

STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD



IN THE MATTER OF PROPOSED  
REPEAL AND REPLACEMENT OF  
20.7.11 NMAC  
*Liquid Waste Treatment and Disposal Fees*

No. 19-42 (R)

Environmental Health Bureau,  
Environmental Protection Division of the  
New Mexico Environment Department,

Petitioner.

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NEW MEXICO ENVIRONMENT DEPARTMENT'S  
NOTICE OF COMPLIANCE WITH  
SMALL BUSINESS REGULATORY RELIEF ACT

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The New Mexico Environment Department gives notice that it has filed in the record of this proceeding a letter dated November 8, 2019, to the Small Business Regulatory Advisory Commission, a copy of which is attached hereto, as required by NMSA 1978, Section 14-4A-4 of the Small Business Regulatory Relief Act.

Respectfully submitted,


A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read 'Chris Vigil'.

Chris Vigil  
Assistants General Counsel  
New Mexico Environment Department  
121 Tijeras Ave. NW, Ste 1000  
Albuquerque, NM 87102  
Phone: (505) 383-2060  
christopherj.vigil@state.nm.us

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Notice of Compliance* was served on the following party on this the twenty-seventh day of November 2019 by email:

Cody Barnes, Hearing Officer Administrator  
Room S-2104, Runnels Building  
1190 St. Francis Dr.  
Santa Fe, New Mexico 87505

A handwritten signature in black ink, appearing to read 'CV', written over a horizontal line.

Chris Vigil  
Assistant General Counsel



Michelle Lujan Grisham  
Governor

Howie C. Morales  
Lt. Governor

NEW MEXICO  
ENVIRONMENT DEPARTMENT

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James C. Kenney  
Cabinet Secretary

Jennifer J. Pruett  
Deputy Secretary

November 27, 2019

Small Business Regulatory Advisory Commission  
c/o Johanna Nelson, Administrator  
New Mexico Economic Development Department  
1100 S. St. Francis Drive  
Santa Fe, NM 87505-4147

**RE: Proposed Repeal and Replace of *Liquid Waste Treatment and Disposal Fees*, NMAC 20.7.11**

Dear Commission Members,

The New Mexico Environment Department (“Department”) hereby provides notice to the Small Business Regulatory Advisory Commission pursuant to the Small Business Regulatory Relief Act, NMSA 1978, Section 14-4A-1 through -6 (2005), that the Department’s Environmental Protection Division, Environmental Health Bureau has petitioned the Environmental Improvement Board to repeal and replace *Liquid Waste Treatment and Disposal Fees*, NMAC 20.7.11 (“Regulations”).

The purpose this rulemaking is to consider repealing and replacing 20.7.11 NMAC, *Liquid Waste Treatment and Disposal Fees*, which authorizes liquid waste treatment and disposal fees for the administration of the state liquid waste regulations. The purpose of the state liquid waste treatment and disposal program is to protect the health and welfare of present and future citizens of New Mexico by providing for the prevention and abatement of public health hazards and surface and ground water contamination from on-site liquid waste disposal practices.

The proposed replacement rules would allow the Bureau to bring New Mexico’s liquid waste fees to a level comparable with contiguous states, while still charging fees below the average, as required by the Environmental Improvement Act, NMSA 1978, § 74-1-8(A)(3). The proposed rules would allow the Department to improve enforcement, tracking non-compliant systems, staffing, data collection and network hardware and software. These changes will enhance the Bureau’s Liquid Waste Program (“LWP”), speeding up permit processing times and allowing for more timely inspections to better protect the health of New Mexico residents. Repealing and replacing 20.7.11 NMAC would also provide for a more precise description of persons required to pay liquid waste treatment and disposal fees, would provide greater clarity and consistency in applying rules, and standardize the methods and technologies used to treat liquid waste in accordance with national standards.

The Environmental Improvement Board (“EIB”) will hold a public hearing in this matter beginning at 10:00 am on February 28, 2020 and continuing thereafter as necessary at 33 Plaza La Prensa, Santa Fe, NM 87507. The hearing location may change prior to the hearing date, and those interested in attending should visit the New Mexico Environment Department’s (“NMED”) website prior to the hearing: <https://www.env.nm.gov/public-notices/>.

