

- Section 74-9-8(I) NMSA 1978 by limiting the (current) \$10 thousand maximum fee to publicly owned facilities for processing permit applications;
- Adds Section 74-9-8(J) to establish a fee schedule not to exceed \$30 thousand for processing permit and permit modifications for privately owned facilities;
- Adds Section 74-9-8(K) to establish a fee schedule for annual costs incurred by NMED for technical and administrative oversight of permitted privately-owned facilities that have opted into a 20-year permit based on waste generation, as follows:
 - Not greater than \$50 thousand per year that receive 400 thousand tons or more per year;
 - \$25 thousand per year for facilities that receive less than 400 thousand tons but more than 200 thousand tons; and
 - \$12.5 thousand per year for facilities that receive 200 thousand tons or less per year.
- Amends Section 74-9-24(G)(1) by adding privately-owned facilities to public facilities for 20-year permit eligibility, which places privately owned facilities also under a 10-year review cycle and 20-year permit renewal cycle versus the current 5-year renewal cycle and 10-year permit renewal cycle applicable to private facilities;
- Amends Section 74-9-24(G) (2) relating to private-owned facilities to allow the choice for a 20-year permit as long as the facility is in compliance with the Act or Solid Waste Rules, which is reduced by number of years a facility has been operating under its current permit;
- Requires that financial assurance coverage be adjusted, as necessary in accordance with the rules;
- Requires applicants for permits sought after July 1, 2009, to indicate whether they are seeking a 20-year permit and requires owners with facilities permitted prior to July 1, 2009, to notify NMED in writing of their decision to opt into the 20-year cycle within 30 days of the EIB rulemaking; and
- Includes a provision that a publicly-owned facility that is leased to a private person for operation pursuant to a contract of more than four years shall remain in effect for 20 years, which increases the contract term from the current maximum of 10 years.

FISCAL IMPLICATIONS

As proposed in HB 824/HENRCS, a maximum permit application review fee for publicly owned facilities is capped at \$10 thousand (current cap), and \$30 thousand is proposed to cover the costs of reviews for privately owned facilities. NMED notes that this increase for private facilities would result in higher revenues that would be cyclical. The next permit renewal application is not due to be submitted until 2011. Due to the intermittent nature of these fee increases accruing to private facilities renewing permits--which may not reschedule for up to 20 years under the bill -- the fiscal impact is non-recurring. (See Attachment A.)

According to NMED, “the second proposed fee schedule (up to a maximum of \$50,000) for technical and administrative oversight of permitted or registered facilities that opt for 20 year permit would provide the Environment Department with an additional source of ongoing annual revenue for costs incurred. An estimate of potential revenue generation for this second fee is difficult to determine at this time because it is unknown how many operators may opt into this option, and the tonnage of waste disposal and recycling rate at these facilities. Additionally a fee schedule would have to be developed and approved by the Environmental Improvement Board and until the schedule is final, estimates are difficult. However, as a result of an informal survey of private and public facilities operated by private firms finds that potentially only four facilities may opt into a twenty year permit. The amount of annual revenue generated, based on current waste tonnage, would be \$150,000.”

Based on evaluation of recent completed permit application reviews, the Environment Department estimates it costs between \$90 thousand and \$150 thousand for the agency to review a permit application. The costs of completing reviews of public permit applications fall at the higher end of the cost range determined by the Bureau. The department points to the chart below, showing it costs the bureau significantly more in staff time and effort to review permit applications from the public sector as compared with the private sector.

