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HOUSE BILL 410

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

John A. Heaton

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE
HAZARDOUS WASTE ACT TO ALLOW VOLUNTARY FEE AGREEMENTS AS AN
ALTERNATIVE TO FEE SCHEDULES.

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. An application for a permit pursuant to the
Hazardous Waste Act shall contain information required pursuant
to Section 74-4-4.7 NMSA 1978 or to regulations promulgated by
the board and shall include:

(1) estimates of the composition, quantity and

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

7 (2) an identification and description of, and
8 other pertinent information about, the site where hazardous
9 waste or the products of treatment of hazardous waste will be
10 disposed of, treated, transported to or stored.

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

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

21 D. The secretary may deny any permit application or
22 modify, suspend or revoke any permit issued pursuant to the
23 Hazardous Waste Act if the applicant or permittee has:

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

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

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

6 (a) a felony or other crime involving
7 moral turpitude; or

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

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

13 (5) had any permit revoked or permanently
14 suspended for cause under the environmental laws of any state
15 or the United States; or

16 (6) violated any provision of the Hazardous
17 Waste Act, any regulation adopted and promulgated pursuant to
18 that act or any condition of a permit issued under that act.

19 E. In making a finding under Subsection D of this
20 section, the secretary may consider aggravating and mitigating
21 factors.

22 F. If an applicant or permittee whose permit is
23 being considered for denial or revocation, respectively, on any
24 basis provided by Subsection D of this section has submitted an
25 action plan that has been approved in writing by the secretary,

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1 and plan approval includes a period of operation under a
2 conditional permit that will allow the applicant or permittee a
3 reasonable opportunity to demonstrate its rehabilitation, the
4 secretary may issue a conditional permit for a reasonable
5 period of time. In approving an action plan intended to
6 demonstrate rehabilitation, the secretary may consider:

7 (1) implementation by the applicant or
8 permittee of formal policies;

9 (2) training programs and management control
10 to minimize and prevent the occurrence of future violations;

11 (3) installation by the applicant or permittee
12 of internal environmental auditing programs;

13 (4) the applicant's release or the permittee's
14 release subsequent to serving a period of incarceration or
15 paying a fine, or both, after conviction of any crime listed in
16 Subsection D of this section; and

17 (5) any other factors the secretary deems
18 relevant.

19 G. Notwithstanding the provisions of Subsection D
20 of this section:

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

25 (2) a permit may be modified at the request of

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1 the permittee for just cause as demonstrated by the permittee.

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

16 I. The secretary shall hold a public hearing on a
17 minor permit modification if the secretary determines that
18 there is significant public interest in the minor modification.

19 J. Except as provided in Subsection K of this
20 section, the board shall provide a schedule of fees for
21 businesses generating hazardous waste, conducting permitted
22 hazardous waste management activities or seeking a permit for
23 the management of hazardous waste, to be deposited to the
24 credit of the hazardous waste fund, including but not limited
25 to:

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

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

15 (3) a hazardous waste permit application fee,
16 not exceeding the estimated cost of investigating the
17 application and issuing the permit, to be paid at the time the
18 secretary notifies the applicant by certified mail that the
19 application has been deemed administratively complete and a
20 technical review is scheduled; and

21 (4) an annual hazardous waste permit
22 management fee based on and not exceeding the estimated cost
23 of conducting regulatory oversight of permitted activities.

24 K. The department and a business generating
25 hazardous waste, conducting permitted hazardous waste

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1 management activities or seeking a permit for the management
2 of hazardous waste may enter into a voluntary fee agreement
3 in lieu of some or all of the fees required by Subsection J
4 of this section."

5 Section 2. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2006.

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