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SENATE BILL 228

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Michael Padilla and Mimi Stewart

AN ACT

RELATING TO THE DEPARTMENT OF ENVIRONMENT; AUTHORIZING THE DEPARTMENT TO USE THE MONEY FROM CERTAIN FEES TO PAY THE COST OF OTHER OPERATIONAL EXPENSES; CHANGING THE BASIS OF CERTAIN FEES FROM A DOLLAR AMOUNT TO REASONABLE COSTS; PROVIDING THAT MONEY IN CERTAIN FUNDS ADMINISTERED BY THE DEPARTMENT MAY BE USED FOR OTHER OPERATIONAL EXPENSES; REPEALING CONFLICTING LAWS; MAKING APPROPRIATIONS.

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

SECTION 1. Section 61-14E-10 NMSA 1978 (being Laws 1983, Chapter 317, Section 10, as amended) is amended to read:

"61-14E-10. FUND ESTABLISHED--DISPOSITION--METHOD OF PAYMENT.--

A. There is created in the state treasury the "radiologic technology fund".

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1 B. All fees received by the department pursuant to
2 the Medical Imaging and Radiation Therapy Health and Safety Act
3 shall be deposited with the state treasurer. The state
4 treasurer shall place the money to the credit of the radiologic
5 technology fund.

6 C. Payments out of the radiologic technology fund
7 shall be on vouchers issued and signed by the person designated
8 by the department upon warrants drawn by the department of
9 finance and administration and, except as provided in
10 Subsection D of this section, shall be used by the department
11 for the purpose of meeting necessary expenses incurred in the
12 enforcement of the purposes of the Medical Imaging and
13 Radiation Therapy Health and Safety Act, the duties imposed by
14 that act and the promotion of education and standards for
15 medical imaging technology and radiation therapy in this state.
16 All money unexpended or unencumbered at the end of the fiscal
17 year shall remain in the radiologic technology fund for use in
18 accordance with the provisions of the Medical Imaging and
19 Radiation Therapy Health and Safety Act, except as provided in
20 Subsection D of this section.

21 D. In addition to how money in the fund may be
22 expended pursuant to Subsection C of this section, money in the
23 fund may be used for other operational expenses of the
24 department."

25 SECTION 2. Section 61-33-5 NMSA 1978 (being Laws 1973,
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1 Chapter 394, Section 5, as amended) is amended to read:

2 "61-33-5. APPLICATION REQUIREMENTS--FEES--FUND CREATED--
3 ENDORSEMENT.--

4 A. An applicant for certification as a certified
5 operator shall:

6 (1) make application on forms furnished by the
7 department;

8 (2) submit evidence satisfactory to the
9 department that the applicant has reached the age of majority;
10 and

11 (3) except as provided in Section 61-1-34 NMSA
12 1978, pay in advance to the department fees set by rule [~~not to~~
13 ~~exceed:~~

14 ~~(a) for examination for certification in~~
15 ~~each classification \$100;~~

16 ~~(b) for renewal of a certificate after a~~
17 ~~period set by rule \$40.00; and~~

18 ~~(c) for issuance of a certificate by~~
19 ~~endorsement \$100]~~

20 to cover the reasonable costs of issuing the certificates and
21 other operational expenses of the department.

22 B. Fees collected pursuant to Subsection A of this
23 section shall be deposited with the state treasurer in the
24 "public water supply system operator and public wastewater
25 facility operator fund", hereby created. Except as provided in

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1 Subsection C of this section, the fund shall be used solely for
2 the purpose of administering and enforcing the Utility
3 Operators Certification Act. The fund shall be administered by
4 the department. Money in the fund shall be retained by the
5 department for use, subject to appropriation by the
6 legislature. Balances in the fund at the end of any fiscal
7 year shall not revert to the general fund, but shall accrue to
8 the credit of the fund. Earnings on the fund shall be credited
9 to the fund.

10 C. In addition to how money in the fund may be
11 expended pursuant to Subsection B of this section, money in the
12 fund may be used for other operational expenses of the
13 department.

14 ~~[C.]~~ D. The department may, in its discretion,
15 endorse for certification without examination an operator who
16 submits evidence satisfactory to the department that the
17 applicant has reached the age of majority and holds a valid
18 license or certification in any state, territory or foreign
19 jurisdiction having standards equal to or exceeding those of
20 New Mexico.

21 ~~[D.]~~ E. Fees shall not be increased more than once
22 per calendar year. ~~[The first increase of the fees shall not~~
23 ~~result in any fee greater than thirty dollars (\$30.00). Any~~
24 ~~subsequent increase of the fees shall not be more than five~~
25 ~~percent of the existing fee.]"~~

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1 SECTION 3. Section 74-1-13 NMSA 1978 (being Laws 1993,
2 Chapter 317, Section 2, as amended) is amended to read:

3 "74-1-13. WATER CONSERVATION FEE--IMPOSITION--
4 DEFINITIONS.--

5 A. There is imposed on every person who operates a
6 public water supply system a water conservation fee in an
7 amount equal to three cents (\$.03) per thousand gallons of
8 water produced on which the fee imposed by this subsection has
9 not been paid.

10 B. The "water conservation fund" is created in the
11 state treasury and shall be administered by the department.
12 The fund shall consist of water conservation fees collected
13 pursuant to this section. Balances in the fund at the end of
14 any fiscal year shall not revert to the general fund but shall
15 accrue to the credit of the fund. Earnings on the fund shall
16 be credited to the fund.

17 C. Money in the water conservation fund is
18 appropriated to the department for administration of a public
19 water supply program [~~to~~]:

20 (1) to test public water supplies for the
21 contaminants required to be tested pursuant to the provisions
22 of the federal Safe Drinking Water Act, as amended, and collect
23 chemical compliance samples as required by those provisions of
24 the federal act;

25 (2) to perform vulnerability assessments that

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1 will be used to assess a public water supply's susceptibility
2 to those contaminants; ~~and~~

3 (3) to implement new requirements of the
4 Utility Operators Certification Act and provide training for
5 all public water supply operators; and

6 (4) for other operational expenses of the
7 department.