If Commission members have further questions, comments, or would like to meet and discuss the Regulations, please feel free to contact me directly at (505) 383-2060 or via email: [christopherj.vigil@state.nm.us](mailto:christopherj.vigil@state.nm.us). A copy of the proposed Regulations is enclosed.

Sincerely,



Chris Vigil  
Assistant General Counsel

Enclosure

Cc: Sandra Ely, Director, Environmental Health Division  
William Chavez, Chief, Environmental Health Bureau  
Michael Broussard, Acting Liquid Waste Program Manager

1 TITLE 20 ENVIRONMENTAL PROTECTION  
2 CHAPTER 7 LIQUID WASTE  
3 PART 11 LIQUID WASTE TREATMENT AND DISPOSAL FEES  
4

5 20.7.11.1 ISSUING AGENCY: Environmental Improvement Board.  
6 [20.7.11.1 NMAC - Rp. 20.7.11.1 NMAC, XX/XX/2020N, 2/1/2002]  
7

8 20.7.11.2 SCOPE: All persons required under 20.7.3 NMAC to obtain a: ~~permit, modification to a permit,~~  
9 ~~tank certification or re-inspection under 20.7.3 NMAC.~~

- 10 ~~A. Permit;~~  
11 ~~B. Modification to a permit;~~  
12 ~~C. Registration;~~  
13 ~~D. Septage pump truck registration;~~  
14 ~~E. Certificate of qualification for:~~  
15 ~~(1) Homeowner certification,~~  
16 ~~(2) Third-party evaluator certification,~~  
17 ~~(3) Maintenance service provider certification,~~  
18 ~~(4) Septage pumper certification, or~~  
19 ~~(5) Installer specialist certification~~  
20 ~~F. Septic Tank Certification: or~~  
21 ~~G. Re-inspection.~~

22 [20.7.11.2 NMAC - Rp. 20.7.11.2 NMAC, XX/XX/2020N, 2/1/2002]  
23

24 20.7.11.3 STATUTORY AUTHORITY: Environmental Improvement Act, Section 74-1-1 through 74 -1-  
25 10 NMSA 1978.

26 [20.7.11.3 NMAC - Rp. 20.7.11.3 NMAC, XX/XX/2020N, 2/1/2002]  
27

28 20.7.11.4 DURATION: Permanent.

29 [20.7.11.4 NMAC - Rp. 20.7.11.4 NMAC, XX/XX/2020N, 2/1/2002]  
30

31 20.7.11.5 EFFECTIVE DATE: ~~February-XXXXXXXX XX1, 2002~~2020, unless a later date is cited at the  
32 end of a section.

33 [20.7.11.5 NMAC - Rp. 20.7.11.5 NMAC, XX/XX/2020N, 2/1/2002]  
34

35 20.7.11.6 OBJECTIVE: The objective of this rule is to provide for liquid waste treatment and disposal fees  
36 for the administration of the state liquid waste regulations. The purpose of the state liquid waste treatment and  
37 disposal program is to protect the health and welfare of present and future citizens of New Mexico by providing for  
38 the prevention and abatement of public health hazards and surface and ground water contamination from on-site  
39 liquid waste disposal practices.

40 [20.7.11.6 NMAC - Rp. 20.7.11.6 NMAC, XX/XX/2020N, 2/1/2002; A, 12/15/2011]  
41

42 20.7.11.7 DEFINITIONS:

43 A. Unless otherwise defined in this part, the words and phrases used in this part have the same  
44 meanings as in 20.7.3.7 NMAC, Liquid Waste Disposal.

45 B. As used in this part:

46 (1) "advanced treatment" means any process of wastewater treatment that removes a  
47 greater amount of contaminants than in accomplished through primary treatment. Advanced treatment may include  
48 physical or chemical processes; water renovation that upgrades liquid waste to meet specific reuse requirements;  
49 advanced treatment may include general cleanup of wastewater or removal of specific types of wastes, such as  
50 nitrates or other nitrogen compounds, insufficiently removed by primary or secondary treatment processes;  
51 advanced treatment may include physical or chemical treatments;

52 (2) "advanced treatment system" means a method or technology implemented to achieve  
53 advanced treatment;

54 (3) "alternative disposal" means any approved, on-site liquid waste disposal method used in  
55 lieu of, including modifications to, a conventional disposal method;

1 (4) "alternative disposal system" means a method or technology implemented to achieve  
2 alternative disposal:

