

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

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO 20.4.2 NMAC –  
*Hazardous Waste Permit and Corrective Action Fees*  
AND 20.4.3 NMAC – *Annual Hazardous Waste Fees***

**No. EIB 19-\_\_ (R)**

**Hazardous Waste Bureau,  
Resource Protection Division,  
New Mexico Environment Department,**

*Petitioner.*

---

**STATEMENT OF REASONS**

---

1. The Hazardous Waste Act (“Act”), NMSA 1978, Sections 74-4-1 to -14, provides authorization for the *Hazardous Waste Permit and Corrective Action Fees* at 20.4.2 NMAC and the *Annual Hazardous Waste Fees* at 20.4.3 NMAC.

2. Under Section 74-4-4.2(J) of the Act, the Environmental Improvement Board (“EIB”) “shall provide a schedule of fees for businesses generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste.” NMSA 1978, § 74-4-4.2(J).

3. The purpose of the *Hazardous Waste Permit and Corrective Action Fees* (20.4.2 NMAC) and the *Annual Hazardous Waste Fees* (20.4.3 NMAC) is to support regulatory oversight of hazardous waste facilities by the New Mexico Environment Department (“NMED”), through the Hazardous Waste Bureau (“Bureau”).

4. The EIB originally promulgated these rules as the Hazardous Waste Fee Regulations, EIB/HWFR-1, on October 28, 1988 and the Annual Hazardous Waste Fee Regulations, EIB/HWFR-1, on January 19, 1994.

5. The regulations were restructured to fit the NMAC format and became 20 NMAC 4.2, Hazardous Waste Fees and 20 NMAC 4.3, Annual Hazardous Waste Fees on November 30, 1995.

6. The Hazardous Waste Fees (20 NMAC 4.2) were amended on December 31, 1998 to incorporate fees associated with NMED's authorization from the Environmental Protection Agency ("EPA") for Resource Conservation and Recovery Act ("RCRA") corrective action processes for permitted and interim status facilities.

7. The Annual Hazardous Waste Fees (20 NMAC 4.3) were recompiled on November 27, 2001 to comply with the new NMAC format as the current *Annual Hazardous Waste Fees* at 20.4.3 NMAC.

8. The Hazardous Waste Fees (20 NMAC 4.2) were renumbered, reformatted, amended and replaced on August 18, 2006 to comply with the new NMAC format and to reflect the updated cost of operations and document review times for the HWB, becoming the current *Hazardous Waste Permit and Corrective Action Fees* at 20.4.2 NMAC.

9. Under the authority of NMSA 1978, Sections 74-4-4.2(J), the *Hazardous Waste Permit and Corrective Action Fees* (20.4.2 NMAC) provide for the assessment of fees for "all persons who own or operate a permitted facility at which the treatment, storage, or disposal of hazardous waste is occurring or has occurred, all persons seeking or required to obtain a permit for the treatment, storage, or disposal of hazardous waste, and all persons engaging in or required to engage in closure, post closure care and corrective action under the Hazardous Waste Act." 20.4.2.2 NMAC.

10. The Amendments to 20.4.2 NMAC are necessary to adjust the *Hazardous Waste Permit and Corrective Action Fees* to reflect current operational costs and to more accurately represent document review times based on data acquired since the regulations became effective in August 2006.

11. Current fee regulations are based on 2002 costs for conducting document reviews and estimated review timeframes. The current fees are inadequate to support the Permits Management Program.

12. The updated rules will be based on current hourly costs of operation in combination with an adjustment for inflation based on the 2018 value of a 2004 dollar (\$1.34 in 2018 dollars) and average review times based on staff time tracking for document reviews between Fiscal Year 2008 and Fiscal Year 2018.

13. Additionally, an annual adjustment of the fees for inflation using the Consumer Price Index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor is incorporated into the rule through the proposed amendments.

14. Under the authority of NMSA 1978, Sections 74-4-4.2, the *Annual Hazardous Waste Fees* (20.4.3 NMAC) provide for the assessment of fees “to generators of hazardous waste, and to owners and operators of hazardous waste treatment, storage and disposal facilities which receive imported hazardous waste.” 20.4.3.2 NMAC.

15. The Amendments to 20.4.3 NMAC are necessary to revise and update the *Annual Hazardous Waste Fees*, which have not been updated since 1995.

16. The current fees do not reflect current operational costs and are inadequate to support the Compliance and Technical Assistance Management Program of the Bureau.

17. The amendments will simplify the annual fee structure to flat fees, rather than assessing a 1 cent per pound fee, as well as increase the annual fees for generators and add very small quantity generators into the fee structure.

18. Business fees are being redefined as specific activities or events that occur at facilities or Bureau services that are requested by facilities. There are currently no fees for these activities.

19. Additionally, an annual adjustment of the fees for inflation using the Consumer Price Index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor is incorporated into the rule through the proposed amendments.