8 D. The taxation and revenue department shall
9 provide by ~~[regulation]~~ rule for the manner and form of
10 collection of the water conservation fee. All water
11 conservation fees collected by the taxation and revenue
12 department, less the administrative fee withheld pursuant to
13 Section 7-1-6.41 NMSA 1978, shall be deposited in the water
14 conservation fund.

15 E. The fee imposed by this section shall be
16 administered in accordance with the provisions of the Tax
17 Administration Act and shall be paid to the taxation and
18 revenue department by each person who operates a public water
19 supply system in the manner required by the department on or
20 before the twenty-fifth day of the month following the month in
21 which the water is produced.

22 F. Each operator of a public water supply system
23 shall register and comply with the provisions of Section 7-1-12
24 NMSA 1978 and furnish such information as may be required by
25 the taxation and revenue department.

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1 G. The department shall compile a list of the
2 contaminants that require testing pursuant to Paragraph (1) of
3 Subsection C of this section. The list shall be compiled no
4 less than once every twelve months and include the contaminants
5 that will be tested in the subsequent twelve months. The
6 department shall establish by rule procedures to compile the
7 list and to determine which contaminants that require testing
8 will be tested in the subsequent twelve months. The
9 determination of which contaminants will be tested shall
10 include consideration of the availability of funds in the water
11 conservation fund, the needs of the public water supplies being
12 tested for additional contaminants and public health and
13 safety.

14 H. As used in this section:

15 (1) "person" means any individual or legal
16 entity and also means, to the extent permitted by law, any
17 federal, state or other governmental unit or subdivision or an
18 agency, department or instrumentality thereof; and

19 (2) "public water supply system" means a
20 system that provides piped water to the public for human
21 consumption and that has at least fifteen service connections
22 or regularly services an average of at least twenty-five
23 individuals at least sixty days per year."

24 SECTION 4. Section 74-1-15.2 NMSA 1978 (being Laws 2020,
25 Chapter 32, Section 1) is amended to read:

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1 "74-1-15.2. ENVIRONMENTAL HEALTH FUND--CREATED.--

2 A. The "environmental health fund" is created in
3 the state treasury. The fund consists of fees collected from
4 the ~~[regulation]~~ rule of on-site liquid waste systems and water
5 recreation facilities pursuant to the Environmental Improvement
6 Act, food establishments pursuant to the Food Service
7 Sanitation Act and hemp pursuant to the Hemp Manufacturing Act.
8 Except as provided in Subsection B of this section, money in
9 the fund is subject to appropriation by the legislature to the
10 department for the administration of ~~[regulations]~~ rules
11 pertaining to liquid waste, water recreation facilities, food
12 service sanitation and hemp. Disbursements from the fund shall
13 be by warrant drawn by the secretary of finance and
14 administration pursuant to vouchers signed by the secretary of
15 environment or the secretary of environment's designee. Any
16 unexpended or unencumbered balance in the environmental health
17 fund remaining at the end of any fiscal year shall not revert
18 to the general fund.

19 B. In addition to how money in the environmental
20 health fund may be expended pursuant to Subsection A of this
21 section, money in the fund may be used for other operational
22 expenses of the department.

23 ~~[B.]~~ C. Up to two hundred thousand dollars
24 (\$200,000) from unexpended and unencumbered money in the
25 environmental health fund may be transferred to the liquid

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1 waste disposal system assistance fund on an annual basis."

2 SECTION 5. Section 74-1-16 NMSA 1978 (being Laws 2003,
3 Chapter 335, Section 1, as amended) is amended to read:

4 "74-1-16. WATER RECREATION FACILITIES--FEE IMPOSITION.--

5 A. The board may assess an annual fee [~~not to~~
6 ~~exceed one hundred fifty dollars (\$150)~~] on the owner or
7 operator of a public swimming pool, public spa or other public
8 water recreation facility to defray the cost of administering
9 and enforcing rules adopted in accordance with the
10 Environmental Improvement Act pertaining to public water
11 recreation facilities. The fee shall be based on the size of
12 the public water recreation facility. Fees collected pursuant
13 to this section shall be deposited in the environmental health
14 fund.

15 B. In addition to how money in the environmental
16 health fund may be expended pursuant to Subsection A of this
17 section, money in the fund may be used for other operational
18 expenses of the department."

19 SECTION 6. Section 74-2-7 NMSA 1978 (being Laws 1972,
20 Chapter 51, Section 4, as amended) is amended to read:

21 "74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
22 IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

23 A. By [~~regulation~~] rule, the environmental
24 improvement board or the local board shall require:

25 (1) a person intending to construct or modify

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1 any source, except as otherwise specifically provided by
2 [~~regulation~~] rule, to obtain a construction permit from the
3 department or the local agency prior to such construction or
4 modification; and

5 (2) a person intending to operate any source
6 for which an operating permit is required by the 1990
7 amendments to the federal act, except as otherwise specifically
8 provided by rule or regulation, to obtain an operating permit
9 from the department or the local agency.