3 (52) "alternative system" means any on-site liquid waste system utilizing a method of liquid  
4 waste treatment and disposal used in lieu of a conventional system, including modifications that is recognized and  
5 allowed by Liquid Waste Disposal and Treatment, 20.7.3 NMAC (9/1/13 as amended through 9/15/14), or by the  
6 New Mexico Design Standards, 20.7.3.501-703 NMAC;

7 (63) "commercial unit" means a structure that is not a residential unit but which has sewage  
8 producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers or floor drains for  
9 receiving liquid waste including but not limited to uses included in 20.7.3 NMAC, Table 201.1 means a structure  
10 without bedrooms but which has sewage-producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and  
11 clothes-washers, or floor drains for receiving liquid waste;

12 (74) "conventional system" means an on-site liquid waste system consisting of a septic tank  
13 and a subsurface soil absorption system with gravity distribution of the effluent constructed in accordance with the  
14 standards set forth in 20.7.3 NMAC;

15 (8) "gpd" means gallons-per-day;

16 (95) "hazard to public health" means the indicated presence in water or soil of biological,  
17 chemical or other contaminants under such conditions that could adversely impact human health, including without  
18 limitation surfacing liquid waste, damage to a domestic water supply source, presence of a cesspool or an open tank,  
19 or exposure of liquid waste or septage in a manner that allows possible transmission of disease;

20 (10) "large system" means any liquid waste treatment or disposal system that receives, or is  
21 designed to receive, more than 2,000 gpd but not more than 5,000 gpd;

22 (116) "notice of non-approval" means notification that inspection of a permitted liquid waste  
23 system is not in compliance with 20.7.3 NMAC;

24 (127) "on-site liquid waste system" means a liquid waste system, or part thereof, serving a  
25 dwelling, establishment or group, and using a liquid waste treatment unit designed to receive liquid waste followed  
26 by either a soil treatment or other type of disposal system; on-site liquid waste systems include enclosed systems and  
27 privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

28 (138) "septic tank" means liquid waste treatment units designed to provide primary treatment  
29 and anaerobic treatment prior to disposal;

30 (14) "small system" means any liquid waste treatment and disposal system that receives, or is  
31 designed to receive, no more than 2,000 gpd.

32 [20.7.11.7 NMAC - ~~Rp. 20.7.11.7 NMAC, XX/XX/2020N, 2/1/2002; A, 12/15/2011~~]

34 **20.7.11.8 PERMIT FEES:** Payment of ~~the permit fees~~ are due prior to ~~the~~ issuance of a permit meeting  
35 all the requirements of 20.7.3 NMAC.

36 ~~A. The permit fee for a conventional system is \$100.00.~~

37 ~~B. The permit fee for modification of a conventional system is \$50.00.~~

38 ~~C. The permit fee for construction or modification of a commercial unit is \$150.00.~~

39 ~~D. The permit fee for construction of an advanced treatment or alternative system is \$150.00.~~

40 ~~E. The permit fee for modification of an advanced treatment or alternative system is \$75.00.~~

41 A. Fees for permits to register, construct, or modify a conventional system of a specified design  
42 flow:

43 (1) The fee for a system designed for zero gpd up to 500 gpd is \$225.00

44 (2) The fee for a system designed for 501 gpd up to 1,000 gpd is \$275.00;

45 (3) The fee for a system designed for 1,001 gpd up to 1,500 gpd is \$325.00;

46 (4) The fee for a system designed for 1,501 gpd up to 2,000 gpd is \$375.00;

47 (5) The fee for a system designed for 2,001 gpd up to 2,500 gpd is \$425.00;

48 (6) The fee for a system designed for 2,501 gpd up to 3,000 gpd is \$475.00;

49 (7) The fee for a system designed for 3,001 gpd up to 3,500 gpd is \$525.00;

50 (8) The fee for a system designed for 3,501 gpd up to 4,000 gpd is \$575.00;

51 (9) The fee for a system designed for 4,001 gpd up to 4,500 gpd is \$625.00;

52 (10) The fee for a system designed for 4,501 gpd up to 5,000 gpd is \$675.00;

53 B. Fees for permits to register, construct, or modify an alternative system, advanced treatment  
54 system, or a commercial system of a specified design flow:

