

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- 35 (R)



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

Petitioner.

PETITION TO AMEND 20.4.2 NMAC AND 20.4.3 NMAC
OF THE HAZARDOUS WASTE REGULATIONS
AND REQUEST FOR HEARING

The Hazardous Waste Bureau (“Bureau”), within the Resource Protection Division of the New Mexico Environment Department (“Department”), submits this Petition to amend 20.4.2 NMAC, *Hazardous Waste Permit and Corrective Action Fees*, and 20.4.3 NMAC, *Annual Hazardous Waste Fees* and respectfully requests a hearing before the Environmental Improvement Board (“Board”) for the purpose of adoption of the proposed amendments. .

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”). The Amendments to 20.4.2 NMAC are necessary to adjust the fees to reflect current operational costs and to more accurately represent document review times. The Amendments to 20.4.3 NMAC are necessary to revise and update the fees to reflect current operational costs and more adequately support the Compliance and Technical Assistance Management Program of the Bureau.

As support for this Petition, a Statement of Reasons is included as Attachment 1. The proposed amendments to 20.4.2 NMAC and 20.4.3 NMAC are included as Attachment 2 and Attachment 3, respectively.

The Department has engaged in extensive stakeholder involvement prior to the filing of this Petition, and the response to the proposed amendments from the regulated community has been constructive and positive.

The EIB has the authority to adopt proposed regulations and amendments under NMSA 1978, Section 74-1-8(A)(13) and Section 74-4-4(A).

The Bureau respectfully requests that a hearing be scheduled on this matter in accordance with 20.1.1.300(C) NMAC for December 20, 2019. The Bureau anticipates that a hearing on this matter will take approximately four hours.

Respectfully submitted,

HAZARDOUS WASTE BUREAU
RESOURCE PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT



Christal Weatherly
Assistant General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102-3400
(505) 222-9524
christal.weatherly@state.nm.us

Andrew P. Knight
Assistant General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102-3400
(505) 222-9540
andrew.knight@state.nm.us

**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.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 4 HAZARDOUS WASTE
PART 2 HAZARDOUS WASTE PERMIT AND CORRECTIVE ACTION FEES

20.4.2.1 ISSUING AGENCY: Environmental Improvement Board.
[12/31/98; 20.4.2.1 NMAC - Rn, 20 NMAC 4.2.I.101, 8/18/06]

20.4.2.2 SCOPE: This part applies to 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 or corrective action, all persons subject to an enforceable document under the New Mexico Hazardous Waste Act, and all persons engaging in or required to engage in closure, post closure care and corrective action under the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978.
[12/31/98; 20.4.2.2 NMAC - Rn, 20 NMAC 4.2.I.102, 8/18/06]

20.4.2.3 STATUTORY AUTHORITY: Sections 74-1-8, 74-4-4, 74-4-4.2 and 74-4-4.5 NMSA 1978.
[12/31/98; 20.4.2.3 NMAC - Rn, 20 NMAC 4.2.I.103 & A, 8/18/06]

20.4.2.4 DURATION: Permanent.
[12/31/98; 20.4.2.4 NMAC - Rn, 20 NMAC 4.2.I.104, 8/18/06]

20.4.2.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section.
[12/31/98; 20.4.2.5 NMAC - Rn, 20 NMAC 4.2.I.105 & A, 8/18/06]

20.4.2.6 OBJECTIVE: The objective of this part is to provide a schedule of fees for facilities seeking permits, currently permitted, or undergoing corrective action for past or present hazardous waste management activities. Fees paid are for deposit in the hazardous waste fund to meet necessary expenses in the administration and operation of the state hazardous waste program.
[12/31/98; 20.4.2.6 NMAC - Rn, 20 NMAC 4.2.I.106, 8/18/06]

20.4.2.7 DEFINITIONS: Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in 20.4.1 NMAC, Hazardous Waste Management regulations. As used in this part:

A. "accelerated corrective action completion report" or "accelerated corrective measures completion report" means a report on implementation of presumptive remedies at small and relatively simple units where groundwater contamination is not a component of the accelerated cleanup, where the remedy is considered to be the final remedy for the unit, and where the field work will be accomplished within 180 days of commencement;

B. "accelerated corrective action work plan" or "accelerated corrective measures work plan" means a work plan to implement presumptive remedies at small and relatively simple units where groundwater contamination is not a component of the accelerated cleanup, where the remedy is considered to be the final remedy for the unit, and where the field work will be accomplished within 180 days of commencement;

C. "act" means the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978;

D. "administrative authority" means the secretary of the New Mexico environment department, or the secretary's designee, or, in the case of provisions for which the state is not authorized, the United States environmental protection agency (EPA);

E. "administratively complete" means a determination made by the secretary that an application contains all the general information required in 40 CFR 270.13, applicable specific information in sections 40 CFR 270.14 through 270.28 and is complete as defined by the regulations of 20.4.1.900 NMAC incorporating 40 CFR 270.10 (c) and (d);

F. "area of concern" or "AOC" means any area having a known or suspected release of hazardous waste or hazardous constituents that is not from a solid waste management unit and that the secretary has determined may pose a current or potential threat to human health or the environment, pursuant to 20.4.1.500 NMAC (incorporating 40 CFR 270.32 (b) (2)). An area of concern may include buildings, and structures at which releases of hazardous waste or constituents were not remediated, including one-time and accidental events;

G. "~~certification of completion~~background study report" means a report documenting the results of a study to determine background concentrations of naturally occurring inorganic compounds~~completion of corrective~~

~~action required at a unit, submitted to the NMED to demonstrate that corrective action requirements for the unit, have been satisfied;~~

~~H. "background study work plan" means a plan proposing the methods to evaluate naturally occurring concentrations of inorganic compounds in environmental media.~~

~~I. "certification of completion" means completion of corrective action required at a unit, submitted to the NMED to demonstrate that corrective action requirements for the unit, specified an order, have been satisfied~~

~~HJ. "closure certification document" means all documentation certified by a New Mexico registered professional engineer in a certification of closure that is submitted by an owner or operator;~~

~~IK. "corrective action" means any activity related to site assessment, investigation, remediation, characterization or monitoring including reporting and document submittals at SWMUs or AOCs, including activities related to off-site migration;~~

