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SENATE BILL 643

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE SOLID WASTE ACT TO PROVIDE FOR SEPARATE FEE SCHEDULES FOR PERMIT APPLICATION PROCESSING AND FOR PERMIT AUDITING; PROVIDING FOR REDUCED ANNUAL FEES FOR PUBLIC FACILITIES PROPORTIONAL TO RECYCLED WASTE; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1991 BY REPEALING LAWS 1991, CHAPTER 185, SECTION 2; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-9-8 NMSA 1978 (being Laws 1990, Chapter 99, Section 8, as amended by Laws 1991, Chapter 185, Section 2 and also by Laws 1991, Chapter 194, Section 3) is amended to read:

"74-9-8. BOARD ADOPTION OF INITIAL REGULATIONS.--No later than December 31, 1991, the board shall adopt regulations under .177414.1

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1 the authority of this section to:

2 A. implement, administer and enforce a program for
3 the cost-effective and environmentally safe siting,
4 construction, operation, maintenance, closure and post-closure
5 care of solid waste facilities, including financial
6 responsibility requirements for solid waste facility owners and
7 operators and also including requirements that assure that the
8 relative interests of the applicant, other owners of property
9 likely to be affected and the general public will be considered
10 prior to the issuance of a permit for a solid waste facility;

11 B. define the solid wastes that are considered
12 special wastes;

13 C. establish specific requirements for the
14 detoxification and disposal of special wastes;

15 D. establish classifications of solid waste
16 facilities and define what types of solid waste may be
17 processed or disposed of in each classification;

18 E. establish performance standards for the
19 construction and operation of solid waste facilities that will
20 assure protection of ground water quality from degradation by
21 contaminants from solid waste facilities consistent with the
22 provisions of the Water Quality Act and the regulations and
23 standards established under that act by the water quality
24 control commission, provided such regulations shall not allow
25 permitting of any active solid waste facility larger than five

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1 hundred acres;

2 F. establish performance standards for
3 transformation facilities that will assure protection of the
4 state's environment;

5 G. establish requirements and procedures for the
6 granting or denial of an application to modify a solid waste
7 facility permit under Section 74-9-25 NMSA 1978;

8 H. establish requirements and procedures for
9 commercial haulers to minimize littering and otherwise prevent
10 degradation of the environment;

11 ~~[I. establish an applicant fee schedule for~~
12 ~~processing permit applications that is based on costs of~~
13 ~~application review incurred by the division and also costs~~
14 ~~incurred for investigations of applicants by state departments~~
15 ~~and agencies other than the division, which regulation shall~~
16 ~~provide for the reimbursement of these costs to the division or~~
17 ~~other department or agency from the fees charged and shall also~~
18 ~~limit the fee to be not greater than ten thousand dollars~~
19 ~~(\$10,000)]~~

20 I. establish two separate regulatory fee schedules
21 as follows:

22 (1) the first fee schedule shall be for
23 processing applications for permits and permit modifications
24 and shall be based on audited costs of application review
25 incurred by the division and also costs incurred for

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1 investigations of applicants by state departments and agencies
2 other than the division, which regulations shall provide for
3 the reimbursement of these costs to the division or other
4 departments or agencies from the fees charged and shall limit
5 the total fee to be not greater than fifty thousand dollars
6 (\$50,000) for publicly or privately owned facilities; or

7 (2) the second fee schedule shall be for
8 reimbursement of audited costs incurred annually by the
9 division for technical and administrative oversight of
10 permitted or registered facilities that have opted into the
11 life of site compliance schedule pursuant to Section 74-9-24
12 NMSA 1978 and shall not be greater than fifty thousand dollars
13 (\$50,000) per year for publicly or privately owned facilities;

14 J. establish requirements and procedures for a
15 person to obtain a variance from the application of a
16 substantive regulation to the person if the person files a
17 written application for a variance with the director and
18 demonstrates to the director's satisfaction that:

19 (1) application of the regulation would result
20 in an arbitrary and unreasonable taking of the applicant's
21 property or would impose an undue economic burden upon any
22 lawful business, occupation or activity; and

23 (2) granting the variance will not result in
24 any condition injurious to human health, safety or welfare or
25 the environment;

