

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 164

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE SOLID
WASTE ACT TO PROVIDE FOR HEARINGS IF THERE IS SIGNIFICANT
PUBLIC INTEREST.

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

SECTION 1. Section 74-9-22 NMSA 1978 (being Laws 1990,
Chapter 99, Section 22, as amended) is amended to read:

"74-9-22. SOLID WASTE FACILITY PERMIT--NOTICE OF
APPLICATION.--

A. Each application filed with the division for a
permit under the provisions of Section 74-9-20 NMSA 1978 shall
include documentary proof that the applicant has provided
notice of the filing of the application to the public and other
affected individuals and entities. The board shall adopt a
regulation specifying the required content of the notice;

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1 provided that the notice shall include a statement that:

2 (1) a hearing may occur on the application,
3 subject to a later determination that the application is
4 complete and that one or more of the criteria set forth in
5 Paragraph (1) of Subsection A of Section 74-9-28 NMSA 1978 is
6 met;

7 (2) no hearing may be held if none of the
8 criteria set forth in Paragraph (1) of Subsection A of Section
9 74-9-28 NMSA 1978 is met; and

10 (3) any member of the public may comment to
11 the secretary of environment about whether there is significant
12 public interest and how to provide such comments.

13 B. The notice shall be, at a minimum:

14 ~~[A.]~~ (1) provided by certified mail to the
15 owners of record, as shown by the most recent property tax
16 schedule, of all properties:

17 ~~[(1)]~~ (a) within one hundred feet of the
18 property on which the facility is located or proposed to be
19 located if the facility is or will be in a class A or H class
20 county or a municipality with a population of more than two
21 thousand five hundred persons; or

22 ~~[(2)]~~ (b) within one-half mile of the
23 property on which the facility is located or proposed to be
24 located if the facility is or will be in a county or
25 municipality other than those specified in ~~[Paragraph (1)]~~

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1 Subparagraph (a) of this subsection;

2 ~~[B.]~~ (2) provided by certified mail to all
 3 municipalities and counties in which the facility is or will be
 4 located and to the governing body of any county, municipality
 5 or Indian tribe or pueblo when the boundary of the territory of
 6 the county, municipality or Indian tribe or pueblo is within a
 7 ten-mile radius of the property on which the facility is
 8 proposed to be constructed, operated or closed;

9 ~~[C.]~~ (3) published once in a newspaper of
 10 general circulation in each county in which the property on
 11 which the facility is proposed to be constructed, operated or
 12 closed is located. This notice shall appear in either the
 13 classified or legal advertisements section of the newspaper and
 14 at one other place in the newspaper calculated to give the
 15 general public the most effective notice and, when appropriate,
 16 shall be printed in both English and Spanish; and

17 ~~[D.]~~ (4) posted in at least four publicly
 18 accessible and conspicuous places, including the proposed or
 19 existing facility entrance on the property on which the
 20 facility is or is proposed to be located."

21 **SECTION 2.** Section 74-9-23 NMSA 1978 (being Laws 1990,
 22 Chapter 99, Section 23) is amended to read:

23 "74-9-23. SOLID WASTE FACILITY PERMIT--WHEN APPLICATION
 24 DEEMED COMPLETE--NOTICE OF HEARING.--

25 A. An application for a solid waste facility permit

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1 under the provisions of Section [~~20 of the Solid Waste Act~~]
2 74-9-20 NMSA 1978 shall be deemed complete when the director
3 has received all information required under that section and
4 Section [~~21 of the Solid Waste Act~~] 74-9-21 NMSA 1978. At any
5 time during the application process that the director
6 determines that additional information is required from an
7 applicant or that information furnished is incomplete, [~~he~~] the
8 director shall notify the applicant in writing within ten days
9 of the date that determination is made.

10 B. Within sixty days of the director's
11 determination that a permit application is complete, the
12 director shall set a date, time and location for a hearing, if
13 any, on the application and, if a hearing is to be conducted,
14 give notice of the hearing date, time and location and a brief
15 description of the application in the same manner as required
16 in Section [~~22 of the Solid Waste Act~~] 74-9-22 NMSA 1978 and to
17 any person who makes a written request to the director for
18 notice regarding a specific application. Except as otherwise
19 provided in this section, hearings, if any, shall be conducted
20 in accordance with the provisions of Section [~~29 of the Solid~~
21 ~~Waste Act~~] 74-9-29 NMSA 1978."

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

24 "74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND
25 DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING

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1 REQUIREMENT.--

2 A. In the event a public hearing is held on an
3 application, the director, within one hundred eighty days after
4 the application is deemed complete and after a public hearing,
5 shall issue a permit, issue a permit with terms and conditions
6 or deny a permit application. In the event a public hearing is
7 not held on the application, the director shall, within sixty
8 days after the application is deemed complete, issue a permit,
9 issue a permit with terms and conditions or deny a permit
10 application. The director may deny a permit application on the
11 basis of information in the application or evidence presented
12 at the hearing, if any, or both, if the director makes a
13 finding that granting the permit would be contradictory to or
14 in violation of the Solid Waste Act or any regulation adopted
15 pursuant to the provisions of that act. The director may also
16 deny a permit application if the applicant fails to meet the
17 financial responsibility requirements established by the board
18 pursuant to the provisions of Subsection A of Section 74-9-8
19 NMSA 1978 and Section 74-9-35 NMSA 1978.