~~JL. "corrective action complete with controls" means that NMED has determined that no additional remedial activity is required at a unit, but the unit requires continued performance of operation and maintenance, or monitoring actions for engineering controls, or institutional controls;~~

~~KM. "corrective action complete without controls" means that NMED has determined that no additional remedial activity is required at a unit;~~

~~LN. "corrective measures evaluation" or "CME" or "corrective measures study report" or "CMS report" means a report or study that evaluates remedial alternatives for the purpose of remedy selection and includes specifications to implement a proposed remedy;~~

~~MO. "corrective measures evaluation work plan" or "CME work plan" or "corrective measures study work plan" or "CMS work plan" means a plan to identify, develop and evaluate potential corrective measures (remedy) alternatives;~~

~~NP. "corrective measures implementation work plan" or "CMI work plan" means plans and specifications to implement the approved remedy at a facility;~~

~~OQ. "corrective measures implementation report" or "CMI report" means a report signifying completion of the remedy approved by NMED for termination of corrective action;~~

~~R. "emergency permit" means an emergency permit as defined at 40 CFR 270.61~~

~~PS. "enforceable document" means an order, a plan, or other document issued by EPA or the state under an authority that meets the requirements of 40 CFR 271.16 (e);~~

~~T. "FFCO" means federal facility compliance order;~~

~~U. "frequent monitoring plan" means a plan that describes proposed periodic monitoring activities for detection, compliance or corrective action monitoring, monitoring of a remediation system, or other corrective measure monitoring for a single site or contiguous sites with shared boundaries;~~

~~V. "frequent monitoring report" or "frequent progress report" means a report that describes periodic monitoring activities and results for detection, compliance or corrective action monitoring, monitoring of a remediation system, or other corrective measure monitoring or progress related to a corrective measure for a single site or contiguous sites with shared boundaries;~~

~~Q. "FFCO" means federal facility compliance order;~~

~~RW. "hazardous waste management activity" means the treatment, storage, or disposal of hazardous waste within a hazardous waste management unit at a facility subject to a hazardous waste permit or operated under interim status and subject to permit authorization, or any closure or post-closure care activity required at a hazardous waste management unit;~~

~~SX. "HWMR" means the New Mexico Hazardous Waste Management regulations, Title 20, Chapter 4, Part 1 of the New Mexico administrative code;~~

~~FY. "interim measure monitoring report" means a report which describes results of the monitoring activities conducted during implementation of measures to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;~~

~~UZ. "interim measures report" means a report that describes the results of interim corrective measures conducted to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;~~

~~VAA. "interim measures work plan" means a work plan to implement proposed interim corrective measures conducted to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;~~

~~WBB. "investigation report" or "RFI report" or "RCRA facility investigation report" or "phase report" means a report that summarizes the results of investigation of the nature, rate, movement and extent of contamination at a unit or facility;~~

XCC. "investigation work plan" or "RFI work plan" or "RCRA facility investigation work plan" means a work plan that describes proposed investigation activities to evaluate the nature, rate, movement and extent of contamination at a unit or facility;

DD. "letter report," or "supplemental report" or "report addendum" means a report summarizing the results on the implementation of a work plan of limited scope where the field work was completed in seven working days or less and that did not constitute the initial field investigation at a site. Must be submitted as a separate document.

EE. "letter work plan," or "supplemental work plan" or "work plan addendum" means a work plan of limited scope that describes proposed corrective action activities where the field work can be completed in seven working days or less and does not constitute the initial field investigation at a site. Must be submitted as a separate document.

YFF. "monitoring plan" means a plan that describes proposed periodic monitoring activities for detection, compliance or corrective action ~~ground-water~~ monitoring, monitoring of a remediation system, or other corrective measure monitoring;

ZGG. "notice of land transfer" means a notice that initiates NMED evaluation of the results of investigation activities conducted to evaluate the nature, rate, movement and extent of contamination and corrective measures at a property that is anticipated to be transferred to an owner other than the owner regulated by a permit or enforceable document;

AAHH. "NMED" means the New Mexico environment department;

II. "notice of disapproval" or "disapproval" means NMED-issued correspondence requiring revision and resubmittal of a deficient document.

BBJJ. "operation and maintenance plan" means a plan that describes operation, maintenance and monitoring of a remediation system or other corrective measure or monitoring activity that requires continued monitoring or upkeep during implementation;

CEKK. "periodic monitoring report" means a report that summarizes periodic detection, compliance or corrective action ground water monitoring, monitoring of a remediation system, or other corrective measure monitoring;

DDLL. "person" means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body; and shall include each department, agency and instrumentality of the United States;

EEMM. ~~"petition for NFA review" or~~ "petition for corrective action complete review" means a petition to change the status of a unit from "subject to corrective action" to a different status (e.g., corrective action complete or no further action required) based on the results of corrective action activities or other relevant information

FFNN. "pilot/aquifer test report" means a report summarizing the results of pilot or aquifer tests conducted to evaluate hydrologic or other conditions for the purpose of site ~~investigation-characterization~~ or remedy selection;

GGOO. "pilot/aquifer test work plan" means a work plan for conducting pilot or aquifer tests to evaluate hydrologic or other conditions for the purpose of site ~~investigation-characterization~~ or remedy selection;

HHPP. "RCRA facility assessment" or "RFA" means the first stage in the corrective action process in which information is compiled on conditions at the site, including releases, potential releases, exposure pathways, solid waste management units, and areas of concern;

QQ. "rejected document" means a document deemed unreviewable due to deficiencies related to permit or other enforceable document requirements, disorganization, or a substantial amount of missing information, inaccuracies, or unrelated or redundant information.

IIRR. "release assessment" or "SWMU assessment report" means an assessment of a solid waste management unit or area of concern performed after the RCRA facility assessment but before the initiation of any field investigation or full site characterization to obtain information for use in focusing subsequent investigations or eliminating certain units or areas from further consideration;

JJSS. "remedial action plan" or "RAP" means a special form of a RCRA permit as defined in 20.4.1.900 NMAC, incorporating 40 CFR 270.80;

KKTT. "remedy completion report" means a report summarizing the results of completion of the implementation of corrective measures;

UU. "revision" or "document revision" means a document that is revised and resubmitted by a facility in response to comments issued by the NMED in a Notice of Disapproval or Disapproval as distinct from revisions submitted in response to an Approval with Modification(s).