10 B. [~~Regulations~~] Rules adopted by the environmental
11 improvement board or the local board shall include at least the
12 following provisions:

13 (1) requirements for the submission of
14 relevant information, including information the department or
15 the local agency deems necessary to determine that
16 [~~regulations~~] rules and standards under the Air Quality Control
17 Act or the federal act will not be violated;

18 (2) specification of the deadlines for
19 processing permit applications; provided that the deadline for
20 a final decision by the department or the local agency on a
21 construction permit application may not exceed:

22 (a) ninety days after the application is
23 determined to be administratively complete, if the application
24 is not subject to requirements for prevention of significant
25 deterioration, unless the secretary or the director grants an

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1 extension not to exceed ninety days for good cause, including
2 the need to have public hearings; or

3 (b) one hundred eighty days after the
4 application is determined to be administratively complete, if
5 the application is subject to requirements for prevention of
6 significant deterioration, unless the secretary or the director
7 grants an extension not to exceed ninety days for good cause,
8 including the need to have public hearings;

9 (3) that if the department or local agency
10 fails to take final action on a construction permit application
11 within the deadlines specified in Paragraph (2) of this
12 subsection, the department or local agency shall notify the
13 applicant in writing that an extension of time is required to
14 process the application and specify in detail the grounds for
15 the extension;

16 (4) a description of elements required before
17 the department or local agency shall deem an application
18 administratively complete;

19 (5) specification of the public notice,
20 comment period and public hearing, if any, required prior to
21 the issuance of a permit; provided that the permit
22 [~~regulations~~] rules adopted:

23 (a) by the environmental improvement
24 board shall include provisions governing notice to nearby
25 states; and

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1 (b) by any local board shall include
2 provisions requiring that notice be given to the department of
3 all permit applications by any source that emits, or has a
4 potential emission rate of, one hundred tons per year or more
5 of any regulated air contaminant, including any source of
6 fugitive emissions of each regulated air contaminant, at least
7 sixty days prior to the date on which construction or major
8 modification is to commence;

9 (6) a schedule of construction permit fees
10 sufficient to cover the reasonable costs of:

11 (a) reviewing and acting upon any
12 application for such permit; ~~and~~

13 (b) implementing and enforcing the terms
14 and conditions of the permit, excluding any court costs or
15 other costs associated with an enforcement action; and

16 (c) other operational expenses of the
17 department;

18 (7) a schedule of emission fees consistent
19 with the provisions of Section 502(b)(3) of the 1990 amendments
20 to the federal act;

21 (8) a method for accelerated permit processing
22 that may be requested at the sole discretion of the applicant
23 at the time the applicant submits a construction permit
24 application and that:

25 (a) allows the department or local

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1 agency to contract with qualified outside firms to assist the
2 department or local agency in its accelerated review of the
3 construction permit application; provided that the department
4 or local agency can contract with a qualified firm that does
5 not have a conflict of interest; and

6 (b) establishes a process for the
7 department or local agency to account for the expenditure of
8 the accelerated permit processing fees;

9 (9) allowance for additional permit
10 application fees, sufficient to cover the reasonable costs of
11 an accelerated permit application review process. Before the
12 applicant is notified that the permit application has been
13 determined to be complete, the department or local agency shall
14 give the applicant a reasonable estimate of costs of an
15 accelerated permit application review process;

16 (10) specification of the maximum length of
17 time for which a permit shall be valid; provided that for an
18 operating permit such period may not exceed five years; and

19 (11) for an operating permit only:

20 (a) provisions consistent with Sections
21 502(b) and 505(b) of the federal act providing: 1) notice to
22 and review and comment by the United States environmental
23 protection agency; and 2) that if the department or local
24 agency receives notice of objection from the United States
25 environmental protection agency before the operating permit is

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1 issued, the department or the local agency shall not issue the
2 permit unless it is revised and issued under Section 505(c) of
3 the federal act;

4 (b) provisions governing renewal of the
5 operating permit; and

6 (c) specification of the conditions
7 under which the operating permit may be terminated, modified or
8 revoked and reissued prior to the expiration of the term of the
9 operating permit.

10 C. Except as provided in Subsection 0 of this
11 section, the department or the local agency may deny any
12 application for:

13 (1) a construction permit if it appears that
14 the construction or modification:

15 (a) will not meet applicable standards,
16 rules or requirements of the Air Quality Control Act or the
17 federal act;

18 (b) will cause or contribute to air
19 contaminant levels in excess of a national or state standard
20 or, within the boundaries of a local authority, applicable
21 local ambient air quality standards; or

22 (c) will violate any other provision of
23 the Air Quality Control Act or the federal act; and

24 (2) an operating permit if the source will not
25 meet the applicable standards, rules or requirements pursuant

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1 to the Air Quality Control Act or the federal act.

2 D. The department or the local agency may specify
3 conditions to any permit granted under this section, including:

4 (1) for a construction permit:

5 (a) a requirement that such source
6 install and operate control technology, determined on a case-
7 by-case basis, sufficient to meet the standards, rules and
8 requirements of the Air Quality Control Act and the federal
9 act;

10 (b) individual emission limits,
11 determined on a case-by-case basis, but only as restrictive as
12 necessary to meet the requirements of the Air Quality Control
13 Act and the federal act or the emission rate specified in the
14 permit application, whichever is more stringent;

15 (c) compliance with applicable federal
16 standards of performance;

17 (d) reasonable restrictions and
18 limitations not relating to emission limits or emission rates;
19 or

20 (e) any combination of the conditions
21 listed in this paragraph; and

22 (2) for an operating permit, terms and
23 conditions sufficient to ensure compliance with the applicable
24 standards, rules and requirements pursuant to the Air Quality
25 Control Act and the federal act.

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1 E. This section does not authorize the department
2 or the local agency to require the use of machinery, devices or
3 equipment from a particular manufacturer if the federal
4 standards of performance, state ~~[regulations]~~ rules and permit
5 conditions may be met by machinery, devices or equipment
6 otherwise available.

7 F. The issuance of a permit does not relieve any
8 person from the responsibility of complying with the provisions
9 of the Air Quality Control Act and any applicable ~~[regulations]~~
10 rules of the environmental improvement board or the local
11 board. Any conditions placed upon a permit by the department
12 or the local agency shall be enforceable to the same extent as
13 a ~~[regulation]~~ rule of its board.

14 G. A person who participated in a permitting action
15 before the department or the local agency shall be notified by
16 the department or the local agency of the action taken and the
17 reasons for the action. Notification of the applicant shall be
18 by certified mail.