55 (1) The fee for a system designed for zero gpd up to 500 gpd is \$450.00

56 (2) The fee for a system designed for 501 gpd up to 1,000 gpd is \$500.00;

- 1                   (3)     The fee for a system designed for 1,001 gpd up to 1,500 gpd is \$550.00;
- 2                   (4)     The fee for a system designed for 1,501 gpd up to 2,000 gpd is \$600.00;
- 3                   (5)     The fee for a system designed for 2,001 gpd up to 2,500 gpd is \$650.00;
- 4                   (6)     The fee for a system designed for 2,501 gpd up to 3,000 gpd is \$700.00;
- 5                   (7)     The fee for a system designed for 3,001 gpd up to 3,500 gpd is \$750.00;
- 6                   (8)     The fee for a system designed for 3,501 gpd up to 4,000 gpd is \$800.00;
- 7                   (9)     The fee for a system designed for 4,001 gpd up to 4,500 gpd is \$850.00;
- 8                   (10)    The fee for a system designed for 4,501 gpd up to 5,000 gpd is \$900.00.

9                   **C.     Annual operating permit fees for an alternative system, advanced treatment system, or a**  
10 **commercial system:**

- 11                   (1)     The fee for an alternative system, advanced treatment system, or a commercial system is
- 12 \$50.00;
- 13                   (2)     The fee for a commercial large system is \$200.00;
- 14                   (3)     The fee for a holding tank system or a split flow system with a holding tank, excluding
- 15 commercial systems is \$30.00.

16 [~~20.7.11.8 NMAC - Rp. 20.7.11.8 NMAC, XX/XX/2020~~, 2/1/2002]

17

18 **20.7.11.9     QUALIFICATION CERTIFICATE FEES:** If a qualification certificate is requested as  
19 provided for in 20.7.3.904 NMAC, a fee as indicated in subsections A through F of this section shall be submitted  
20 upon issuance of the qualification certificate in addition to any associated permit fee required in 20.7.11 NMAC.

- 21                   A.     The fee for a qualification certificate for a qualified homeowner is \$100.00;
- 22                   B.     The fee for a qualification certificate for a third-party evaluator is \$50.00;
- 23                   C.     The fee for a qualification certificate for a maintenance service provider is \$50.00;
- 24                   D.     The fee for a qualification certificate for a septage pumper is \$30.00;
- 25                   E.     The fee for a qualification certificate for an installer specialist is \$150.00;
- 26                   F.     The fee for a qualification certificate of renewal for an installer specialist is \$75.00

27 [~~20.7.11.9 NMAC - Rp. 20.7.11.9 NMAC, XX/XX/2020~~]

28

29 **20.7.11.10     SEPTAGE PUMPING TRUCK ANNUAL REGISTRATION FEE:** The annual fee for  
30 registration of a septage pumping truck is \$30.00.

31 [~~20.7.11.10 NMAC - Rp. 20.7.11.10 NMAC, XX/XX/2020~~]

32

33 **20.7.11.11     PROPERTY TRANSFER REPORT FILING FEE:** The fee for filing a property transfer report  
34 is \$50.00.

35 [~~20.7.11.11 NMAC - Rp. 20.7.11.11 NMAC, XX/XX/2020~~]

36

37 **20.7.11.12     SEPTIC TANK MANUFACTURER CERTIFICATION FEE:** The annual fee for the  
38 certification/re-certification of septic tank designs as required in 20.7.3 NMAC is \$100.00/150.00.

39 [~~20.7.11.9-12 NMAC - Rp. 20.7.11.12 NMAC, XX/XX/2020~~, 2/1/2002]

40

41

42 **20.7.1311.     RE-INSPECTION FEE:** If a site inspection results in an issuance of a notice of non-approval, a  
43 fee of \$150.00 shall be assessed for the re-inspection of the system. The re-inspection fee shall be remitted to the  
44 department prior to a subsequent inspection being conducted.

45 [~~20.7.11.10-13 NMAC - Rp. 20.7.11.13 NMAC, XX/XX/2020~~, 2/1/2002]

46

47 **20.7.11.1414     VARIANCE FEE:** If a variance is requested as provided for in 20.7.3 NMAC, a fee of  
48 \$50.00/100.00 for small systems and \$400.00 for large systems shall be submitted upon issuance of the variance in  
49 addition to the permit fee required in 20.7.11.8 above.