LLVV. "risk evaluation/risk assessment report" means a report summarizing the results of a risk evaluation or assessment for the purpose of evaluating the human health and ecological risks of exposure to contaminants and determining appropriate cleanup levels at a site;

MMWW. "secretary" means the secretary of the New Mexico environment department;

NNXX. "solid waste management unit" or "SWMU" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste; such units include any area at a facility at which solid wastes have been routinely and systematically released;

OOYY. "submittal" means all applications, permit modification requests, plans, reports, studies, and other documents listed in tables 2 through 7 in 20.4.2.205 NMAC through 20.4.2.210 NMAC;

PPZZ. "status report" means a report summarizing the progress of implementation of corrective actions or corrective measures;

QQAAA. "unit" means "hazardous waste management unit" as defined in 20.4.1.101 NMAC, incorporating 40 CFR 260.10, or "solid waste management unit", or "area of concern";

RRBBB. "well completion report" means a report summarizing the activities related to the drilling and installation of wells.

CCC. "well abandonment report" or "well replacement report" means a report summarizing the activities related to abandonment or replacement of a well.

DDD. "well abandonment work plan" or "well replacement work plan" means a work plan that describes the proposed activities to abandon or replace a well.

[12/31/98; 20.4.2.7 NMAC - Rn, 20 NMAC 4.2.I.107 & A, 8/18/06]

20.4.2.8 - 20.4.2.107 [RESERVED]

20.4.2.108 GENERAL PROVISIONS: Saving clause: Repeal and replacement of hazardous waste fees, New Mexico environmental improvement board, 20.4.2 NMAC, shall not affect any administrative or judicial enforcement action pending on the effective date of this part.
[12/31/98; 20.4.2.108 NMAC - Rn, 20 NMAC 4.2.I.108, 8/18/06]

20.4.2.109 - 20.4.199 [RESERVED]

20.4.2.200 PERMIT APPLICATION, INTERIM STATUS, REMEDIAL ACTION PLAN, AND CORRECTIVE ACTION FEES:
[12/31/98; 20.4.2.200 NMAC - Rn, 20 NMAC 4.2.II.200 & A, 8/18/06]

20.4.2.201 TYPES OF FEES: Every owner or operator engaged in hazardous waste management activities or engaged in corrective action shall pay to NMED fees in the amounts specified in Subsections A through L of 20.4.2.201 NMAC. However, if an owner or operator has paid a fee for any type of permit application, or for the review of a submittal, prior to the effective date of these regulations, the owner or operator shall not be required to pay the fee provided for by these regulations. An owner or operator who has paid a fee provided for in table 2 or table 4 for permit applications or permit modification requests shall be required to pay the applicable fee again if the application or document is resubmitted by the owner or operator after being denied under NMSA 1978, Section 74-4-4.2, and 20.4.1.901 NMAC by NMED. The secretary may in his discretion, based on good cause shown, determine that the fee on resubmission should be reduced or waived.

A. Annual Fees: Every owner or operator engaged in hazardous waste management activities or engaged in corrective action shall pay to NMED an annual fee in an amount equal to the sum of the annual unit fees set forth in table 1 of 20.4.2.204 NMAC for each unit as identified in the facility permit, part A application, or enforceable document, or any combination thereof as applicable.

B. Submittal review process:

(1) For each submittal, the owner or operator shall pay the associated review fee as listed in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC. NMED will conduct the review within the time specified in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC. The secretary may grant an extension of time for good cause shown. NMED shall provide notice to the owner or operator of any requested time extension.

(2) NMED will invoice the owner or operator for the applicable review fee.

(a) Within 60 days of receipt of submittal, in the case of interim status fees, corrective action submittal fees, and other fees assessed under tables 3, 5, 6, and 7 of 20.4.2.206 NMAC and 20.4.2.208 NMAC through 20.4.2.210 NMAC.

(b) After an application is deemed administratively complete, in the case of application and permit modification fees under table 2 of 20.4.2.205 NMAC and table 4 of 20.4.207 NMAC. For class 2 permit modification requests the invoice shall be issued within 30 days of receipt and the procedures of 40 CFR 270.42, as incorporated by 20.4.1.900 NMAC, shall apply. Unless extended by the secretary, administrative completeness determination shall be made within ~~180~~270 days of receipt of the submittal. If the application is incomplete, NMED shall provide the owner or operator with written notice that shall list those parts of the application that are missing and describe the specific information needed to process the permit application.

(3) The timeframe for NMED review begins after receipt of payment, except for class 2 permit modification requests, in which case the time frame for NMED's review begins upon receipt of the request.

(4) NMED will provide the owner or operator written notice of approval, approval with modifications, disapproval, denial, or rejection of the submittal. If the submittal is disapproved, denied or rejected, NMED shall provide the owner or operator with written notice providing the reasons for such action.

(5) The review times specified in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC shall be tolled during all periods in which NMED is awaiting a response by the owner or operator to a notice under Paragraph (1) of Subsection B of 20.4.2.201 NMAC and during all time periods in which further action cannot be taken due to public comment and hearing requirements, except for class 2 permit modification requests, in which case the time frame for NMED's review begins upon receipt of the request.

(6) If NMED fails to meet a notice date pursuant to 20.4.2.205 NMAC through 20.4.2.210 NMAC, including an administrative completeness notice date, the NMED shall, within 10 business days after the deadline, notify the secretary and the owner or operator that the deadline was not met. The written notice shall state the reasons that the deadline was not met and propose a new deadline by which the NMED will act. The owner or operator may submit a written response to the secretary regarding its proposed remedy within 10 business days of its receipt of the notification. The secretary, at his or her discretion, shall establish a new notice date and remedy within 30 days after the secretary receives notice that the deadline was not met.

(7) In the event of a conflict, between review time and notice dates in these regulations and in an enforceable document the time-periods and review process in the enforceable documents shall control.