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1 K. assure that no variance will be granted under
2 the provisions of Subsection J of this section until the
3 director has considered the relative interests of the
4 applicant, other owners of property likely to be affected and
5 the general public and that any variance or renewal of a
6 variance shall be granted for time periods and under conditions
7 consistent with reasons for the [~~various~~] variance but within
8 the following limitations:

9 (1) if the variance is granted on the grounds
10 that there are no practicable means known or available for the
11 adequate prevention of degradation of the environment or the
12 risk to the public health, safety or welfare, it shall continue
13 only until the necessary means for the prevention of the
14 degradation or risk become known and available; or

15 (2) if the variance is granted on the grounds
16 that it is justified to relieve or prevent hardship of a kind
17 other than that provided for in Paragraph (1) of this
18 subsection, it shall not be granted for more than one year;

19 L. establish a list of solid wastes that shall not
20 be transferred, disposed of or transformed in a solid waste
21 facility and prohibit the disposal or transformation of those
22 solid wastes in solid waste facilities;

23 M. establish recordkeeping procedures for solid
24 waste transfer, landfill disposal and transformation facilities
25 that shall include requirements for recording the type, amount

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1 and origin of solid waste transferred, disposed of or
2 transformed at the facility and that require operators of
3 landfill disposal, solid waste transfer and transformation
4 facilities within the state to:

5 (1) maintain records in a form required by the
6 division and file them with the division indicating the type,
7 amount, origin and location in a landfill disposal facility of
8 solid waste accepted by the facility;

9 (2) maintain copies of the records required
10 under Paragraph (1) of this subsection after closure in a
11 manner and for the length of time prescribed by the division;
12 and

13 (3) make all required records available for
14 inspection by the division and the general public during normal
15 business hours; and

16 N. require the division to establish a solid waste
17 facility operator certification program."

18 Section 2. Section 74-9-15 NMSA 1978 (being Laws 1990,
19 Chapter 99, Section 15) is amended to read:

20 "74-9-15. SPECIFIC PROGRAM--STATE GOVERNMENT SOURCE
21 REDUCTION AND RECYCLING.--

22 A. The division shall cooperate with the general
23 services department in its assessment of the status of
24 recycling efforts undertaken directly by state government for
25 its own solid waste and its evaluation of existing programs and

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1 its development of necessary recycling programs to reduce the
2 generation of solid waste by state government. The programs
3 shall include recycling of office papers, cardboard, used motor
4 oil, yard waste and other materials produced by the state for
5 which recycling markets exist or may be developed.

6 B. Each state agency and the legislature shall
7 prepare a source reduction and recycling plan addressing the
8 requirements of Subsections C and D of this section. Each
9 agency plan shall be submitted for approval to the general
10 services department on or before December 31, 1991, consistent
11 with the goals and guidelines of this section, the goals stated
12 in Subsection J of Section [~~6 of the Solid Waste Act~~] 74-9-6
13 NMSA 1978 and the state plan. Agency plans shall be updated
14 biennially to increase the amount of solid waste recycled by
15 taking advantage of any changed circumstances. Updated plans
16 shall be submitted to the general services department for
17 approval prior to adoption.

18 C. By July 1, 1992, each state agency and the
19 legislature shall establish and implement a source separation
20 and collection program for recyclable materials produced as a
21 result of agency operations, including, at a minimum, high
22 grade paper, corrugated paper and glass. The source separation
23 and collection program shall include, at a minimum, procedures
24 for collecting and storing recyclable materials and contractual
25 and other arrangements with buyers. Each agency shall appoint

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1 a recycling coordinator and shall conduct educational programs
2 about the recycling program for its employees.

3 D. By July 1, 1992, each state agency shall
4 establish and implement a source reduction program for
5 materials used in the course of agency operations. The program
6 shall be designed and implemented to achieve the maximum
7 feasible reduction of solid waste generated as a result of
8 agency operations.

9 E. Annual fees assessed by the division for
10 technical and administrative oversight of publicly owned
11 facilities pursuant to Section 74-9-8 NMSA 1978 shall be
12 reduced proportionately by the percentage of waste generated
13 within the responsible jurisdiction that is either recycled or
14 composted and not disposed of or transferred as waste to
15 publicly owned facilities."