19 H. A person who participated in a permitting action
20 before the department or the local agency and who is adversely
21 affected by such permitting action may file a petition for
22 hearing before the environmental improvement board or the local
23 board. The petition shall be made in writing to the
24 environmental improvement board or the local board within
25 thirty days from the date notice is given of the department's

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1 or the local agency's action. Unless a timely petition for
2 hearing is made, the decision of the department or the local
3 agency shall be final.

4 I. If a timely petition for hearing is made, the
5 environmental improvement board or the local board shall hold a
6 hearing within sixty days after receipt of the petition. The
7 environmental improvement board or the local board shall notify
8 the petitioner and the applicant or permittee, if other than
9 the petitioner, by certified mail of the date, time and place
10 of the hearing. If the subject of the petition is a permitting
11 action deemed by the environmental improvement board or the
12 local board to substantially affect the public interest, the
13 environmental improvement board or the local board shall ensure
14 that the public receives notice of the date, time and place of
15 the hearing. The public in such circumstances shall also be
16 given a reasonable opportunity to submit data, views or
17 arguments orally or in writing and to examine witnesses
18 testifying at the hearing. Any person submitting data, views
19 or arguments orally or in writing shall be subject to
20 examination at the hearing.

21 J. The environmental improvement board or the local
22 board may designate a hearing officer to take evidence in the
23 hearing. All hearings shall be recorded.

24 K. The burden of proof shall be upon the
25 petitioner. Based upon the evidence presented at the hearing,

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1 the environmental improvement board or the local board shall
2 sustain, modify or reverse the action of the department or the
3 local agency respectively.

4 L. Notwithstanding any other provision of law and
5 subject to the provisions of Section 74-2-4 NMSA 1978, a final
6 decision on a permit by the department, the environmental
7 improvement board, the local agency, the local board or the
8 court of appeals that a source will or will not meet applicable
9 local, state and federal air pollution standards, rules and
10 regulations shall be conclusive and is binding on every other
11 state agency and as an issue before any other state agency
12 shall be deemed resolved in accordance with that final
13 decision.

14 M. Subject to the provisions of Section 74-2-4 NMSA
15 1978, if the local board has adopted a permit [~~regulation~~] rule
16 pursuant to this section, persons constructing or modifying any
17 source within the boundaries of the local authority shall
18 obtain a permit from the local agency and not from the
19 department.

20 N. Fees collected pursuant to this section shall be
21 deposited in:

22 (1) the state air quality permit fund created
23 by Section 74-2-15 NMSA 1978 if collected by the department; or

24 (2) a fund created pursuant to Section 74-2-16
25 NMSA 1978 if collected by a local agency pursuant to a permit

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1 ~~[regulation]~~ rule adopted by the local board pursuant to this
2 section.

3 O. The department may not deny an application for a
4 construction permit for a cotton gin if the applicant proposes
5 use of the best system of emissions reduction currently in use
6 by cotton gins in the United States, as specified by
7 ~~[regulation]~~ rule of the environmental improvement board, and
8 the cotton gin has a potential emission rate, considering the
9 use of the proposed emissions reduction system and the proposed
10 hours of operation, of not more than fifty tons per year of any
11 regulated air contaminant for which there is a national ambient
12 air quality standard. The construction permit shall require
13 that the applicant use the proposed emission reduction system
14 and limit the hours of operation to the hours specified in the
15 application. For purposes of this subsection, "best system of
16 emissions reduction" for cotton gins means a system that will
17 result in emissions reduction equal to or greater than that
18 obtained by the use of condenser screens, seventy-mesh screen
19 or equivalent on low-pressure exhausts and high-efficiency
20 cyclone dust collectors on high-pressure exhausts.

21 P. The department or local agency may deny any
22 permit application or revoke any permit issued pursuant to the
23 Air Quality Control Act if, within ten years immediately
24 preceding the date of submission of the permit application, the
25 applicant or permittee has:

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1 (1) knowingly misrepresented a material fact
2 in an application for a permit;

3 (2) refused to disclose the information
4 required by the provisions of the Air Quality Control Act;

5 (3) been convicted in any court of any state
6 or the United States of:

7 (a) a felony related to environmental
8 crime; or

9 (b) a crime defined by state or federal
10 statute as involving or being in restraint of trade, price
11 fixing, bribery or fraud;

12 (4) constructed or operated a facility for
13 which a permit is sought without a permit required by the Air
14 Quality Control Act, except when such an unpermitted facility
15 is discovered after acquisition in the course of a timely
16 environmental audit authorized by department or local board
17 policy and except if:

18 (a) the operator of the facility using
19 good engineering practices and established approved calculation
20 methodologies estimated that the facility's emissions would not
21 require a permit pursuant to the Air Quality Control Act; and

22 (b) upon discovery of the discrepancy
23 between the calculated pre-construction maximum facility
24 emissions and the calculated post-construction maximum facility
25 emissions, the operator of the facility applies for the

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1 appropriate permit within thirty calendar days; or

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

5 Q. In making a finding under Subsection P of this
6 section, the department or local agency may consider
7 aggravating and mitigating factors.

8 R. If an applicant or permittee whose permit is
9 being considered for denial or revocation on any basis provided
10 by Subsection P of this section has submitted an action plan
11 that has been approved in writing by the secretary or director,
12 and plan approval includes a period of operation under a
13 conditional permit that will allow the applicant or permittee a
14 reasonable opportunity to demonstrate its rehabilitation, the
15 secretary or director may issue a conditional permit for a
16 reasonable period of time.

17 S. An applicant for a permit pursuant to the Air
18 Quality Control Act shall file a disclosure statement with the
19 department or local agency with the information listed in
20 Subsection P of this section, and on a form developed by the
21 department. An existing permit holder shall provide such
22 disclosure upon request by the department or local agency."

23 SECTION 7. Section 74-2-15 NMSA 1978 (being Laws 1992,
24 Chapter 20, Section 18) is amended to read:

25 "74-2-15. STATE AIR QUALITY PERMIT FUND.--

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1 A. There is created in the state treasury the
2 "state air quality permit fund" to be administered by the
3 department. All fees collected by the department pursuant to
4 Section 74-2-7 NMSA 1978 shall be deposited in the state air
5 quality permit fund.

