.00.

47 [2/18/1994; 12/31/1998; Recompiled 11/27/2001]

48

49 **20.4.3.203 TRANSFER OF OWNERSHIP/OPERATIONS:**

50 ~~A.~~ If there is a transfer of ownership or operations, the generator at the site on the date the annual

51 generation fee is due under Section 500 [now 20.4.3.500 NMAC] is liable for payment of the entire fee due in full.

52 ~~BA.~~ The transferor must report the waste generated during the calendar year in which the transfer takes

53 place but, prior to transfer to the department, on a form obtained from the department. This report and payment

54 shall be submitted to the department at the time of transfer.

55 ~~C.~~ At the time of transfer, the transferor must also provide a copy of the above report to the person

56 who will be liable for the fees based on the waste reported. In addition to the report, the transferor must provide to

1 ~~that person any manifests prepared for shipments of the waste reported, or copies thereof, and any other information~~
2 ~~used to prepare the report. Manifests and other information need not be sent to the department under this section,~~
3 ~~unless requested by the department.~~

4 [2/18/1994; Recompiled 11/27/2001]

5
6 **20.4.3.204 - 20.4.3.299 [RESERVED]**

7
8 **20.4.3.300 IMPORTED WASTE COMPENSATING FEES: ANNUAL IMPORTED WASTE**

9 **COMPENSATING FEES:** For waste that is generated out-of-state, but treated, stored, including at transfer
10 facilities, or disposed of in New Mexico, an annual imported waste compensating fee shall be paid in lieu of the
11 generation fee provided for in ~~Subpart H of this part [now 20.4.3.200 NMAC through 20.4.3.203 NMAC]~~. The
12 owner or operator of the ~~treatment, storage or disposal~~ facility first receiving the imported hazardous waste shall pay
13 ~~the fee~~ to the department annually \$0.01 per pound of hazardous waste managed in New Mexico, in accordance with
14 the provisions of this part.

15 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

16
17 **20.4.3.301 FEE SCHEDULE:** The annual ~~generation~~ fee and the exclusions applicable thereto shall apply
18 to imported hazardous waste to the same extent as if the waste had been generated within the state. For purposes of
19 determining the volume of waste and the fees due, all imported hazardous waste received by ~~a treatment, storage or~~
20 ~~disposal~~ facility, during the calendar year prior to the year in which the fee is to be paid, shall be considered to have
21 been received from a single source.

22 [2/18/1994; Recompiled 11/27/2001]

23
24 **20.4.3.302 TRANSFER OF OWNERSHIP/OPERATIONS:**

25 **A.** If there is a transfer of ownership or operations, the owner or operator of the facility on the date an
26 imported waste compensating fee is due under ~~Section 500 [now 20.4.3.500 NMAC]~~ is liable for payment of that fee
27 in full.

28 **B.** The transferor must report the imported waste received during the calendar year in which the
29 transfer takes place to the department, on a form obtained from the department. This report shall be submitted to the
30 department at the time of transfer.

31 **C.** At the time of transfer, the transferor must also provide a copy of the above report to the person
32 who will be liable for the fee based on the waste reported. In addition to the report, the transferor must provide to
33 that person any manifests prepared on the waste reported, or copies thereof, and any other information used to
34 prepare the report. Manifests and other information need not be sent to the department under this section, unless
35 requested by the department.

36 [2/18/1994; Recompiled 11/27/2001]

37
38 **20.4.3.303 - 2.4.3.399 [RESERVED]**

39
40 **20.4.3.400 BUSINESS FEES: ~~ANNUAL BUSINESS FEES:~~** ~~Every generator shall pay hazardous waste~~
41 ~~business fees to the department annually, in accordance with the provisions of this part. Business fees shall be paid~~
42 ~~for each of the events outlined in 20.4.3.401 NMAC.~~

43 [2/18/1994; 11/30/1995; 12/31/1998; Recompiled 11/27/2001]

44
45 **20.4.3.401 FEE SCHEDULE:** ~~Annual business~~ Business fees are set forth in the schedules below and due at
46 time of request. Generation at individual generation site (per site):

47 ~~A. small quantity generator: \$200;~~

48 ~~B. large quantity generator: \$2,500.~~

49 A. Episodic generators, for each planned or unplanned event: \$500;

50 B. Generators or co-generators requesting temporary or emergency EPA identification number
51 requests: \$100;

52 C. Salvage yards, for each compliance assistance visit requested: \$100;

53 D. Generators notifying of 40 CFR 262 Subpart K activities: \$100;

54 E. Generators notifying of 40 CFR 250.10 (hazardous secondary materials activities): \$100;

55 [2/18/1994; 11/30/1995; 12/31/1998; Recompiled 11/27/2001]

1 **20.4.3.402 FEE CALCULATION:**

2 ~~A. The annual business fee shall be the cumulative total of the fees for all sites at which the person~~
3 ~~generated hazardous waste during the calendar year, prior to the year in which the fee is to be paid, subject to the~~
4 ~~limits set forth in Section 109 of this part [now 20.4.3.109 NMAC].~~