16 Section 3. Section 74-9-24 NMSA 1978 (being Laws 1990,
17 Chapter 99, Section 24, as amended) is amended to read:

18 "74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND
19 DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING
20 REQUIREMENT.--

21 A. The director, within one hundred eighty days
22 after the application is deemed complete and after a public
23 hearing, shall issue a permit, issue a permit with terms and
24 conditions or deny a permit application. The director may deny
25 a permit application on the basis of information in the

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1 application or evidence presented at the hearing, or both, if
2 [he] the director makes a finding that granting the permit
3 would be contradictory to or in violation of the Solid Waste
4 Act or any regulation adopted [~~under it.~~ He] pursuant to the
5 provisions of that act. The director may also deny a permit
6 application if the applicant fails to meet the financial
7 responsibility requirements established by the board [~~under~~
8 pursuant to the provisions of Subsection A of Section 74-9-8
9 NMSA 1978 and Section 74-9-35 NMSA 1978.

10 B. The director may deny any permit application or
11 revoke a permit if [he] the director has reasonable cause to
12 believe that [~~any~~] a person required to be listed on the
13 application pursuant to Section 74-9-20 NMSA 1978 has:

14 (1) knowingly misrepresented a material fact
15 in application for a permit;

16 (2) refused to disclose or failed to disclose
17 the information required [~~under~~] pursuant to the provisions of
18 Section 74-9-21 NMSA 1978;

19 (3) been convicted of a felony or other crime
20 involving moral turpitude within ten years immediately
21 preceding the date of the submission of the permit application;

22 (4) been convicted of a felony, within ten
23 years immediately preceding the date of the submission of the
24 permit application, in any court for any crime defined by state
25 or federal statutes as involving or being restraint of trade,

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1 price-fixing, bribery or fraud;

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

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

7 C. In making a finding under Subsection B of this
8 section, the director may consider aggravating and mitigating
9 factors presented by any party at the hearing.

10 D. If an applicant whose permit is being considered
11 for denial or revocation on any basis provided in this section
12 has submitted an affirmative action plan that has been approved
13 in writing by the director and plan approval includes a period
14 of operation under a conditional permit or license that will
15 allow the applicant a reasonable opportunity to affirmatively
16 demonstrate its rehabilitation, the director may issue a
17 conditional license for a reasonable period of time of
18 operation. In approving an affirmative action plan intended to
19 affirmatively demonstrate rehabilitation, the director may
20 consider the following factors: implementation by the
21 applicant of formal policies; training programs and management
22 control to minimize and prevent the occurrence of future
23 violations; installation by the applicant of internal
24 environmental auditing programs; the discharge of individuals
25 convicted of any crimes set forth in Subsection B of this

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1 section; and such other factors as the director may deem
2 relevant.

3 E. Within sixty days of the date of the closing of
4 the hearing on a permit application, the director shall notify
5 the applicant by certified mail of the issuance, denial or
6 issuance with conditions of a permit and the reasons [~~therefor~~]
7 for it. Any person who has made a written request to the
8 director to be notified of the action taken on the application
9 shall be given written notice of the director's action.

10 F. No permit for the operation of a solid waste
11 facility shall be valid until the permit or a notice of the
12 permit and a legal description of the property on which the
13 facility is located are filed and recorded in the office of the
14 county clerk in each county in which the facility is located.

15 G. Except as otherwise provided by law:

16 (1) each permit issued for a publicly owned
17 and publicly or privately operated new or repermited existing
18 landfill, transfer station, recycling facility or composting
19 facility shall remain in effect throughout the active life of
20 the landfill, transfer station, recycling facility or
21 composting facility as described in the approved permit [~~or for~~
22 ~~twenty years, whichever is less. Each permit issued for a~~
23 ~~publicly owned landfill, transfer station, recycling facility~~
24 ~~or composting facility that is privately operated pursuant to a~~
25 ~~contract of no more than four years duration entered into in~~