C. Permit application, remedial action plan, and corrective action section fees: Every owner or operator seeking a permit for the treatment, storage or disposal of hazardous waste or for post closure care shall pay an application review and permit preparation fee set forth in table 2 of 20.4.2.205 NMAC. The fee for application review and permit preparation shall be in an amount equal to the sum of the fees for each unit included in the permit application. If a corrective action section is required, the owner or operator shall also pay the basic fee for corrective action preparation set forth in table 2 of 20.4.2.205 NMAC plus the additional unit fee for each corrective action unit in excess of one which is addressed by the corrective action section. NMED ~~shall~~will perform the review of the application and prepare the draft permit within the time specified in table 2 of 20.4.2.205 NMAC after receipt of the fees.

D. Permit renewals: Every owner or operator seeking to renew a previously issued permit for the treatment, storage or disposal of hazardous waste or for post-closure care shall pay an application review and permit preparation fee, and if required, a corrective action section fee, in the amounts and in the manner set forth in table 2 in 20.4.2.205 NMAC.

E. Interim status closure plan review fees: Every owner or operator submitting an interim status closure plan for review and approval shall pay a fee set forth in table 3 of 20.4.2.206 NMAC. The fee shall be in an amount equal to the sum of the fees set forth in table 3 of 20.4.2.206 NMAC for each unit included in the closure plan. An application to modify an approved interim status closure plan is subject to the following fees:

(1) Amendments of plans that are identified as equivalent to a class 1 or a class 2 permit modifications are subject to the corresponding fee in table 4 in 20.4.2.207 NMAC;

(2) Amendments of plans identified as equivalent to class 3 permit modifications are subject to the corresponding fee in table 3 in 20.4.2.206 NMAC.

F. Permit modification fees: Every owner or operator who requests a class 1, 2, or 3 modification to a permit, and every owner or operator whose permit is to be modified as a result of a five ~~(5)~~ year land disposal review shall pay the applicable class modification fee for each modification as set forth in table 4 of 20.4.2.207 NMAC. If the permit modification request is to add a new unit to the permit the applicable fee in table 2 of 20.4.2.205 NMAC ~~will~~shall apply.

1 **G. Closure report review fees:** Every owner or operator who submits a closure report for review
2 shall pay a closure report review fee as set forth in table 3 of 20.4.2.206 NMAC.

3 **H. Corrective action submittal review fees:** Every owner or operator who submits a corrective
4 action submittal for review shall pay a corrective action submittal review fee as set forth in table 5 of 20.4.2.208
5 NMAC. An additional unit fee shall be paid for each additional unit for submittals that address multiple units.
6 Documents that contain attached documents or attached sections of other documents within the submittal will be
7 assessed a separate document review fee for the attached document or document section corresponding to the
8 document type listed in table 5 of 20.4.2.208 NMAC. Draft documents shall be considered initial submittals subject
9 to the corrective action submittal review fees as set forth in table 5 of 20.4.2.208 NMAC. Rejected documents shall
10 be subject to the corrective action submittal review fees as set forth in table 5 of 20.4.2.208 NMAC upon
11 resubmittal.

12 **I. Land disposal review fee:** Every owner or operator subject to a review under 20.4.1.900 NMAC
13 (incorporating 40 CFR 270.50 (d)) shall pay a review fee as set forth in table 6 of 20.4.2.209 NMAC. At the time of
14 invoicing, NMED shall notify the owner or operator in writing of any additional information required to process the
15 review.

16 **J. Audit review fee:** Every owner or operator subject to an audit review required under a facility
17 permit or enforceable document shall pay an audit fee for each audit as set forth in table 6 of 20.4.2.209 NMAC.

18 **K. FFCO fee:** Every owner or operator subject to a review of amendments, annual reports, and
19 revisions under an FFCO shall pay a fee as set forth in table 6 of 20.4.2.209 NMAC. In the event of a conflict
20 between the review times specified in table 6 and the FFCO, the FFCO shall control.

21 **L. Change during interim status fee:** Every owner or operator who requests a change during
22 interim status pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.72) shall pay the following fees:

23 (1) Modifications that are identified as being equivalent to class 1 or class 2 permit
24 modifications are subject to the corresponding fee in table 7 in 20.4.2.210 NMAC;

25 (2) Modifications identified as equivalent to class 3 permit modifications are subject to the
26 corresponding fee in table 7 in 20.4.2.210 NMAC.

27 **M. Emergency permit fee:** Every facility that requests an emergency permit as required by 40 CFR
28 270.61 shall pay a fee as set forth in table 6 of 20.4.2.209 NMAC.

29 **N. Adjustment for inflation:** Beginning January 1 following the effective date of these fee
30 regulations, the fees listed in 20.4.2.204 through 20.4.2.210 shall be adjusted annually to account for inflation. The
31 amounts shall be adjusted by the percentage of the preceding calendar year's change in the consumer price index for
32 All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States
33 Department of Labor. The amount of change in the fee shall be rounded to the nearest \$50.00.
34

35 [12/31/98; 20.4.2.201 NMAC - Rn, 20 NMAC 4.2.II.201 & A, 8/18/06]

36
37 **20.4.2.202 ANNUAL FEE REPORT:** On or before September 30 of every year, NMED shall review the
38 amount of fees collected and the amount of money expended administering the hazardous waste management
39 program for the prior state fiscal year and submit a report on its review to the board. The report shall include for
40 each facility the amount of fees collected, the number and types of permitting actions taken, submittals reviewed, a
41 summary of the time required to conduct each review or permitting action, and an analysis of the cost of regulatory
42 oversight. The report shall include a summary of funds received and expenses required to administer the state
43 hazardous waste program.

44 [12/31/98; 20.4.2.202 NMAC - Rn, 20 NMAC 4.2.II.202 & A, 8/18/06]

45
46 **20.4.2.203 HEARING FEES:**

47 **A.** An applicant for issuance, renewal, or modification of a permit, or remedy selection shall be
48 required to pay the following hearing fees if the secretary determines that a public hearing shall be held on the
49 application.

50 (1) **Hearing fee:** The applicant shall be invoiced a hearing fee of twenty-five thousand
51 dollars (~~\$2025,000~~) within ~~thirty (30)~~ days of notification by the secretary that a hearing will be scheduled.

52 (2) **Administrative record preparation fee:** The applicant shall pay an administrative
53 record preparation fee equal to the actual cost of copying the administrative record for the public hearing process.