5 ~~B. A site created solely as a result of a discharge or cleanup of a discharge described in Paragraph~~
6 ~~B.1 or B.2 of Section 201 [now Paragraphs (1) or (2) of Subsection B of 20.4.3.201 NMAC] shall not be considered~~
7 ~~a site for purposes of the annual business fee.~~

8 ~~CA. The annual business fee shall be paid in full if the person generated hazardous waste at the~~
9 ~~site applicable during any part of the calendar year.~~

10 ~~D. A generator shall pay the fee for large quantity generators, unless it can demonstrate that it was a~~
11 ~~small quantity generator.~~

12 ~~E. The generator at the site on the date the annual business fee is due under Section 500 [now~~
13 ~~20.4.3.500 NMAC] is liable for payment of that fee in full. Payments will not be refunded because of a transfer of~~
14 ~~ownership or operations to a new owner or operator.~~

15 ~~B. The business fees are due for all sites engaged in activities as defined in 20.4.3.7 NMAC during~~
16 ~~the calendar year prior to the year in which the fees are to be paid, subject to the limits set forth in 20.4.3.109~~
17 ~~NMAC.~~

18 ~~C. Beginning January 1 following the effective date of these fee regulations, the fees listed in~~
19 ~~20.4.3.401 NMAC shall be adjusted annually to account for inflation. The amounts shall be adjusted by the~~
20 ~~percentage of the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U),~~
21 ~~United States City Average for All Items, published by the United States Department of Labor. The amount of~~
22 ~~change in the fee shall be rounded to the nearest \$1.00.~~
23 [2/18/1994; 11/30/1995; 12/31/1998; Recompiled 11/27/2001]

24
25 **20.4.3.403 - 20.4.3.499 [RESERVED]**

26
27 **20.4.3.500 DUE DATES:** The annual fees for which this part provides are due and payable on August 1 of
28 each year.
29 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

30
31 **20.4.3.501 MANNER OF PAYMENT:** The person paying fees under this part shall complete a fee report
32 form obtained from the department, and submit the report to the department, together with any documentation
33 requested by the department, ~~and a check, cashier's check or money order for the fees owed, to the department in~~
34 ~~accordance with the instructions set forth on the report form.~~ The report shall include a certification of the
35 truthfulness of all of the matters and facts contained in the report, as provided in ~~Section 502 [now 20.4.3.502~~
36 ~~NMAC]. All fees shall be paid to NMED by certified check or money order payable to the New Mexico~~
37 ~~Environment Department or the Hazardous Waste Bureau, by electronic funds transfer (with prior notice to NMED),~~
38 ~~or by other methods deemed acceptable by NMED. Cash payments are not an acceptable method of payment. All~~
39 ~~payments must include the name of facility, address and contact information or invoice number and be addressed to~~
40 ~~the New Mexico environment department – hazardous waste bureau.~~
41 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

42
43 **20.4.3.502 CERTIFICATE:** The certification required ~~by Section 501 [now of 20.4.3.501 NMAC]~~ shall be
44 made on oath or affirmation in accordance with Sections 14-13-1 and 14-13-2 NMSA 1978, by the chief executive
45 officer or his designee in the case of a corporation, the managing partner in the case of a partnership, the proprietor
46 in the case of a sole proprietorship, or the official with authority to execute the certification in the case of a
47 government entity.
48 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

49
50 **20.4.3.503 - 20.4.3.599 [RESERVED]**

51
52 **20.4.3.600 LATE CHARGES; ENFORCEMENT: LATE CHARGES:** If any fee for which this part
53 provides is not paid in full when due, the person owing the fee shall pay a billing charge of \$100, plus late charges in
54 the amount of an additional one percent (1%) of all fees owed for every month or part of a month in which the fees
55 remain unpaid beyond the due date. Billing and late charges shall be considered hazardous waste fees for deposit in

1 the hazardous waste fund, pursuant to Section 74-4-4.5 NMSA 1978, and are independent of any penalties assessed
2 under the act.
3 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

4
5 **20.4.3.601 VERIFICATION BY THE DEPARTMENT:**

6 **A.** The department may at any time verify the accuracy of reports submitted and amounts paid
7 pursuant to this part. It may use any relevant information for verification purposes, including, but not limited to, the
8 biennial reports submitted pursuant to the ~~20 NMAC 4.1~~ [now 20.4.1 NMAC], Hazardous Waste Management, or
9 40 CFR, Parts 262.41, 264.75 or 265.75, and any manifests prepared for waste shipments. Persons who are subject
10 to this part shall make these and other records relating to the waste generated, manifested or managed available to
11 the department upon request.

12 **B.** If the department determines that a fee report submitted pursuant to ~~Section 501~~ [now 20.4.3.501
13 NMAC] does not accurately state the quantity of waste generated, the quantity of imported hazardous waste treated,
14 stored or disposed of, or the fees owed, it shall notify the person submitting the report of the discrepancy and may
15 recalculate the annual fee based on the department's determination.

