

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS 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--REVOCAATION.--

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

(2) an identification and description of,
and other pertinent information about, the site where
hazardous waste or the products of treatment of hazardous

waste will be disposed of, treated, transported to or stored.

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

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

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

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

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

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

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

(b) a crime defined by state or federal

statutes as involving or being in restraint of trade, price-fixing, bribery or fraud;

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

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

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

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

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

(1) implementation by the applicant or

permittee of formal policies;

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

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

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

(5) any other factors the secretary deems relevant.

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

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

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

H. No ruling shall be made on permit issuance, major modification, suspension or revocation without an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine

witnesses testifying at the hearing; provided, however, that the secretary may, pursuant to Section 74-4-10 NMSA 1978, order the immediate termination of a research development and demonstration permit whenever the secretary determines that termination is necessary to protect human health or the environment and may order the immediate suspension or revocation of a permit for a facility that has been ordered to take corrective action or other response measures for releases of hazardous waste into the environment.

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

J. The board 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, including but not limited to:

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

(2) a hazardous waste generation fee applicable to any business generating hazardous waste, which shall be based on the quantity of hazardous waste generated

annually; however, when any material listed in Paragraph (2) of Subsection K of Section 74-4-3 NMSA 1978 is determined by the board to be subject to regulation under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, the board may set a generation fee under this paragraph for that waste based on its volume, toxicity, mobility and economic impact on the regulated entity;

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

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

K. The department and a business generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste may enter into a voluntary fee agreement in addition to and that includes all of the fees required by Subsection J of this section."

Section 2. Section 74-4-4.5 NMSA 1978 (being Laws 1987, Chapter 179, Section 7, as amended) is amended to read:

"74-4-4.5. HAZARDOUS WASTE FUND CREATED--

APPROPRIATION.--

A. There is created in the state treasury the "hazardous waste fund", which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.

B. All fees collected pursuant to Section 74-4-4.2 NMSA 1978 shall be transmitted to the state treasurer for credit to the hazardous waste fund."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006. _____