54 (3) **Facility fee:** The applicant shall pay a facility fee equal to the actual cost of providing
55 the public facility, including security and other ancillary costs, necessary to conduct the public hearing.

(4) **Recording and Transcription service fee:** The applicant shall pay a recording and transcription service fee equal to the actual cost of providing recording and transcription services for the public hearing and providing three copies of the hearing transcript to NMED.

(5) **Translation service fee:** If the secretary determines that translation services are required for the public hearing, the applicant shall pay a translation service fee equal to the actual cost of providing translation services necessary to conduct the public hearing.

(6) The applicant shall be invoiced for the total cost of the hearing within 90 days after the secretary's final decision under Subsection A of 20.4.2.203 NMAC. The hearing fee required under Paragraph (1) of Subsection A of 20.4.2.203 NMAC will be credited against the total cost of the hearing, or if the fee is more than the total cost of the hearing it shall be credited for future actions.

[12/31/98; 20.4.2.203 NMAC - Rn, 20 NMAC 4.2.II.201.8 & 203 & A, 8/18/06]

20.4.2.204 TABLE 1 - ANNUAL FEES:

Unit Type	Fee
Disposal	\$4,000 <u>\$5,500</u>
Treatment	\$3,000 <u>\$4,000</u>
Storage	\$2,000 <u>\$3,000</u>
Post Closure	\$4,000 <u>\$5,500</u>
Corrective Action Management (CAMU)	\$4,000 <u>\$5,500</u>
Temporary (TU)	\$3,000 <u>\$4,000</u>
Remedial Action Plan Unit	\$3,000 <u>\$4,000</u>
Corrective Action Only	
SWMU/AOC per Unit:	<u>\$1,000</u>
— for the first 150 units (1 to 150)	<u>\$750</u>
— for the second 350 units (151 to 500)	<u>\$350</u>
— for each unit over 500 (501+)	<u>\$200</u>
Corrective Action Complete with Controls per Unit	\$23 <u>50</u>

[12/31/98; 20.4.2.204 NMAC - Rn, 20 NMAC 4.2.II.204 & A, 8/18/06]

20.4.2.205 TABLE 2 - APPLICATION AND CORRECTIVE ACTION SECTION FEES:

Unit Type	Fee	Fee for Renewal or Modification to add a unit	Review Time
Land Disposal	\$90,000 <u>\$270,000</u>	\$60,000 <u>\$180,000</u>	360 <u>1080</u> days
Post Closure	\$90,000 <u>\$120,000</u>	\$60,000 <u>\$80,000</u>	360 <u>720</u> days
Land Treatment	\$90,000 <u>\$120,000</u>	\$60,000 <u>\$80,000</u>	360 days
Surface Impoundment	\$75,000 <u>\$100,000</u>	\$50,000 <u>\$65,000</u>	360 days
Incinerator	\$75,000 <u>\$100,000</u>	\$50,000 <u>\$65,000</u>	360 <u>720</u> days
Boiler or Industrial Furnace	\$75,000 <u>\$100,000</u>	\$50,000 <u>\$65,000</u>	360 days
Subpart X	\$90,000 <u>\$120,000</u>	\$60,000 <u>\$80,000</u>	360 <u>720</u> days
Waste Pile	\$36,000 <u>\$144,000</u>	\$24,000 <u>\$96,000</u>	360 <u>720</u> days
Treatment in Tanks	\$36,000 <u>\$144,000</u>	\$24,000 <u>\$96,000</u>	360 <u>720</u> days
Treatment in Containers	\$36,000 <u>\$144,000</u>	\$24,000 <u>\$96,000</u>	360 <u>720</u> days
Storage in Tanks	\$36,000 <u>\$144,000</u>	\$24,000 <u>\$96,000</u>	360 <u>720</u> days
Storage in Containers	\$36,000 <u>\$144,000</u>	\$24,000 <u>\$96,000</u>	360 <u>720</u> days
Research Demonstration and Development	\$24,000 <u>\$32,000</u>	\$16,000 <u>\$21,500</u>	360 days
Remedial Action Plan	\$24,000 <u>\$32,000</u>	\$16,000 <u>\$21,500</u>	360 days
Permit for Corrective Action Only	\$16,000 <u>\$80,000</u>	\$10,000 <u>\$65,000</u>	360 days
Corrective Action Section	\$10,000	\$7,000	N/A
Additional SWMU/AOC Unit Fee	\$1,000 \$1,300 for each additional unit	N/A	N/A

[12/31/98; 20.4.2.205 NMAC - Rn, 20 NMAC 4.2.II.205 & A, 8/18/06]

20.4.2.206 TABLE 3 - INTERIM STATUS CLOSURE PLAN AND INTERIM STATUS AND PERMITTED UNIT CLOSURE REPORT REVIEW FEES:

Unit Type	Fee	Amendment Fee (equivalent to Class 3 permit modification)	Review Time
Land Disposal or Land Treatment	\$20,000	\$10,000	360 <u>540</u> days
Surface Impoundment	\$10,000 <u>\$25,000</u>	\$5,000 <u>\$10,000</u>	360 <u>540</u> days
Incinerator	\$8,000	\$4,000	270 days
Boiler or Industrial Furnace	\$8,000	\$4,000	270 days
Subpart X	\$10,000 <u>\$30,000</u>	\$5,000 <u>\$15,000</u>	360 <u>540</u> days
Waste Pile	\$8,000	\$4,000	270 days
Storage	\$6,000 <u>\$12,000</u>	\$3,000 <u>\$6,000</u>	180 <u>270</u> days
Treatment	\$8,000 <u>\$10,000</u>	\$4,000 <u>\$5,000</u>	270 <u>360</u> days
Closure Report	\$6,000 <u>\$13,000</u>	NA	180 days

[12/31/98; 20.4.2.206 NMAC - Rn, 20 NMAC 4.2.II.206 & A, 8/18/06]