6 B. Money in the state air quality permit fund is
7 appropriated to the department for the purpose of paying the
8 reasonable costs of:

9 (1) reviewing and acting upon any application
10 for a permit;

11 (2) if the owner or operator receives a
12 permit, implementing and enforcing the terms and conditions of
13 such permit, not including any court costs or other costs
14 associated with any enforcement action;

15 (3) emissions and ambient monitoring;

16 (4) preparing generally applicable
17 [~~regulations~~] rules or guidance;

18 (5) modeling, analysis and demonstrations;

19 [~~and~~]

20 (6) preparing inventories and tracking
21 emissions; and

22 (7) other operational expenses of the
23 department."

24 SECTION 8. Section 74-3-5.1 NMSA 1978 (being Laws 2000,
25 Chapter 86, Section 6) is amended to read:

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1 "74-3-5.1. RADIATION PROTECTION FUND CREATED.--

2 A. The "radiation protection fund" is created in
3 the state treasury. Radiation license, registration and other
4 related fees shall be deposited in the fund. All earnings from
5 investment of the fund shall be credited to the fund. Except
6 as provided in Subsection B of this section, money in the fund
7 is appropriated to the department of environment to carry out
8 provisions of the Radiation Protection Act. Disbursements from
9 the fund shall be by warrant drawn by the secretary of finance
10 and administration pursuant to vouchers signed by the secretary
11 of environment or [~~his~~] the secretary of environment's
12 designee. Any unexpended or unencumbered balance in the
13 radiation protection fund at the end of any fiscal year shall
14 not revert to the general fund.

15 B. In addition to how money in the fund may be
16 expended pursuant to Subsection A of this section, money in the
17 fund may be used for other operational expenses of the
18 department of environment."

19 SECTION 9. Section 74-4-4.5 NMSA 1978 (being Laws 1987,
20 Chapter 179, Section 7, as amended) is amended to read:

21 "74-4-4.5. HAZARDOUS WASTE FUND CREATED--APPROPRIATION.--

22 A. There is created in the state treasury the
23 "hazardous waste fund", which shall be administered by the
24 department. All fees collected pursuant to Section 74-4-4.2
25 NMSA 1978 shall be transmitted to the state treasurer for

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1 credit to the fund. Except as provided in Subsection B of this
2 section, all balances in the fund are appropriated to the
3 department for the ~~[sole]~~ purpose of meeting necessary expenses
4 in the administration and operation of the hazardous waste
5 program.

6 B. ~~[All fees collected pursuant to Section 74-4-4.2~~
7 ~~NMSA 1978 shall be transmitted to the state treasurer for~~
8 ~~credit to the hazardous waste fund]~~ In addition to how money in
9 the fund may be expended pursuant to Subsection A of this
10 section, money in the fund may be used for operational expenses
11 of the department."

12 SECTION 10. Section 74-4-4.8 NMSA 1978 (being Laws 1993,
13 Chapter 298, Section 2, as amended) is amended to read:

14 "74-4-4.8. STORAGE TANK FUND CREATED--APPROPRIATION.--

15 A. There is created in the state treasury the
16 "storage tank fund", which shall be administered by the
17 department. All fees collected pursuant to Subsection D of
18 Section 74-4-4.4 NMSA 1978 shall be transmitted to the state
19 treasurer for credit to the storage tank fund. Except as
20 provided in Subsection B of this section, all balances in the
21 fund are appropriated to the department for the sole purpose of
22 meeting necessary expenses in the administration and operation
23 of the storage tank program.

24 B. ~~[All fees collected pursuant to Subsection D of~~
25 ~~Section 74-4-4.4 NMSA 1978 shall be transmitted to the state~~

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1 ~~treasurer for credit to the storage tank fund]~~ In addition to
2 how money in the fund may be expended pursuant to Subsection A
3 of this section, money in the fund may be used for other
4 operational expenses of the department.

5 C. Balances remaining in the storage tank fund at
6 the end of a fiscal year shall not revert to the general fund."

7 SECTION 11. Section 74-4-8 NMSA 1978 (being Laws 1977,
8 Chapter 313, Section 8, as amended) is amended to read:

9 "74-4-8. EMERGENCY FUND.--

10 A. The "hazardous waste emergency fund" is created
11 in the state treasury. ~~[This]~~ Except as provided in Subsection
12 B of this section, money in the fund shall be used for cleanup
13 of hazardous substance incidents, disposal of hazardous
14 substances and necessary repairs to or replacement of state
15 property and may be used for the state's share of any response
16 action taken under the Comprehensive Environmental Response,
17 Compensation, and Liability Act of 1980, 42 U.S.C. Sections
18 9601 et seq. The administrative and technical expenses of
19 maintaining an emergency response program within the ~~[division]~~
20 department shall be reimbursable on a quarterly basis from this
21 fund. Any penalties collected by the ~~[division]~~ department
22 shall be credited to this fund. Amounts in the fund shall be
23 deposited with the state treasurer and then disbursed pursuant
24 to vouchers signed by the ~~[director]~~ secretary or ~~[his]~~ the
25 secretary's authorized representative upon warrants drawn by

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1 the secretary of finance and administration.

2 B. In addition to how money in the fund may be
3 expended pursuant to Subsection A of this section, money in the
4 fund may be used for other operational expenses of the
5 department."

6 SECTION 12. Section 74-4G-4 NMSA 1978 (being Laws 1997,
7 Chapter 38, Section 4) is amended to read:

8 "74-4G-4. [REGULATIONS] RULES.--The department shall
9 adopt and promulgate rules [~~and regulations~~] necessary to
10 implement the provisions of the Voluntary Remediation Act. The
11 rules [~~and regulations~~] shall provide for, among other things,
12 the amount of the nonrefundable application fee and a schedule
13 for the cost of the department's oversight of the voluntary
14 remediation and other operational expenses of the department."