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1 ~~accordance with the state or local procurement code shall~~
2 ~~remain in effect throughout the active life of the landfill,~~
3 ~~transfer station, recycling facility or composting facility as~~
4 ~~described in the approved permit or for twenty years, whichever~~
5 ~~is less. Each time the contract is renewed, the director shall~~
6 ~~review the contract to determine whether the term of the permit~~
7 ~~shall be governed by this paragraph or Paragraph (2) of this~~
8 ~~section] or for twenty years, whichever the applicant chooses.~~
9 If the applicant opts for a life of site permit that is greater
10 than twenty years, annual fees for audited costs incurred by
11 the division for technical and administrative review shall be
12 reimbursed pursuant to Section 74-9-8 NMSA 1978. Applicants
13 for permits sought after July 1, 2009 shall indicate in their
14 application whether they are seeking a permit term of twenty
15 years or for the active life of the facility. Owners of
16 facilities permitted prior to July 1, 2009 shall submit in
17 writing to the division no later than September 30, 2009 their
18 decision to remain in the twenty-year permit cycle or to opt
19 into the life of site provision. Each permit shall be reviewed
20 by the department of environment at least once every ten years.
21 The review shall address the operation, compliance history,
22 financial assurance and technical requirements for the
23 landfill, transfer station, recycling facility or composting
24 facility. At the time of the review there shall be public
25 notice in the manner prescribed by Section 74-9-22 NMSA 1978.

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1 If the secretary of environment determines that there is
2 significant public interest, a nonadjudicatory hearing shall be
3 held as part of the review. The secretary may require
4 appropriate modifications of the permit, including
5 modifications necessary to make the permit terms and conditions
6 consistent with statutes, regulations or judicial decisions;

7 (2) each permit issued for a privately owned
8 new or repermited existing landfill, transfer station,
9 recycling facility or composting facility shall remain in
10 effect ~~[for ten years or for the active life of the facility,~~
11 ~~whichever is less. Each permit issued for a publicly owned~~
12 ~~landfill, transfer station, recycling facility or composting~~
13 ~~facility that is leased to a private person or that is operated~~
14 ~~by a private person pursuant to a contract of more than four~~
15 ~~years duration shall remain in effect for ten years or for the~~
16 ~~active life of the landfill or facility, whichever is less]~~
17 throughout the active life of the landfill, transfer station,
18 recycling facility or composting facility as described in the
19 approved permit, or for twenty years, whichever the applicant
20 chooses. If the applicant opts for a life of site permit, the
21 annual fees for audited costs incurred by the division for
22 technical and administrative review shall be reimbursed
23 pursuant to Section 74-9-8 NMSA 1978. Applicants for permits
24 sought after July 1, 2009 shall indicate in their application
25 whether they are seeking a permit term of twenty years or for

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1 the active life of the facility. Owners of privately held
2 facilities permitted prior to July 1, 2009 shall submit in
3 writing to the division no later than September 30, 2009 their
4 decision to opt into the twenty-year permit cycle or to opt
5 into the life of site provision. If a privately owned facility
6 opts into the twenty-year permit cycle, the twenty-year permit
7 term shall be reduced by the number of years the facility has
8 operated under its current permit. For privately owned
9 facilities that opt into either the twenty-year permit term or
10 the life of site permit term, the facility owners shall adjust
11 financial assurance coverage to accommodate requirements
12 pursuant to the solid waste management regulations. Each
13 permit shall be reviewed at least every [~~five~~] ten years by the
14 department of environment. Interested parties may petition the
15 department for review, in addition to the [~~five-year~~] ten-year
16 review, provided that the director [~~shall have~~] has discretion
17 to determine whether there is good cause for such an additional
18 review. The review shall address the operation, compliance
19 history, financial assurance and technical requirements for the
20 landfill, transfer station, recycling facility or composting
21 facility. At the time of the review there shall be public
22 notice in the manner prescribed by Section 74-9-22 NMSA 1978.
23 If the secretary of environment determines that there is
24 significant public interest, a nonadjudicatory hearing shall be
25 held as part of the review. The secretary may require

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1 appropriate modifications of the permit, including
2 modifications necessary to make the permit terms and conditions
3 consistent with statutes, regulations or judicial decisions;
4 and

5 (3) the term of permits for facilities not
6 specified by this subsection shall be governed by existing or
7 amended regulations adopted by the board.

8 H. The director shall issue separate special waste
9 permits for all solid waste facilities that transfer, process,
10 transform, recycle or dispose of special waste pursuant to
11 regulations adopted by the board."

12 Section 4. REPEAL.--Laws 1991, Chapter 185, Section 2 is
13 repealed.