50 [~~20.7.11.11-14 NMAC - Rp. 20.7.11.14 NMAC, XX/XX/2020~~, 2/1/2002]

51

52 **20.7.11.1512     PAYMENT OF FEES:**

- 53                   A.     The department shall not issue a permit, variance or tank design certification until payment is
- 54 received by the department. The fees required in this part are non-refundable.

1 B. All fees shall be remitted to the department ~~in the form of a check or money order made~~ payable to  
2 the environment department liquid waste fund. All fees collected pursuant to this part shall be transmitted to the  
3 state treasurer for deposit in the liquid waste fund.

4 ~~C.~~ C. Beginning on February 1, 2021, all fees shall be adjusted each year on February 1 to reflect the  
5 increase, if any, by which the consumer price index for the most recent year exceeds the consumer price index for  
6 the previous year. The amount of the change in the fee shall be determined by multiplying the existing fee by the  
7 change in the consumer price index and rounding the result to the nearest dollar. The consumer price index for any  
8 year is the average of the consumer price index for all-urban consumers published by the United States department  
9 of labor, as of the close of the twelve-month period ending on August 31 of the previous year. No fee can exceed the  
10 average fee for the surrounding jurisdictions as determined by the latest report on contiguous state fees published by  
11 the department on January 15th of the current year.

12 [20.7.11.~~12-15~~ NMAC - Rp. 20.7.11.15 NMAC. XX/XX/2020N, 2/1/2002]

13  
14 **20.7.11.~~1613~~ APPLICABILITY:**

15 A. The requirement for payment of the permit application fee shall apply only to those applications  
16 received on or after the effective date of this part.

17 B. The annual tank certification fee shall apply on or after the effective date of this part. The annual  
18 fee shall be received by the department no later than ~~January~~ March 1 of each year.

19 C. The requirements concerning payment of a re-inspection fee shall apply only to those re-  
20 inspections occurring on or after the effective date of this part.

21 [20.7.11.~~13-16~~ NMAC - Rp. 20.7.11.16 NMAC. XX/XX/2020N, 2/1/2002]

22  
23 **20.7.11.~~1744~~ PERIODIC REVIEW:** In order for the environmental improvement board to fulfill its obligation  
24 to establish onsite liquid system fees in accordance with Section 74-1-8(A)(3), NMSA 1978, the department shall  
25 provide information by January 15<sup>th</sup> of each year to the environmental improvement board as follows:

26 A. liquid waste fund revenues for the previous fiscal year;

27 B. liquid waste fund expenditures for the previous fiscal year:

28 (1) personal services and benefits;

29 (2) contracts;

30 (3) other costs;

31 (4) indirect;

32 C. external audit report for the previous fiscal year;

33 D. current fiscal year budget for field operations bureau approved by the department of finance and  
34 administration and the legislative finance committee;

35 E. report on contiguous states' fees:

36 (1) for Arizona, Oklahoma and Texas: report of state program fee schedules (although some  
37 Texas counties have their own fee schedules);

38 (2) Colorado and Utah: report of fee schedule for each county or health district;

39 F. performance measures report for previous fiscal year;

40 G. copy of liquid waste annual strategic plan;

41 H. copy of training plan, if any, for the upcoming year.

42 [20.7.11.~~1744~~ NMAC - Rp. 20.7.11.17 NMAC. XX/XX/2020N, 2/1/2002; A, 12/15/2011]

43  
44 **20.7.11.~~1815~~ COMPLIANCE WITH OTHER REGULATIONS:** Compliance with this part does not relieve  
45 a person of the obligation to comply with other applicable state and federal regulations.

46 [20.7.11.~~15-18~~ NMAC - N. XX/XX/2020N, 2/1/2002]

47  
48 **20.7.11.~~1916~~ CONSTRUCTION:** This part shall be liberally construed to implement the purpose of the act.

49 [20.7.11.~~16-19~~ NMAC - N. XX/XX/2020N, 2/1/2002]

50  
51 **20.7.11.~~2017~~ SEVERABILITY:** If any provision or application of this part is held invalid, the remainder shall  
52 not be affected.

53 [20.7.11.~~17-20~~ NMAC - N. XX/XX/2020N, 2/1/2002]

54  
55 **HISTORY of 20.7.11 NMAC: [RESERVED]**