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HOUSE BILL 304

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

John A. Heaton

AN ACT

**RELATING TO THE ENVIRONMENT; AMENDING SECTION 74-4-4.2 NMSA
1978 (BEING LAWS 1981 (1ST S.S.), CHAPTER 8, SECTION 6, AS
AMENDED) TO CLARIFY CONDITIONS FOR A PUBLIC HEARING.**

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

**Section 1. Section 74-4-4.2 NMSA 1978 (being Laws 1981
(1st S.S.), Chapter 8, Section 6, as amended) is amended to
read:**

**"74-4-4.2. PERMITS--ISSUANCE--DENIAL--MODIFICATION--
SUSPENSION--REVOCATION.--**

**A. Each application for a permit pursuant to the
Hazardous Waste Act shall contain information as may be
required pursuant to Section 74-4-4.7 NMSA 1978 or pursuant to
[regulations] rules promulgated by the board, including
information with respect to:**

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1 (1) estimates with respect to the
2 composition, quantity and concentration of any hazardous waste
3 identified or listed under Subsection A of Section 74-4-4 NMSA
4 1978 or combinations of any hazardous waste and other solid
5 waste proposed to be disposed of, treated, transported or
6 stored and the time, frequency or rate at which the waste is
7 proposed to be disposed of, treated, transported or stored;
8 and

9 (2) the site where hazardous waste or the
10 products of treatment of hazardous waste will be disposed of,
11 treated, transported to or stored.

12 B. Hazardous waste permits issued after April 8,
13 1987 shall require corrective action for all releases of
14 hazardous waste or constituents from any solid waste
15 management unit at a treatment, storage or disposal facility
16 seeking a permit under this section.

17 C. The ~~[division]~~ department shall provide timely
18 review on all permit applications. Upon a determination by
19 the secretary that the applicant has met the requirements
20 adopted pursuant to Section 74-4-4 NMSA 1978, the secretary
21 may issue a permit or a permit subject to any conditions
22 necessary to protect human health and the environment for the
23 facility.

24 D. The secretary may deny any permit application
25 or modify, suspend or revoke any permit issued pursuant to the

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1 Hazardous Waste Act if the applicant or permittee has:

2 (1) knowingly and willfully misrepresented a
3 material fact in the application for a permit;

4 (2) refused to disclose the information
5 required under the provisions of Section 74-4-4.7 NMSA 1978;

6 (3) been convicted in any court, within ten
7 years immediately preceding the date of submission of the
8 permit application, of:

9 (a) a felony or other crime involving
10 moral turpitude; or

11 (b) a crime defined by state or federal
12 statutes as involving or being in restraint of trade,
13 price-fixing, bribery or fraud;

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

16 (5) had any permit revoked or permanently
17 suspended for cause under the environmental laws of any state
18 or the United States; or

19 (6) violated any provision of the Hazardous
20 Waste Act, any ~~regulation~~ rule adopted and promulgated
21 pursuant to that act or any condition of a permit issued under
22 that act.

23 E. In making a finding under Subsection D of this
24 section, the secretary may consider aggravating and mitigating
25 factors.

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1 F. If an applicant or permittee whose permit is
2 being considered for denial or revocation, respectively, on
3 any basis provided by Subsection D of this section has
4 submitted an action plan that has been approved in writing by
5 the secretary, and plan approval includes a period of
6 operation under a conditional permit that will allow the
7 applicant or permittee a reasonable opportunity to demonstrate
8 its rehabilitation, the secretary may issue a conditional
9 permit for a reasonable period of time. In approving an
10 action plan intended to demonstrate rehabilitation, the
11 secretary may consider:

- 12 (1) implementation by the applicant or
13 permittee of formal policies;
- 14 (2) training programs and management control
15 to minimize and prevent the occurrence of future violations;
- 16 (3) installation by the applicant or
17 permittee of internal environmental auditing programs;
- 18 (4) the applicant's release or the
19 permittee's release subsequent to serving a period of
20 incarceration or paying a fine, or both after conviction of
21 any crime listed in Subsection D of this section; and
- 22 (5) any other factors the secretary deems
23 relevant.

24 G. Notwithstanding the provisions of Subsection D
25 of this section:

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1 (1) a research, development and demonstration
2 permit may be terminated upon the determination by the
3 secretary that termination is necessary to protect human
4 health or the environment; and

5 (2) a permit may be modified at the request
6 of the permittee for just cause as demonstrated by the
7 permittee.

8 H. No ruling shall be made on permit issuance,
9 [~~major~~] class three modification, suspension or revocation
10 without an opportunity for a public hearing at which all
11 interested persons shall be given a reasonable chance to
12 submit data, views or arguments orally or in writing [~~and to~~
13 ~~examine witnesses testifying at the hearing~~]; provided,
14 however, that the secretary may, pursuant to Section 74-4-10
15 NMSA 1978, order the immediate termination of a research
16 development and demonstration permit whenever the secretary
17 determines that termination is necessary to protect human
18 health or the environment and may order the immediate
19 suspension or revocation of a permit for a facility that has
20 been ordered to take corrective action or other response
21 measures for releases of hazardous waste into the environment.

22 I. The secretary shall hold a public hearing on a
23 [~~minor~~] class two permit modification if the secretary
24 determines that there is significant public [~~interest in~~]
25 concern about the [~~minor~~] modification.

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1 J. The board shall provide a schedule of fees for
2 businesses generating hazardous waste or seeking a permit for
3 the management of hazardous waste, to be deposited to the
4 credit of the hazardous waste fund, including but not limited
5 to:

6 (1) a hazardous waste business fee applicable
7 to any business engaged in a regulated hazardous waste
8 activity, which shall be an annual flat fee based on the type
9 of activity;

10 (2) a hazardous waste generation fee
11 applicable to any business generating hazardous waste, which
12 shall be based on the quantity of hazardous waste generated
13 annually; however, when any material listed in Paragraph (2)
14 of Subsection I of Section 74-4-3 NMSA 1978 is determined by
15 the board to be subject to regulation under Subtitle C of the
16 federal Resource Conservation and Recovery Act of 1976, the
17 board may set a generation fee under this paragraph for that
18 waste based on its volume, toxicity, mobility and economic
19 impact on the regulated entity; and

20 (3) a hazardous waste permit application fee,
21 not exceeding the estimated cost of investigating the
22 application and issuing the permit, to be paid at the time the
23 secretary notifies the applicant by certified mail that the
24 application has been deemed administratively complete and a
25 technical review is scheduled.

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