16 **C.** Before assessing a recalculated fee, the department shall send notice of its determination and its
17 intent to reassess the fee to the person who had submitted the report. That person shall have ~~thirty (30)~~ days from
18 the date of the notice to provide the department with any documentation to rebut the determination. Once the
19 department has reviewed any documentation submitted, it will send notice of fee assessment to the person owing a
20 fee. Any amounts that the department determines were due, together with the billing and late charges on the
21 amounts due and unpaid, shall be paid within ~~sixty (60)~~ days of the date of the notice of fee assessment.
22 [2/18/1994; 11/30/1995; 12/31/1998; Recompiled 11/27/2001]

23
24 **20.4.3.602 ADMINISTRATIVE APPEAL:**

25 **A.** A notice of fee assessment issued under ~~Section 601.C~~ [now Subsection C of 20.4.3.601 NMAC]
26 may be appealed by filing a written request for hearing with the hearing clerk designated by the secretary within
27 ~~thirty 30~~ days of the date of the notice. The written request shall be accompanied by a copy of the fee assessment
28 being contested and shall set forth the grounds upon which the appellant disagrees with the assessment.

29 **B.** Except as otherwise provided, notice of docketing and hearing officer assignment, motions, pre-
30 hearing procedures and discovery, and hearing and post-hearing procedures shall be governed by 20 ~~NMAC 1.5~~
31 [now 20.1.5 NMAC], Adjudicatory Procedures - Environment Department. The hearing officer shall schedule the
32 hearing for no later than ~~ninety (90)~~ days after service of the notice of docketing.

33 **C.** The department shall not seek collection of the fee or take enforcement action on the fee
34 assessment until the secretary has issued a decision on the appeal. Late charges on the amount assessed shall
35 continue to accrue and shall be payable if the assessment is upheld or upheld with modifications. If the assessment
36 is modified on appeal, late charges shall be calculated based on the assessment as modified.
37 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

38
39 **20.4.3.603 FAILURE TO SUBMIT REPORTS OR PAY FEES:**

40 **A.** Failure to complete or submit a report in the manner required by ~~Section 501~~ [now 20.4.3.501
41 NMAC], or to pay fees in full when due, may result in enforcement proceedings under the act. Enforcement actions
42 may include, but are not limited to, the revocation or suspension of any permit issued by the department pursuant to
43 the act to the person failing to complete or submit the fee report or pay the fees as required.

44 **B.** Any person who knowingly omits material information from or makes any false statement or
45 representation in a fee report may be subject to criminal penalties under the act.
46 [2/18/1994; Recompiled 11/27/2001]

47
48 **20.4.3.604 - 20.4.3.699 [RESERVED]**

49
50 **20.4.3.700 RECORDS AND RECORD KEEPING: RECORDKEEPING REQUIRED:** All persons
51 subject to this part are required to retain the documentation necessary to support their fee calculations, including all
52 records used as a basis for the calculations.
53 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

54
55 **20.4.3.701 RETENTION RECORDS:** The records required by ~~Section 700~~ [now 20.4.3.700 NMAC],
56 together with copies of any fee reports submitted under these regulations, shall be retained for three (~~3~~) years from

1 the date of payment of the fees to which the records and reports apply. The periods of record retention required by
2 this section are automatically extended during the course of any unresolved enforcement action regarding the
3 regulated activity.

4 [2/18/1994; Recompiled 11/27/2001]

5
6 **20.4.3.702 - 20.4.3.799 [RESERVED]**

7
8 **20.4.3.800 MISCELLANEOUS PROVISIONS: DEPOSIT IN THE HAZARDOUS WASTE FUND:**

9 All fees collected pursuant to this part shall be transmitted to the state treasurer for credit to the hazardous waste
10 fund, and used for the sole purpose of meeting necessary expenses in the administration and operation of the
11 hazardous waste program.

12 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

13
14 **20.4.3.801 ANNUAL REPORT:** Within ~~ninety~~(90) days of the end of each state fiscal year, the department
15 shall prepare and submit to the environmental improvement board a report describing the funds received pursuant to
16 these regulations and the activities performed with the use of these funds. This report shall be made available to
17 members of the public upon request. The department may charge a fee for copies to cover its costs in printing or
18 duplicating the report.

19 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

20
21 **20.4.3.802 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with this part does not relieve
22 a person of the obligation to comply with other applicable state and federal regulations.

23 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

24
25 **20.4.3.803 CONSTRUCTION:** This part shall be liberally construed to effectuate the purpose of the act.

26 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

27
28 **20.4.3.804 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder, or
29 its application to other situations or persons, shall not be affected.

30 [2/18/1994; 11/30/1995; Recompiled 11/27/2001]

31
32 **20.4.3.805 - 20.4.3.899 [RESERVED]**

33
34 **HISTORY OF 20.4.3 NMAC:**

35 Pre-NMAC Regulatory Filing History: This part is derived in part from material previously filed with the State
36 Records Center and Archives under Annual Hazardous Waste Fee Regulations, EIB/AHWFR-1, filed January 19,
37 1994.

38
39 **History of Repealed Material: [RESERVED]**