20.4.2.207 TABLE 4 - PERMIT MODIFICATION FEES:

Modification	Fee	Review Time
Class 1 (without prior approval)	\$500 <u>\$1,800</u>	N/A
Class 1 (with prior approval)	\$2,500 <u>\$6,500</u>	120 <u>150</u> days
Class 2	\$6,000 <u>\$30,000</u>	Refer to 20.4.1.900 NMAC (incorporating 40 CFR 270.42 (b))
Class 3	\$40,000 <u>\$100,000</u>	360 <u>540</u> days
Class 3 - Petition for Corrective Action Complete Review/Petition for No Further Action Review	\$7,000 <u>\$30,000</u> plus \$250 <u>\$500</u> for each additional unit <u>up to 20 units</u> and plus <u>\$750 for every unit</u> <u>over 20 units.</u>	270 <u>360</u> days (plus 30 days for every 10 <u>3</u> units over 20)

[12/31/98; 20.4.2.207 NMAC - Rn, 20 NMAC 4.2.II.207 & A, 8/18/06]

20.4.2.208 TABLE 5 - CORRECTIVE ACTION SUBMITTAL REVIEW FEES:

Submittal Type	Basic Review Fee	Additional Unit Fee	Review Time
Accelerated Corrective Action Completion Report/Accelerated Corrective Measures Completion Report	\$5,000 <u>\$11,000</u>	\$1,000	120 days
Accelerated Corrective Action Work Plan/Accelerated Corrective Measures Work Plan	\$5,000 <u>\$9,000</u>	\$1,000	120 days
<u>Background Study Report</u>	<u>\$5,000</u>	<u>\$1,000</u>	<u>210 days</u>
<u>Background Study Work Plan</u>	<u>\$4,000</u>	<u>\$1,000</u>	<u>210 days</u>
Certification of Completion per unit	\$500 <u>\$3,000</u>	NA	90 days
Corrective Measures Implementation Report	\$12,000 <u>\$10,000</u>	\$1,000	360 days
Corrective Measures Implementation Work Plan	\$6,500 <u>\$18,000</u>	\$1,000	270 days
Corrective Measures Study Report/ Corrective Measures Evaluation	\$15,000 <u>\$30,000</u>	\$1,000	480 days
Corrective Measures Study Report/ Corrective Measures Evaluation with Risk Assessment	\$20,000 <u>\$35,000</u>	\$1,000	480 days
Corrective Measures Study Workplan/ Corrective Measures Evaluation Workplan	\$7,500 <u>\$8,500</u>	\$1,000	360 days
<u>Frequent Monitoring Plan</u>	<u>\$3,500</u>	<u>\$1,000</u>	<u>120 days</u>

<u>Frequent Monitoring Report/Frequent Progress Report</u>	<u>\$3,000</u>	<u>\$1,000</u>	<u>N/A</u>
<u>Interim Measures Monitoring Report</u>	<u>\$500</u>	<u>\$1,000</u>	<u>N/A</u>
Interim Measures Report	\$3,500 <u>\$10,000</u>	\$1,000	120 days
Interim Measures Work Plan	\$5,000 <u>\$17,000</u>	\$1,000	90 days
Investigation Report (RFI Report)/Phase Report	\$7,500 <u>\$18,000</u>	\$1,000	270 days
Investigation Report with Risk Assessment	\$10,000 <u>\$20,000</u>	\$1,000	360 days
Investigation Work Plan (RFI Work Plan)	\$10,000 <u>\$15,000</u>	\$1,000	270 days
<u>Letter Report/Supplemental Report/Report Addendum</u>	<u>\$6,000</u>	<u>\$1,000</u>	<u>180 days</u>
<u>Letter Work Plan/Supplemental Work Plan/Work Plan Addendum</u>	<u>\$5,000</u>	<u>\$1,000</u>	<u>180 days</u>
Monitoring Plan	\$2,500- <u>\$10,000</u>	\$1,000	120 days
Notice of Land Transfer	\$5,000- <u>\$2,000</u>	\$1,000	120 days
Operation and Maintenance Plan	\$2,500 <u>\$9,000</u>	\$1,000	150 days
Periodic Monitoring Report	\$2,000 <u>\$5,000</u>	\$1,000	N/A
Pilot/Aquifer Test Report	\$1,500 <u>\$10,000</u>	\$1,000	120- <u>180</u> days
Pilot/Aquifer Test Work Plan	\$1,000 <u>\$7,000</u>	\$1,000	90- <u>150</u> days
RCRA Facility Assessment (RFA) Report	\$2,500 <u>\$14,500</u>	\$1,000	180 days
Release Assessment/SWMU Assessment Report	\$3,500 <u>\$8,500</u>	\$1,000	90- <u>180</u> days
Remedy Completion Report	\$4,500 <u>\$8,500</u>	\$1,000	180 days
<u>Third Revision/ Third Document Revision</u>	<u>50% Review Fee</u>	<u>NA</u>	<u>NA</u>
Risk Evaluation/Risk Assessment Report	\$6,000 <u>\$14,000</u>	\$1,000	180 days
Status Report	\$2,000 <u>\$8,000</u>	\$1,000	N/A
Well Completion Report <u>per well</u>	\$500 <u>\$3,000</u>	NA	90 days
<u>Well Abandonment Report/Well Replacement Report per well</u>	<u>\$2,000</u>	<u>NA</u>	<u>90 days</u>
<u>Well Abandonment Work Plan/Well Replacement Work Plan per well</u>	<u>\$2,000</u>	<u>NA</u>	<u>90 days</u>

[20.4.2.208 NMAC - N, 8/18/06]

20.4.2.209 TABLE 6 - LAND DISPOSAL, AUDIT REVIEW AND OTHER FEES:

Activity	Fee	Review Time
Land Disposal Permit Review	\$10,000	360 days
Audit Review	\$20,000 <u>\$30,000</u>	45- <u>60</u> days
FFCO Administration	\$500 <u>\$2,000</u>	90 days
<u>Emergency Permit</u>	<u>\$1,000</u>	<u>30 days</u>

[20.4.2.209 NMAC - N, 8/18/06]

20.4.2.210 TABLE 7 - CHANGE DURING INTERIM STATUS FEES:

Submittal Type	Fee	Review Time
Change without prior approval	\$500 <u>\$1,800</u>	30- <u>45</u> days
Change with prior approval (equivalent to Class 1 permit modification)	\$2,500 <u>\$6,500</u>	120- <u>150</u> days
Change with prior approval (equivalent to Class 2 permit modification)	\$6,000 <u>\$30,000</u>	120 days

Change with prior approval (equivalent to Class 3 permit modification)	\$10,000 <u>\$100,000</u>	360-540 days
--	--------------------------------------	-------------------------

[20.4.2.210 NMAC - N, 8/18/06]

20.4.2.211 FEE CALCULATION:

A. The annual fee shall be assessed for each unit identified in the facility permit, Part A application, and enforceable document on January 1 of the assessed year. The annual fee shall be waived for hazardous waste management units for which the owner or operator provides documentation to NMED that hazardous waste management activities did not occur at the unit during the previous calendar year. To be considered for the waiver the owner or operator shall submit the documentation to NMED on or before July 1 of each year.