20 B. The director may deny any permit application or
21 revoke an existing permit if the director has reasonable cause
22 to believe that a person required to be listed on the
23 application pursuant to Section 74-9-20 NMSA 1978 has:

24 (1) knowingly misrepresented a material fact
25 in application for a permit;

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1 (2) refused to disclose or failed to disclose
2 the information required pursuant to the provisions of Section
3 74-9-21 NMSA 1978;

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

7 (4) been convicted of a felony, within ten
8 years immediately preceding the date of the submission of the
9 permit application, in any court for any crime defined by state
10 or federal statutes as involving or being restraint of trade,
11 price-fixing, bribery or fraud;

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

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

17 C. In making a finding under Subsection B of this
18 section, the director may consider aggravating and mitigating
19 factors presented by any party at the hearing, if any.

20 D. If an applicant whose permit is being considered
21 for denial or revocation on any basis provided in this section
22 has submitted an affirmative action plan that has been approved
23 in writing by the director and plan approval includes a period
24 of operation under a conditional permit or license that will
25 allow the applicant a reasonable opportunity to affirmatively

1 demonstrate its rehabilitation, the director may issue a
2 conditional license for a reasonable period of time of
3 operation. In approving an affirmative action plan intended to
4 affirmatively demonstrate rehabilitation, the director may
5 consider the following factors:

6 (1) implementation by the applicant of formal
7 policies;

8 (2) training programs and management control
9 to minimize and prevent the occurrence of future violations;

10 (3) installation by the applicant of internal
11 environmental auditing programs;

12 (4) the discharge of individuals convicted of
13 any crimes set forth in Subsection B of this section; and

14 (5) such other factors as the director may
15 deem relevant.

16 E. Within sixty days of the date of the closing of
17 the hearing on a permit application, or within sixty days after
18 the application is deemed complete if no hearing is held, the
19 director shall notify the applicant by certified mail of the
20 issuance, denial or issuance with conditions of a permit and
21 the reasons for it. Any person who has made a written request
22 to the director to be notified of the action taken on the
23 application shall be given written notice of the director's
24 action.

25 F. No permit for the operation of a solid waste

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1 facility shall be valid until the permit or a notice of the
2 permit and a legal description of the property on which the
3 facility is located are filed and recorded in the office of the
4 county clerk in each county in which the facility is located.

5 G. Except as otherwise provided by law:

6 (1) each permit issued for a publicly owned
7 and publicly or privately operated new or repermited existing
8 landfill, transfer station, recycling facility or composting
9 facility shall remain in effect throughout the active life of
10 the landfill, transfer station, recycling facility or
11 composting facility as described in the approved permit or for
12 twenty years, whichever is less. Each permit issued for a
13 publicly owned landfill, transfer station, recycling facility
14 or composting facility that is privately operated pursuant to a
15 contract of no more than four years duration entered into in
16 accordance with the state or local procurement code shall
17 remain in effect throughout the active life of the landfill,
18 transfer station, recycling facility or composting facility as
19 described in the approved permit or for twenty years, whichever
20 is less. Each time the contract is renewed, the director shall
21 review the contract to determine whether the term of the permit
22 shall be governed by this paragraph or Paragraph (2) of this
23 subsection. Each permit shall be reviewed by the department of
24 environment at least once every ten years. The review shall
25 address the operation, compliance history, financial assurance

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1 and technical requirements for the landfill, transfer station,
2 recycling facility or composting facility. At the time of the
3 review, there shall be public notice in the manner prescribed
4 by Section 74-9-22 NMSA 1978. If the secretary of environment
5 determines that ~~[there is significant public interest]~~ one or
6 more of the criteria for holding a public hearing set forth in
7 Paragraph (1) of Subsection A of Section 74-9-28 NMSA 1978 is
8 met, a nonadjudicatory hearing shall be held as part of the
9 review. The secretary may require appropriate modifications of
10 the permit, including modifications necessary to make the
11 permit terms and conditions consistent with statutes,
12 regulations or judicial decisions;

13 (2) each permit issued for a privately owned
14 new or repermited existing landfill, transfer station,
15 recycling facility or composting facility shall remain in
16 effect throughout the active life of the facility as described
17 in the approved permit or for twenty years, whichever is less.
18 Owners of privately owned facilities permitted prior to July 1,
19 2011 shall submit in writing to the division no later than
20 September 1, 2011 their decision to opt into the twenty-year
21 permit cycle and provide information that demonstrates that
22 such period is less than the remaining active life of the
23 facility. If a privately owned facility opts into the
24 twenty-year permit cycle, the twenty-year permit term shall be
25 reduced by the number of years the facility has operated under

