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FISCAL IMPACT REPORT

ORIGINAL DATE 03/13/09

SPONSOR SCONC LAST UPDATED _____ HB _____

SHORT TITLE Solid Waste Permit Fees SB 643/SCONCS

ANALYST Aubel

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
Permit Fees	NFI	Up To \$50.0	Nonrecurring	Solid Waste Fees
20-year Annual Technical And Administrative Fees	Up to \$150.0	Up to \$150.0	Recurring	Solid Waste Fees
Recycling Reduction	Indeterminate Reduction	Indeterminate Reduction	Recurring	Solid Waste Fees

(Parenthesis () Indicate Revenue Decreases)

*Based on fiscal impact in NMED response to HB824/HENRCS

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Increase in Solid Waste Fees		Indeterminate Reduction	Indeterminate Reduction	Indeterminate Reduction	Nonrecurring	General Fund

Conflicts with SB491, HB824/HENRCS
Relates to General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

The Senate Conservation Committee Substitute for Senate Bill 643 amends the following sections of the Solid Waste Act:

- Section 74-9-3 NMSA 1978 to add several definitions:
 - “active life of site permit” limits permit term to life of a property that does not exceed 500 acres
 - “active life of site registration” means a permit issued for a new or existing facility that has opted into the “life of site” permit;
 - “audited costs” means costs incurred that can be verified using governmental accounting principles;
 - “permit modification” does not include a modification of pollution control systems in order to comply with changes in federal or state statutes or regulations (see technical issues); and
 - “registered facility” means a facility that is exempt from permitting requirements;
- Section 74-9-8(A) NMSA 1978 to extend the date to December 31, 1010 by which the Environmental Improvement Board (EIB) shall adopt rules regarding the proposed fee schedules;
- Section 74-9-8(I) NMSA 1978 to establish a two fee schedules for public and private facilities;
- The first fee schedule is for processing applications for permits and permit modifications and shall be based on audited not to exceed the following fees based on tonnage:
 - Not greater than \$60 thousand per year that receive 400 thousand tons or more per year;
 - \$30 thousand per year for facilities that receive less than 400 thousand tons but more than 200 thousand tons; and
 - \$20 thousand per year for facilities that receive 200 thousand tons or less per year;
- The second fee schedule shall be for reimbursement of audited costs incurred annually for technical and administrative oversight of permitted or registered facilities that have opted into the life of site permit, 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 and removes language that also allows an active life of site option,;

- Amends Section 74-9-24(G) (2) relating to private-owned facilities, repeating Section (G)(1) to allow the choice for a 20-year permit or life of site as long as the facility is in compliance with the Act or Solid Waste Rules;
 - Applies the reimbursement schedule noted above for facilities choosing the life of site option;
 - The 20-year option is reduced by number of years a facility has been operating under its current permit;
 - The notification process and timeline for choosing a 20-year or life of site permit option is specified;
 - The life of site option requires an adjustment of financial assurance coverage; and
- Specifies that each permit shall be reviewed every ten years (rather than the current five years); and
- Adds a new subsection, Section 74-9-15(E), that proportionately reduces the annual fee proposed in SB 643/SCONCS based on the percentage of waste generated within the jurisdiction that is either recycled or composted for public facilities.

FISCAL IMPLICATIONS

As proposed in SB 643/SCONCS, a maximum permit application or renewal fee for publicly or privately owned facilities is capped at \$60 thousand. NMED notes that this increase in fees would result in increased revenues that would be cyclical. The next permit renewal application is not due to be submitted until 2011. (See Attachment A.) Due to the intermittent nature of these fee increases for permit renewals or modifications--which may not be rescheduled for up to 20 years or never (based on a life of site option) -- the fiscal impact is non-recurring.

According to the NMED response to HB824/HENRCS, “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 a 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.”

Assuming a similar survey response for the “life of site” option contained in this bill, the fiscal impact would be a recurring \$150 thousand for SB643/SCONCS.

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. According to the department, reviewing permit applications from the public cost the bureau significantly more in staff time and effort than applications from the private sector.

The bill contains a provision to reduce fees for public facilities that is proportional to the percentage of waste generated within the jurisdiction that is either recycled or composted. The amount of recycling and composting are additional unknown variables; thus, the reduction to fees is also indeterminate.

Any overall increase in revenue to the Solid Waste Fund may decrease the reliance on the general fund to support this program, although program costs still appear to outpace the increased revenues according to the NMED cost estimates. Therefore, the general fund reduction may be minimal in years with ongoing permitting review or renewals and is considered nonrecurring.

SB 643/SCONCS increases fees for the Solid Waste Fund and provides for continuing appropriations. 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 SB/6423/SCONC, all landfill owners could choose a 20-year option or a life of site 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 or life of site 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.”

PERFORMANCE IMPLICATIONS

NMED maintains that the amendments to the Solid Waste Act proposed by SB 643/SCONCS 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 life of site 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

SB 643/SCONCS 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.

SB 643/SCONCS now conflicts with HB 824/HENRCS, which provides for an “20-year” option for privately-owned facilities.

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 (I) and (J), to refer to 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