B. The owner or operator of the facility is liable for payment of the undisputed part of the assessed fee on the date the annual fee is due. Payments will not be refunded because of a transfer of ownership or operations to a new owner or operator.

[20.4.2.211 NMAC - Rn, 20 NMAC 4.2.II.208 & A, 8/18/06]

20.4.2.212 - 20.4.2.299 [RESERVED]

20.4.2.300 PAYMENT, DUE DATES, AND APPEALS:

[12/31/98; 20.4.2.300 NMAC - Rn, 20 NMAC 4.2.III.300 & A, 8/18/06]

20.4.2.301 MANNER OF PAYMENT AND DUE DATES:

A. **Annual Fee Invoices:** NMED shall invoice every owner or operator for the annual fee by October 1 of every year.

B. **Review Fees:** Any submittals listed in tables 2 through 7 of 20.4.2.205 NMAC through 20.4.2.210 NMAC submitted by an owner or operator for review shall be invoiced for the corresponding fee by NMED.

C. **Due Date:** Payment of any fee shall be due within ~~sixty (60)~~ days of receipt of the invoice unless the owner or operator submits to NMED a written request seven (7) days prior to the end of the ~~sixty (60)~~ day period and receives written approval to extend the time for payment before the date payment is due. Failure to submit payment within the ~~sixty (60)~~ days, or approved extension, may result in the document being denied, and further enforcement action.

D. All fees shall be paid to NMED by certified check or money order payable to the ~~New Mexico hazardous waste fund~~ New Mexico Environment Department or the hazardous waste bureau, by electronic funds transfer (with prior notice to NMED), or by other methods deemed acceptable by NMED. Cash payments are not an acceptable method of payment. All payments must include the invoice number and be addressed to the New Mexico environment department - hazardous waste bureau.

[12/31/98; 20.4.2.301 NMAC - Rn, 20 NMAC 4.2.III.301 & A, 8/18/06]

20.4.2.302 APPEAL OF FEE ASSESSMENT:

A. Mandatory Settlement Conference:

Any owner or operator seeking to appeal an invoice for fees under this part must first notify the NMED in writing of the intent to appeal the invoice within ~~thirty (30)~~ calendar days of receipt of the invoice. The notice shall set forth the specific matters in dispute, the basis for the dispute, and any matters considered necessary for NMED's consideration. The parties shall have ~~thirty (30)~~ calendar days from NMED's receipt of notification to meet or confer with NMED to attempt to resolve the matters in the dispute. The secretary may extend deadlines under this section upon a determination that good cause exists. If an agreement is reached resolving the dispute, NMED may issue a revised invoice and the owner and operator shall comply with the terms of such agreement and revised invoice. If an agreement is not reached, NMED shall issue a notification to all parties that an agreement has not been reached. Failure to notify NMED of an appeal in the required timeframe shall prohibit the owner and operator from appeal of the invoice.

B. Administrative appeal:

(1) An invoice for fees may be appealed by filing a written request for hearing with the hearing clerk designated by the secretary of environment within thirty (30) days of the date of the notification that an agreement has not been reached. The written request shall be accompanied by a copy of the invoice being contested and shall set forth the grounds upon which the appellant disagrees with the assessment.

(2) Except as otherwise provided, the appeal shall be governed by 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. The hearing officer shall schedule the hearing for no later than ~~ninety~~ (90) days after service of the notice of docketing.

(3) NMED shall not seek collection of an appealed fee or take enforcement action on an appealed of the fee assessment until the secretary has issued a decision on the appeal. Late charges on the amount assessed shall continue to accrue and shall be payable if the assessment is upheld or upheld with modification. If the assessment is modified on appeal, late charges shall be calculated based on the assessment as modified.

(4) If an appeal is not timely filed pursuant to this subsection, the invoice shall constitute a final action of the secretary of environment.
[12/31/98; 20.4.2.302 NMAC - Rn, 20 NMAC 4.2.III.302 & A, 8/18/06]

20.4.2.303 - 20.4.2.399 [RESERVED]

20.4.2.400 LATE CHARGES AND ENFORCEMENT:
[12/31/98; 20.4.2.400 NMAC - Rn, 20 NMAC 4.2.IV.400, 8/18/06]

20.4.2.401 LATE CHARGES: If any fee required by this part is not paid in full on the date due, which shall be either ~~sixty~~ (60) days after receipt of the invoice or the end of an approved extension of the time for payment, the person owing the fee shall pay a billing charge of \$100, plus late charges in the amount of an additional one percent (~~1%~~) of all fees owed for every month or part of a month in which the fees remain unpaid beyond the due date. Billing and late charges shall be credited to the Hazardous Waste Fund and are independent of any penalties assessed under the act.
[12/31/98; 20.4.2.401 NMAC - Rn, 20 NMAC 4.2.IV.401, 8/18/06]

20.4.2.402 FAILURE TO PAY FEES:

A. Failure to pay any fee required by this part may result in enforcement proceedings under the act including but not limited to the revocation or suspension of any permit issued by NMED pursuant to the act to the person failing to pay the fees as required.