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1 its current permit. For privately owned facilities that opt
2 into the twenty-year permit term, the facility owners shall
3 adjust financial assurance coverage to accommodate requirements
4 pursuant to the solid waste management regulations. Each
5 permit shall be reviewed at least every five years by the
6 department of environment. Interested parties may petition the
7 department for review, in addition to the five-year review,
8 provided that the director has discretion to determine whether
9 there is good cause for such an additional review. The review
10 shall address the operation, compliance history, financial
11 assurance and technical requirements for the landfill, transfer
12 station, recycling facility or composting facility. At the
13 time of the review there shall be public notice in the manner
14 prescribed by Section 74-9-22 NMSA 1978. If the secretary of
15 environment determines that ~~[there is significant public~~
16 ~~interest]~~ one or more of the criteria for holding a public
17 hearing set forth in Paragraph (1) of Subsection A of Section
18 74-9-28 NMSA 1978 is met, a nonadjudicatory hearing shall be
19 held as part of the review. The secretary may require
20 appropriate modifications of the permit, including
21 modifications necessary to make the permit terms and conditions
22 consistent with statutes, regulations or judicial decisions;
23 and

24 (3) the term of permits for facilities not
25 specified by this subsection shall be governed by existing or

1 amended regulations adopted by the board.

2 H. The director shall issue separate special
3 waste permits for all solid waste facilities that transfer,
4 process, transform, recycle or dispose of special waste
5 pursuant to regulations adopted by the board."

6 SECTION 4. Section 74-9-28 NMSA 1978 (being Laws 1990,
7 Chapter 99, Section 28) is amended to read:

8 "74-9-28. PRIOR HEARING REQUIREMENT FOR ~~[ALL]~~ CERTAIN
9 ADJUDICATORY ACTIONS.--

10 A. The following adjudicatory actions by the
11 division are subject to prior hearing in accordance with the
12 requirements of Section ~~[29 of the Solid Waste Act]~~ 74-9-29
13 NMSA 1978, in addition to any specific hearing requirements
14 and procedures under other provisions of that act:

15 (1) issuance, refusal to issue or modify and
16 revocation of permits for solid waste facilities if the
17 applicant for the permit or the modification requests a
18 hearing or if the director determines that:

19 (a) there is significant public
20 interest concerning the facility or proposed facility that is
21 the subject of the proposed division action; or

22 (b) the facility or proposed facility
23 that is the subject of the proposed division action is
24 located or is to be located in a vulnerable area as defined
25 by the board;

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1 (2) administrative enforcement actions; and
2 (3) actions on requests for variances and
3 exemptions.

4 B. In any adjudicatory hearing, the director has
5 and may delegate to the hearing officer the power to issue
6 subpoenas for the attendance and testimony of witnesses and
7 the production of relevant documentary evidence. The
8 subpoenas may be enforced by action brought in the district
9 court for the county in which the hearing is held."

10 SECTION 5. Section 74-9-29 NMSA 1978 (being Laws 1990,
11 Chapter 99, Section 29) is amended to read:

12 "74-9-29. HEARING PROVISIONS FOR ADJUDICATORY
13 ACTIONS.--

14 A. The director shall adopt procedural
15 regulations to govern the procedures to be followed in
16 hearings on adjudicatory actions of the director. [~~No~~
17 ~~adjudicatory actions under the Solid Waste Act shall be taken~~
18 ~~until these regulations are adopted.~~] As a minimum, the
19 procedural regulations shall provide:

- 20 (1) for hearings, if any, to be public;
21 (2) requirements for prior notice of the
22 variance or exemption request hearings and the methods for
23 giving that notice, which shall be designed to inform
24 interested and affected persons of the nature of the action
25 to be considered and the date, time and place of the hearing;

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1 (3) for maintenance of a list of persons
2 that desire to have notice of variance request hearings and
3 provisions for giving notice to those persons;

4 (4) a reasonable opportunity for all persons
5 desiring to be heard on a variance or exemption request or a
6 permit action to be heard without making the hearing process,
7 if any, unreasonably lengthy or cumbersome or burdening the
8 record with unnecessary repetition;

9 (5) procedures for discovery;

10 (6) assurance that procedural due process
11 requirements are satisfied;

12 (7) for the director to designate a hearing
13 officer to conduct a hearing and make a report and
14 recommendation to the director;

15 (8) for the maintenance of a record of the
16 hearing proceedings and assessment of the costs of any
17 transcription of testimony that is required for judicial
18 review purposes; and

19 (9) for the place of the hearing to be in
20 Santa Fe, and at other places the board may prescribe, for
21 hearings on actions of general statewide application, for
22 hearings on actions of limited local application to be held
23 at a place in the area affected and for enforcement actions
24 to be heard in Santa Fe.

25 B. Actions taken by the director following a

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underscored material = new
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1 hearing, if any, on adjudicatory actions shall be:

2 (1) written and shall state the reasons for
3 the action;

4 (2) made public when taken;

5 (3) communicated to all persons that have
6 made a written request for notification of the action taken;
7 and

8 (4) taken within not more than thirty days
9 after the closing of the hearing, if any, or the date of
10 submission of a report by a hearing officer."