15 SECTION 13. Section 74-4G-5 NMSA 1978 (being Laws 1997,
16 Chapter 38, Section 5) is amended to read:

17 "74-4G-5. APPLICATION AND FEE.--

18 A. To be eligible for a voluntary remediation
19 agreement an applicant must:

- 20 (1) own the site;
21 (2) operate a facility located on the site;
22 (3) be a prospective owner of the site; or
23 (4) be a prospective operator of a facility at
24 the site.

25 B. An applicant shall pay at the time of submitting

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1 the application a reasonable, nonrefundable application fee
2 determined by the department in advance that will pay for the
3 costs to the department of processing the application and for
4 other operational costs of the department.

5 C. The participant shall pay all costs of the
6 department's oversight of the voluntary remediation.

7 D. The department shall reject an application for a
8 voluntary remediation agreement if the department determines:

9 (1) the contaminants at the site constitute,
10 with reasonable evidence, an unreasonable threat to human
11 health or the environment or Native American cultural or
12 religious sites;

13 (2) an administrative state or federal or
14 judicial state or federal enforcement action is pending that
15 concerns remediation of contamination described in the
16 application;

17 (3) a federal grant requires an enforcement
18 action at the site;

19 (4) the application is incomplete or
20 inaccurate and the alleged incompleteness or inaccuracy cannot
21 be remedied by the applicant within thirty days;

22 (5) the site has a state or federal permit
23 that addresses a contaminant described in the application or a
24 permit is pending;

25 (6) an agreement between the department and

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1 the environmental protection agency precludes the site from
2 being addressed under this statute; or

3 (7) the applicant has, within ten years
4 immediately preceding the date of submission of the
5 application:

6 (a) knowingly misrepresented a material
7 fact in an application for a permit or plan submitted pursuant
8 to state environmental laws;

9 (b) refused or failed to disclose any
10 material information required under ~~[this]~~ the Voluntary
11 Remediation Act;

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

15 (d) had an environmental permit revoked
16 or permanently suspended for cause pursuant to provisions of
17 any environmental laws of any state or of the United States.

18 E. The department shall determine, on a first-come,
19 first-served basis and within a reasonable period defined by
20 ~~[regulation]~~ rule, whether the applicant is eligible to
21 participate in a voluntary remediation agreement pursuant to
22 provisions of the Voluntary Remediation Act.

23 F. Before the department approves a proposed
24 voluntary remediation agreement, the applicant must:

25 (1) make the proposed voluntary remediation

1 agreement available for public inspection at a location in
2 reasonable proximity to the site;

3 (2) notify the following and advise them of
4 the proposed voluntary remediation agreement and the
5 opportunity to submit comments to the department:

6 (a) any local, state, federal, tribal or
7 pueblo governmental agency potentially affected by the proposed
8 voluntary remediation agreement;

9 (b) those parties that have requested
10 notification;

11 (c) the general public by posting at the
12 site on a form provided by the department; and

13 (d) the general public by publishing in
14 a newspaper of general circulation in the community potentially
15 affected by the voluntary remediation agreement; and

16 (3) submit to the department a copy of the
17 public notice as well as an affidavit affirming that the
18 applicant has complied with the provisions of this subsection.

19 G. The department shall:

20 (1) provide a comment period of at least
21 thirty days following publication of the newspaper notice.
22 During the comment period, interested persons may submit
23 comments to the department concerning the proposed voluntary
24 remediation agreement. The department shall consider public
25 comments in deciding whether to enter into a voluntary

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1 remediation agreement;

2 (2) during the thirty day comment period,
3 allow any interested person to request a public meeting. The
4 request shall be in writing and shall set forth the reasons why
5 the meeting should be held. A public meeting will be held if
6 the secretary of environment determines that there is
7 significant public interest; and

8 (3) provide for appropriate public
9 participation in the voluntary remediation work plan, including
10 a public meeting if the secretary of environment determines
11 that there is significant public interest.

12 H. If an agreement is not reached between an
13 applicant and the department on or before the thirtieth day
14 after the department determines an applicant to be eligible
15 pursuant to the provisions of this section, the applicant or
16 the department may withdraw from the negotiations."

17 SECTION 14. Section 74-4G-11 NMSA 1978 (being Laws 1997,
18 Chapter 38, Section 11) is amended to read:

19 "74-4G-11. VOLUNTARY REMEDIATION FUND.--

20 A. The "voluntary remediation fund" is created in
21 the state treasury. The fund shall be administered by the
22 department. All fees and oversight payments collected pursuant
23 to the [~~regulations~~] rules adopted by the secretary of
24 environment pursuant to the provisions of the Voluntary
25 Remediation Act shall be deposited in the fund. Except as

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1 provided in Subsection B of this section, the money in the fund
2 shall be appropriated by law to the department for the purpose
3 of administering the Voluntary Remediation Act. Disbursements
4 from the fund shall be made upon warrants drawn by the
5 secretary of finance and administration pursuant to vouchers
6 signed by the secretary of environment.

7 B. In addition to how money in the fund may be
8 expended pursuant to Subsection A of this section, money in the
9 fund may be used for other operational expenses of the
10 department."

11 SECTION 15. Section 74-6-5 NMSA 1978 (being Laws 1973,
12 Chapter 326, Section 4, as amended) is amended to read:

13 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

14 A. By [~~regulation~~] rule, the commission may require
15 persons to obtain from a constituent agency designated by the
16 commission a permit for the discharge of any water contaminant
17 or for the disposal or reuse of septage or sludge.

18 B. The commission shall adopt [~~regulations~~] rules
19 establishing procedures for certifying federal water quality
20 permits.

21 C. Prior to the issuance of a permit, the
22 constituent agency may require the submission of plans,
23 specifications and other relevant information that it deems
24 necessary.