B. Fees are not refundable and do not guarantee that a permit will be issued or a submittal or action will be approved by the NMED.
[12/31/98; 20.4.2.402 NMAC - Rn, 20 NMAC 4.2.IV.402 & A, 8/18/06]

20.4.2.403 - 20.4.2.499 [RESERVED]

20.4.2.500 MISCELLANEOUS PROVISIONS:
[12/31/98; 20.4.2.500 NMAC - Rn, 20 NMAC 4.2.V.500, 8/18/06]

20.4.2.501 DEPOSIT IN THE HAZARDOUS WASTE FUND: All fees collected pursuant to this part shall be transmitted to the state treasurer for credit to the hazardous waste fund and used for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.
[12/31/98; 20.4.2.501 NMAC - Rn, 20 NMAC 4.2.V.501, 8/18/06]

20.4.2.502 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this part does not relieve a person of the obligation to comply with other applicable local, state and federal regulations.
[12/31/98; 20.4.2.502 NMAC - Rn, 20 NMAC 4.2.V.502, 8/18/06]

20.4.2.503 CONSTRUCTION: This part shall be liberally construed to effectuate the purpose of the act.
[12/31/98; 20.4.2.503 NMAC - Rn, 20 NMAC 4.2.V.503, 8/18/06]

20.4.2.504 SEVERABILITY: If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.
[12/31/98; 20.4.2.504 NMAC - Rn, 20 NMAC 4.2.V.504, 8/18/06]

20.4.2.505 - 20.4.2.599 [RESERVED]

HISTORY OF 20.4.2 NMAC:

1 **Pre-NMAC History:** The provisions of this part were derived in part from material previously filed with the
2 commission of public records, state records center and archives under:
3 EIB/HWFR-1, Hazardous Waste Fee Regulations, filed October 28, 1988; and
4 EIB/HWFR-1, Annual Hazardous Waste Fee Regulations, filed January 19, 1994.
5

6 **History of Repealed Material:**

7 20 NMAC 4.2, Hazardous Waste Fees (filed 10/27/1995), repealed 12/31/1998.
8

9 **Other History:**

10 EIB/HWFR-1, Annual Hazardous Waste Fee Regulations (filed 01/19/1994) was renumbered, reformatted,
11 amended, and replaced by 20 NMAC 4.2, Hazardous Waste Fees, effective 11/30/1995.

12 20 NMAC 4.2, Hazardous Waste Fees (filed 10/27/1995) was replaced by 20 NMAC 4.2, Hazardous Waste Fees,
13 effective 12/31/1998.

14 20 NMAC 4.2, Hazardous Waste Fees (filed 11/30/1998) was renumbered, reformatted, amended, and replaced by
15 20.4.2 NMAC, Hazardous Waste Permit and Corrective Action Fees, effective 08/18/2006.
16

This rule was filed as 20 NMAC 4.3.

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

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

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

20.4.3.3 STATUTORY AUTHORITY: Subsection J of Section 74-4-4.2, NMSA 1978, directs the board to provide a schedule of business fees for businesses engaged in regulated hazardous waste activity and a schedule of generation fees for businesses generating hazardous waste.
[11/30/1995; 12/31/1998; Recompiled 11/27/2001]

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

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

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

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

A. "Act" means the New Mexico Hazardous Waste Act, Sections 74-4-1 to 74-4-14 NMSA 1978;

~~B. "Annual business fee" means the hazardous waste business fee in Subpart IV of this part [now 20.4.3.400 NMAC through 20.4.3.402 NMAC];~~

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

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

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

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

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

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

~~GH. "Department" means the New Mexico environment department;~~

~~I. "Episodic generator" means a generator that has a planned or unplanned event that does not normally occur during generator operations, resulting in an increase in the generation of hazardous waste that 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 2,205 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 13,228 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 2,205
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 2,205 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 2,205 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 20.4.3.8 - 20.4.3.107 [RESERVED]

33
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 20.4.3.109 FEES CUMULATIVE, SUBJECT TO LIMITS:

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

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

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

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

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

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

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

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

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

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

20.4.3.110 QUANTITY CALCULATIONS: In computing fees under Subparts II and III of this part [now 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 hazardous waste exceeding a quantity specified therein shall be rounded to the next highest whole number.
[2/18/1994; 11/30/1995; Recompiled 11/27/2001]

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

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

20.4.3.112 - 20.4.3.199 [RESERVED]

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

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

20.4.3.201 FEE SCHEDULE:

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

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

(2) Small quantity generator: \$500;

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

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

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

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

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

(b) \$.01 per ton for:

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

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

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

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

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 CA. 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; Recomplied 11/27/2001]

6 **20.4.3.204 - 20.4.3.299 [RESERVED]**

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 II 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; Recomplied 11/27/2001]

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; Recomplied 11/27/2001]

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; Recomplied 11/27/2001]

38 **20.4.3.303 - 2.4.3.399 [RESERVED]**

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; Recomplied 11/27/2001]

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; Recomplied 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, address, and contact information for the facility and must be addressed to the New~~
40 ~~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

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

20.4.3.601 VERIFICATION BY THE DEPARTMENT:

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

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

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

20.4.3.602 ADMINISTRATIVE APPEAL:

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

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

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

20.4.3.603 FAILURE TO SUBMIT REPORTS OR PAY FEES:

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

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

20.4.3.604 - 20.4.3.699 [RESERVED]

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

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

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

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

20.4.3.702 - 20.4.3.799 [RESERVED]

20.4.3.801 MISCELLANEOUS PROVISIONS: DEPOSIT IN THE HAZARDOUS WASTE FUND:

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

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

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

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

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

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

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

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

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

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

20.4.3.805 - 20.4.3.899 [RESERVED]

HISTORY OF 20.4.3 NMAC:

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


History of Repealed Material: [RESERVED]

Certificate of Service

I hereby certify that on September 10, 2019 a copy of the **Petition to Amend 20.4.2 NMAC and 20.4.3 NMAC of the Hazardous Waste Regulations and Request for Hearing** was emailed to the persons listed below. A copy will be mailed first class upon request.

Christal Weatherly
Andrew Knight
New Mexico Environment Department
121 Tijeras Ave, NE #1000
Albuquerque, NM 87102
Christal.weatherly@state.nm.us
Andrew.knight@state.nm.us
Attorney for the New Mexico Environment Department

Marah deMeule
New Mexico Office of the Attorney General
P.O. Box 1508
Santa Fe, NM 87504
mdemeule@nmag.gov
Counsel for the Environmental Improvement Board



Cody Barnes
Board Administrator
P.O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2428
Email: cody.barnes@state.nm.us

Rebekah Martinez
Board Administrator
P.O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425
Email: Rebekah.martinez@state.nm.us