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FISCAL IMPACT REPORT

ORIGINAL DATE 2-19-09

SPONSOR Feldman LAST UPDATED _____ HB _____

SHORT TITLE Increase Solid Waste Permit Fees SB 491

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.1*	\$0.1*	Recurring	Solid Waste Fund
	(\$0.1)*	(\$0.1)*	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

*See Fiscal Impact

Conflicts with S643
Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
Department of Finance and Administration (DFA)
New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

Senate Bill 491 amends the Solid Waste Act to increase the maximum fee charged for a solid waste permits from \$10 thousand to \$100 thousand. Laws 1991, Chapter 185, Section 2 is repealed as a statutory “cleanup.”

FISCAL IMPLICATIONS

While increasing the fee would increase revenues and potentially reduce the need for general fund, the department notes it is unable to produce an estimated fiscal impact for the following reasons:

- The Environmental Improvement Board must approve a fee schedule after a stakeholder process and a public hearing. The amendment sets a maximum cap of \$100,000. Without an approved schedule there is no way to develop an estimate. It is anticipated that the schedule will be similar to the existing schedule that charges by tonnage and by modification type. This amendment was submitted to allow for adequate reimbursement for future solid waste permit reviews.
- Revenue generated as a result of permit applications is and would continue to be cyclical, and does not provide a sustained annual revenue source. For reference, the current permit fee fund balance as of February 3, 2009 is \$54,349. The SWB has authorization in the current fiscal year budget to spend \$40,000. This fund is used to pay for court reporting, hearing officer (if necessary) and other costs associated with hearings.
- The attached chart indicates all New Mexico Permitted Facilities. The Solid Waste Bureau has processed most of the permit applications and renewals, and as seen in the Permit Expiration Section, the earliest next permit due is in 2011.
- The Solid Waste Bureau is aware of one potential new application that may be submitted prior to the end of the fiscal year. From that application, the Bureau estimates that it may receive approximately \$20,000, because it may include special waste.
- The Solid Waste Bureau is unaware of any modifications that will be submitted within the next three years and projects no revenues from modifications.

Given the uncertainty in fee projections, it is unclear whether the higher fees would simply cover the higher costs or they would allow a reduction in general fund to support the same activities.

SIGNIFICANT ISSUES

NMED notes that the fee limit for solid waste permits has not been amended in 18 years while the cost of completing technical reviews of permit applications has significantly increased. The agency specifies that in some cases the cost to process the permit was ten times greater than the \$10,000 maximum limit. NMED asserts that an adjustment should be made to reflect current costs required to perform reviews of increasingly substantive and complex applications. The department reports that the typical application review takes a team of technical staff and an attorney at least 18 months to complete.

NMED maintains that due to the SWB's reliance on general fund for operations relating to the solid waste program, there is no other source of funds to cover the high costs associated with existing reviews of permit applications. The SWB receives no federal grants to implement the Act.

NMED provides additional information:

The Environmental Improvement Board must approve the new application fee schedule prior to implementation. Fees currently generated from permit application reviews are used to offset hearing costs for items such as court reporters, hearing officers, rental of hearing facilities, and language translation of public notices. During the past several

years, there has been a deficiency of funds to pay for these costs, and as a result the SWB has had to use funding earmarked for other important programs such as recycling and diversion outreach programs and staff training.

Section 2 of SB 491 repeals Laws 1991 Chapter 185 Section 2. Legislative Council Service added this section to NMED proposed amendments as a statutory cleanup, reconciling conflicting sections amended in 1991. It does not change the substance of SB 491.

PERFORMANCE IMPLICATIONS

The department has performance measures that require timely review of permit applications. The agency proposes that additional funds for permit application reviews will allow NMED to continue to provide technically competent reviews in a timely manner, which is important to the regulated industries, community groups and to the maintenance of adequate waste disposal capacity in New Mexico.

CONFLICT,

SB 491 conflicts with SSB 643, which proposes a two-tiered fee increase.

If SB 491 is enacted, appropriations made in the GAA for operating expenses in the Solid Waste Bureau may be duplicated.



WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

It appears that the costs have escalated far beyond the fee currently charged. The processing of solid waste permit applications from public and private landfill owners will continue to be 90 percent funded by the general fund.

MA/mt

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