25 D. The commission shall by [~~regulation~~] rule set

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1 the dates upon which applications for permits shall be filed
2 and designate the time periods within which the constituent
3 agency shall, after the filing of an administratively complete
4 application for a permit, either grant the permit, grant the
5 permit subject to conditions or deny the permit. The
6 constituent agency has the burden of showing that each
7 condition is reasonable and necessary to ensure compliance with
8 the Water Quality Act and applicable ~~[regulations]~~ rules,
9 considering site-specific conditions. After ~~[regulations]~~
10 rules have been adopted for a particular industry, permits for
11 facilities in that industry shall be subject to conditions
12 contained in the ~~[regulations]~~ rules. Additional conditions on
13 a final permit may be imposed if the applicant is provided with
14 an opportunity to review and provide comments in writing on the
15 draft permit conditions and to receive a written explanation of
16 the reasons for the conditions from the constituent agency.

17 E. The constituent agency shall deny any
18 application for a permit or deny the certification of a federal
19 water quality permit if:

- 20 (1) the effluent would not meet applicable
21 state or federal effluent rules and regulations, standards of
22 performance or limitations;
- 23 (2) any provision of the Water Quality Act
24 would be violated;
- 25 (3) the discharge would cause or contribute to

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1 water contaminant levels in excess of any state or federal
2 standard. Determination of the discharge's effect on ground
3 water shall be measured at any place of withdrawal of water for
4 present or reasonably foreseeable future use. Determination of
5 the discharge's effect on surface waters shall be measured at
6 the point of discharge; or

7 (4) the applicant has, within the ten years
8 immediately preceding the date of submission of the permit
9 application:

10 (a) knowingly misrepresented a material
11 fact in an application for a permit;

12 (b) refused or failed to disclose any
13 information required under the Water Quality Act;

14 (c) been convicted of a felony or other
15 crime involving moral turpitude;

16 (d) been convicted of a felony in any
17 court for any crime defined by state or federal law as being a
18 restraint of trade, price-fixing, bribery or fraud;

19 (e) exhibited a history of willful
20 disregard for environmental laws of any state or the United
21 States; or

22 (f) had an environmental permit revoked
23 or permanently suspended for cause under any environmental laws
24 of any state or the United States.

25 F. The commission shall by ~~[regulation]~~ rule

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1 develop procedures that ensure that the public, affected
2 governmental agencies and any other state whose water may be
3 affected shall receive notice of each application for issuance,
4 renewal or modification of a permit. Public notice shall
5 include:

6 (1) for issuance or modification of a permit:

7 (a) notice by mail to adjacent and
8 nearby landowners; local, state and federal governments; land
9 grant organizations; ditch associations; and Indian nations,
10 tribes or pueblos;

11 (b) posting at a place conspicuous to
12 the public and near the discharge or proposed discharge site;
13 and

14 (c) a display advertisement in English
15 and Spanish in a newspaper of general circulation in the
16 location of the discharge or proposed discharge; provided,
17 however, that the advertisement shall not be displayed in the
18 classified or legal advertisement sections; and

19 (2) for issuance of renewals of permits:

20 (a) notice by mail to the interested
21 public, municipalities, counties, land grant organizations,
22 ditch associations and Indian nations, tribes or pueblos; and

23 (b) a display advertisement in English
24 and Spanish in a newspaper of general circulation in the
25 location of the discharge; provided, however, that the

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1 advertisement shall not be displayed in the classified or legal
2 advertisement sections.

3 G. No ruling shall be made on any application for a
4 permit without opportunity for a public hearing at which all
5 interested persons shall be given a reasonable chance to submit
6 evidence, data, views or arguments orally or in writing and to
7 examine witnesses testifying at the hearing. The hearing shall
8 be recorded. Any person submitting evidence, data, views or
9 arguments shall be subject to examination at the hearing.

10 H. The commission may adopt [~~regulations~~] rules for
11 the operation and maintenance of the permitted facility,
12 including requirements, as may be necessary or desirable, that
13 relate to continuity of operation, personnel training and
14 financial responsibility, including financial responsibility
15 for corrective action.

16 I. Permits shall be issued for fixed terms not to
17 exceed five years, except that for new discharges, the term of
18 the permit shall commence on the date the discharge begins, but
19 in no event shall the term of the permit exceed seven years
20 from the date the permit was issued.

21 J. By [~~regulation~~] rule, the commission may impose
22 reasonable conditions upon permits requiring permittees to:

23 (1) install, use and maintain effluent
24 monitoring devices;

25 (2) sample effluents and receiving waters for

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1 any known or suspected water contaminants in accordance with
2 methods and at locations and intervals as may be prescribed by
3 the commission;

4 (3) establish and maintain records of the
5 nature and amounts of effluents and the performance of effluent
6 control devices;

7 (4) provide any other information relating to
8 the discharge or direct or indirect release of water
9 contaminants; and

10 (5) notify a constituent agency of the
11 introduction of new water contaminants from a new source and of
12 a substantial change in volume or character of water
13 contaminants being introduced from sources in existence at the
14 time of the issuance of the permit.

15 K. The commission shall provide by [~~regulation~~]
16 rule a schedule of fees for permits, not exceeding the
17 estimated cost of investigation and issuance, modification and
18 renewal of permits and of other operational expenses of the
19 department of environment. Fees collected pursuant to this
20 section shall be deposited in the water quality management
21 fund.

22 L. The issuance of a permit does not relieve any
23 person from the responsibility of complying with the provisions
24 of the Water Quality Act, any applicable [~~regulations~~] rules or
25 water quality standards of the commission or any applicable

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1 federal laws, regulations or standards.

2 M. A permit may be terminated or modified by the
3 constituent agency that issued the permit prior to its date of
4 expiration for any of the following causes:

5 (1) violation of any condition of the permit;

6 (2) obtaining the permit by misrepresentation
7 or failure to disclose fully all relevant facts;

8 (3) violation of any provisions of the Water
9 Quality Act or any applicable [~~regulations~~] rules, standard of
10 performance or water quality standards;

11 (4) violation of any applicable state or
12 federal effluent rules, regulations or limitations; or

13 (5) change in any condition that requires
14 either a temporary or permanent reduction or elimination of the
15 permitted discharge.

