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## FISCAL IMPACT REPORT

**SPONSOR** Stefanics **ORIGINAL DATE** 2/04/2020  
**LAST UPDATED** 2/11/2020 **HB** \_\_\_\_\_

**SHORT TITLE** Fees for Used Oil Businesses **SB** 180/aSCONC

**ANALYST** Wan

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		
	\$150.0	\$300.0	Recurring	Hazardous Waste Fund, Hazardous Waste Emergency Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$50.0		\$50.0	Nonrecurring	Hazardous Waste Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Environment Department (NMED)

### SUMMARY

#### Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 180 strikes language on business fees that are not assessed by NMED in the existing fee structure. The amendment also revises sentences on page 6, lines 4 and 5, to clarify that hazardous waste generation fees are applicable to businesses generating used oil and that used oil fees will be based on any amount of used oil generated annually.

#### Synopsis of Original Bill

Senate Bill 180 amends the Hazardous Waste Act (HWA) to allow the Environmental Improvement Board (EIB) to include used oil generators in the hazardous waste fee rules. The

bill does not establish specific fees or change the rulemaking process by which fees are determined. The bill would also increase the maximum civil penalty amounts the Environment Department may assess for violations of hazardous waste management rules, which govern requirements for hazardous waste and used oil generation and management, and would establish an annual increase to the civil penalties based on the consumer price index. Penalty caps would be increased to \$75 thousand for violations of compliance orders issued under the HWA and \$15 thousand for noncompliance of orders related to hazardous waste monitoring, analysis and testing.

The effective date of this bill is July 1, 2020.

### **FISCAL IMPLICATIONS**

According to NMED, “Including used oil generators, used oil transporters and used oil processors in the fee rule will increase revenues for NMED up to \$300 thousand annually, depending on the EIB’s adopted fee schedule. NMED will incur costs associated with developing a proposed fee structure and presenting it to the EIB for adoption, including technical and legal staff time, stakeholder engagement, and publication requirements.” The agency estimates these operating costs will be \$50 thousand in FY21.

NMED also states the ability to raise penalty amounts above the limits currently in statute will increase revenues in the hazardous waste emergency fund managed by NMED. The agency uses the hazardous waste emergency fund for emergency response and remediation activities.

### **SIGNIFICANT ISSUES**

New Mexico has not increased its hazardous waste penalties since the HWA was enacted in 1978. According to NMED, this is inconsistent with federal law and policies, which adjust civil penalties on an annual basis to account for inflation.

NMED states:

[The agency’s] ability to protect communities from improper management of used oil is significantly limited. Communities are directly impacted by illegal dumping and improper management of used oil that results in spills contaminating soils, surface water or groundwater. This is costly to remediate, often leading to legacy contamination which local jurisdictions or the state ultimately may manage. NMED is required by the U.S. Environmental Protection Agency to conduct regulatory oversight of used oil generators, used oil transporters and used oil processing facilities. Currently, the state does not collect fees for these activities.

### **PERFORMANCE IMPLICATIONS**

NMED reports its performance is hindered by limited resources resulting in part from an inability to increase certain penalties. The agency expects increased revenue will allow officers to conduct more inspections and that the deterrent effect of increased civil penalties will increase compliance.

**ADMINISTRATIVE IMPLICATIONS**

If SB180 is enacted, NMED will revise the hazardous waste fee rules to include used oil generators, transporters and used oil processors, and bring a proposed fee structure to the EIB for adoption.

**TECHNICAL ISSUES**

NMED suggested the following amendments to address recent rule changes adopted by the EIB:

Section 1, Paragraph J (1): Delete this paragraph in its entirety. The newly adopted rule (20.4.3 NMAC) does not include fees for doing business, which were in the previous 20.4.3 NMAC. This paragraph is no longer reflective of current adopted language.

Section 1, Paragraph J (2): This paragraph should read “a hazardous waste generation fee applicable to any business generating hazardous waste or used oil, which shall be based on the quantity of hazardous waste generated annually or any amount of used oil; however...”

CW/al/rl