New Mexico Solid Waste Bureau Public Private Permit Application Review Time Comparison			
Facility (Public)	Permit Submitted	Permit Issued Date	Notes
City of Socorro	12/31/2001	Hearing 1/27/2007	Poor application 6 Year review -Permit Denied
Tucumcari Landfill	4/8/2001	5/31/2005	Poor application 4 years
NWNMLF (Red Rocks)	2/22/06 (Admin denied 12/07) Application denied, did not meet minimum requirements	1/27/09	Poor application 3 years Permit decision pending
Butterfield Trail (City of Deming)	5/2004	8/9/2007	Poor application 3+ years Approved, only after extensive SWB technical assistance and City’s hiring of a new engineering firm.
NENMLF (Wagon Mound)	10/18/2005	1/8/2008	Good application 2+years
Facility (Private)	Permit Submitted	Permit Issued Date	Notes
Rio Rancho	11/6/2006	9/23/2008	Less than 2 years
Valencia Regional LF	4/19/2004	11/27/2006	2+ years

Southwest C & D LF	5/5/2006	1/8/2008	Less than 2 years
Camino Real LF	3/3/2006	7/24/2008	2+ years
San Juan LF	1/16/2004	1/12/2006	2 years

HB 824/HENRCS increases fees for the Solid Waste Fund and provides for continuing appropriations. Any overall increase in revenue to the Solid Waste Fund would decrease the reliance on the general fund to support this program. However, the LFC has concerns with including continuing appropriation language in the statutory provisions for funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

Currently, private solid waste facilities renew permits every 10 years with a review every five years. Public sites are on a 20-year permit renewal schedule with reviews every 10 years. Permit renewal is an intensive process that can take up to 18 months and includes adjudicatory public hearings. A review is a less rigorous process that includes such items as reviewing the operation, compliance history, financial assurance, volume of waste generation, and ground water monitoring. If the Secretary of Environment Department determines that there is significant public interest, a nonadjudicatory hearing shall be held as part of the review. Interested parties may petition the department for review, in addition to the 10-year review, provided the director has discretion whether there is good cause for such an additional review.

An adjudicatory public hearing involves a formal legal process, with expert testimony provided under oath, cross-examination, a hearing officer, and a record upon which the NMED Secretary renders a permitting decision. NMED reports that a nonadjudicatory hearing is more informational in nature and does not provide a legal record upon which the Secretary can base a decision.

Under HB 643/HENRC, all landfill owners could choose a 20-year option. NMED interprets the bill to mean that the facilities will not undergo any review at the time of selecting an option but will simply notify the agency of the option selected. Each permit shall then be reviewed by NMED at least once every ten years, which could possibly involve a nonadjudicatory public hearing but not an adjudicatory public hearing.

NMED notes concerns with this proposed process, as follows:

- Allowing a private facility to “choose” a 20 year permit critically diminishes the regulatory authority of the Department to impose permit conditions on any poorly operated public facilities by increasing the review period from five to ten years.
- It limits the Department’s options in egregious cases on non-compliance with operational requirements. Permits may be revoked, however, each owner is allowed due process, including legal appeals that could take between 5 and 8 years to complete.
- It shifts the burden of proof at a public hearing from an applicant to members of the public in the community regarding operations and other potential impacts of the facility. The public usually does not have the funds to mount a good case or even to hire representation or experts.

- Public notification is required; however, public participation would be limited to situations in which “significant interest” is determined. Such a process does not comport with NMSA 1978, §74-9-14.L to “encourage public participation in rulemaking processes regarding solid waste management.”
- HB 824 does not provide a mechanism for the Environment Department to modify the solid waste permit should conditions at a facility require it.

PERFORMANCE IMPLICATIONS

NMED maintains that the amendments to the Solid Waste Act proposed by HB 643/HENRCS will make it extremely difficult for the agency to properly regulate facilities, suggesting that the only regulatory mechanism will be enforcement actions and permit revocations. However, the bill does provide for annual technical and administrative oversight of permitted facilities that have opted into the 20-year permit status. It is unclear how this oversight will compare to the current 5-year (for private facilities) and 10-year reviews (for public facilities) under the bill.

NMED has several solid waste performance measures relating to the protection of ground water. The department maintains that if the agency is not able to effectively regulate solid waste facilities, the performance measures will not be met.

CONFLICT

HB 824/HENRCS conflicts with SB 491, which provides an alternative fee schedule, does not change the current permit renewal process, and does not amend sections to eliminate an adjudicatory public hearing.

HB 824/HENRCS now conflicts with SB643/SCONS, which provides for an “active life of site” registration.

TECHNICAL ISSUES

Three technical issues have been pointed out by NMED:

The definition of “permit modification,” which excludes those modifications of pollution control systems in order to comply with federal or state statutes or regulations, conflicts with two sections of the bill regarding the authority of the “secretary to require appropriate modifications of the permit, “including modifications necessary to make the permit terms and conditions consistent with statutes, regulations or judicial decisions.”

It is unclear if the bill intends the “director” and “division,” as defined in Section 1 (F) and (G), to mean the director the environmental protection division, as there is not an “environmental improvement division” of the department of environment. More likely, the bill intends the Secretary of the Department of Environment to be the decision-maker for solid waste permitting. In this case, the two definitions need to be updated accordingly as well as several references to “director” and “division” in the bill to “secretary” and “department.”

By allowing landfill owners to grant longer permit terms for facility permits, local land use and zoning requirements may be circumvented.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMED will have less alternative funding for its solid waste permit program, but permits will continue to go through the review process every five years (private facility) or 10 years (public facility). Permit renewals would be required every 10 and 20 years, respectively.



POSSIBLE QUESTIONS

1. What is the normal cost for an adjudicatory public hearing to the department and to the landfill owner?
2. Would having nonadjudicatory public hearings reduce this cost for both?
3. How would public comment be incorporated into the permitting process under this bill?

MA/mt:svb

APPENDIX A

New Mexico Permitted Facilities	Issue Date	Interim Review Date	Permit Expiration	2009 Notes
Butterfield Trail	7/19/2007	7/19/2017	7/19/2027	Under Construction
Caja del Rio	6/27/1995	7/25/2008	7/27/2015	\$6,000 Paid Modification
Camino Real	3/5/1997		7/24/2009	1 year permit issued Fee paid Legal Challenge
Cerro Colorado	6/22/2000	6/22/2010	6/22/2020	
Clovis	6/15/1998	6/16/2008	6/15/2018	
Corralitos	8/8/1995	8/8/2005	8/8/2015	
Lea County	12/17/1998	12/17/2008	12/17/2018	
Magdalena C&D	8/7/2000	8/7/2010	8/7/2020	
Mesa Verde (C&D)	3/12/2001	3/12/2006	3/12/2011	
Northeast NM Regional	3/26/1997	12/17/2012	12/17/2017	
Otero/Lincoln Regional	10/4/1993	10/4/2003	10/4/2013	
Red Rocks	10/12/1995	1/27/2009		Hearing Held, fee already paid
Rhino	1/30/2002		1/30/2007	Not Constructed - On hold
Rio Rancho	4/29/1994	9/23/2013	9/23/2018	
Roswell	5/21/1997	8/31/2017	8/31/2027	
Sand Point	3/2/1994	3/16/2006	3/2/2014	
San Juan County Regional	1/18/2006	1/12/2011	1/12/2016	
Sandoval County	8/5/1998	8/5/2008	8/5/2018	Special Waste 7/5/2025
Socorro Registered Permit Req			2/25/2008	Denied Under appeal
Southwest NM Regional (Silver City)	12/19/1994	12/19/2004	12/19/2014	
Southwest	5/8/1997	11/14/2012	11/14/2017	
Taos	8/16/2001	8/16/2011	8/16/2021	Interium Review 8/16/2011 \$21,000 Paid 1/09 Mod and renewal
Torrance County	6/18/1997	2/3/2009	6/18/2017	
Tucumari Landfill	5/31/2005	5/31/2015	5/31/2025	
Valencial Regional Landfill & Recycl	11/20/2006	11/20/2011	11/20/2016	Interium Review 11/27/2011
Permitted Special Waste				
Keers Asbestos	7/16/1993	10/16/2012	10/16/2017	Permit Issued
Lea Land Industrial	2/27/1996		9/12/2005	Fee paid, On Hold pending ACO Hearing

 NO fee for interim reviews
 Permit Expiration Date - Fees would be submitted for Renewals