16 N. If the constituent agency denies, terminates or
17 modifies a permit or grants a permit subject to condition, the
18 constituent agency shall notify the applicant or permittee by
19 certified mail of the action taken and the reasons. Notice
20 shall also be given by mail to persons who participated in the
21 permitting action.

22 O. A person who participated in a permitting action
23 before a constituent agency or a person affected by a
24 certification of a federal permit and who is adversely affected
25 by such permitting action or certification may file a petition

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1 for review before the commission. Unless a timely petition for
2 review is made, the decision of the constituent agency shall be
3 final and not subject to judicial review. The petition shall:

4 (1) be made in writing to the commission
5 within thirty days from the date notice is given of the
6 constituent agency's action;

7 (2) include a statement of the issues to be
8 raised and the relief sought; and

9 (3) be provided to all other persons
10 submitting evidence, data, views or arguments in the proceeding
11 before the constituent agency.

12 P. If a timely petition for review is made, the
13 commission shall consider the petition within ninety days after
14 receipt of the petition. The commission shall notify the
15 petitioner and the applicant or permittee, if other than the
16 petitioner, by certified mail of the date, time and place of
17 the review. If the petitioner is not the applicant or
18 permittee, the applicant or permittee shall be a party to the
19 proceeding. The commission shall ensure that the public
20 receives notice of the date, time and place of the review.

21 Q. The commission shall review the record compiled
22 before the constituent agency, including the transcript of any
23 public hearing held on the application or draft permit, and
24 shall allow any party to submit arguments. The commission may
25 designate a hearing officer to review the record and the

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1 arguments of the parties and recommend a decision to the
2 commission. The commission shall consider and weigh only the
3 evidence contained in the record before the constituent agency
4 and the recommended decision of the hearing officer, if any,
5 and shall not be bound by the factual findings or legal
6 conclusions of the constituent agency. Based on the review of
7 the evidence, the arguments of the parties and recommendations
8 of the hearing officer, the commission shall sustain, modify or
9 reverse the action of the constituent agency. The commission
10 shall enter ultimate findings of fact and conclusions of law
11 and keep a record of the review.

12 R. Prior to the date set for review, if a party
13 shows to the satisfaction of the commission that there was no
14 reasonable opportunity to submit comment or evidence on an
15 issue being challenged, the commission shall order that
16 additional comment or evidence be taken by the constituent
17 agency. Based on the additional evidence, the constituent
18 agency may revise the decision and shall promptly file with the
19 commission the additional evidence received and action taken.
20 The commission shall consider the additional evidence within
21 ninety days after receipt of the additional evidence and shall
22 notify the petitioner and the applicant or permittee, if other
23 than the petitioner, of the date, time and place of the review.

24 S. The commission shall notify the petitioner and
25 all other participants in the review proceeding of the action

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1 taken by the commission and the reasons for that action."

2 SECTION 16. Section 74-6-5.2 NMSA 1978 (being Laws 1993,
3 Chapter 100, Section 4) is amended to read:

4 "74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--

5 A. There is created in the state treasury the
6 "water quality management fund" to be administered by the
7 department of environment. All fees collected pursuant to the
8 [~~regulations~~] rules adopted by the commission under Subsection
9 [H] K of Section 74-6-5 NMSA 1978 shall be deposited in the
10 fund. Except as provided in Subsection B of this section,
11 money in the fund is appropriated to the department of
12 environment for the purpose of administering the [~~regulations~~]
13 rules adopted by the commission pursuant to Section 74-6-5 NMSA
14 1978. Disbursements from the fund shall be made upon warrants
15 drawn by the secretary of finance and administration pursuant
16 to vouchers signed by the secretary of environment.

17 B. In addition to how money in the fund may be
18 expended pursuant to Subsection A of this section, money in the
19 fund may be used for other operational expenses of the
20 department of environment."

21 SECTION 17. Section 74-9-8 NMSA 1978 (being Laws 1990,
22 Chapter 99, Section 8, as amended by Laws 1991, Chapter 185,
23 Section 2 and also by Laws 1991, Chapter 194, Section 3) is
24 amended to read:

25 "74-9-8. BOARD ADOPTION OF INITIAL [~~REGULATIONS~~] RULES.--

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1 [No later than December 31, 1991] The board shall adopt
2 [~~regulations~~] rules under the authority of this section to:

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

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

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

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

19 E. establish performance standards for the
20 construction and operation of solid waste facilities that will
21 assure protection of ground water quality from degradation by
22 contaminants from solid waste facilities consistent with the
23 provisions of the Water Quality Act and the [~~regulations~~] rules
24 and standards established under that act by the water quality
25 control commission, provided such [~~regulations~~] rules shall not

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1 allow permitting of any active solid waste facility larger than
2 five hundred acres;

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

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

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

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

22 J. establish requirements and procedures for a
23 person to obtain a variance from the application of a
24 substantive ~~[regulation]~~ rule to the person if the person files
25 a written application for a variance with the director and

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1 demonstrates to the director's satisfaction that:

2 (1) application of the ~~[regulation]~~ rule would
3 result in an arbitrary and unreasonable taking of the
4 applicant's property or would impose an undue economic burden
5 upon any lawful business, occupation or activity; and

6 (2) granting the variance will not result in
7 any condition injurious to human health, safety or welfare or
8 the environment;

9 K. assure that no variance will be granted under
10 the provisions of Subsection J of this section until the
11 director has considered the relative interests of the
12 applicant, other owners of property likely to be affected and
13 the general public and that any variance or renewal of a
14 variance shall be granted for time periods and under conditions
15 consistent with reasons for the ~~[various]~~ variance but within
16 the following limitations:

17 (1) if the variance is granted on the grounds
18 that there are no practicable means known or available for the
19 adequate prevention of degradation of the environment or the
20 risk to the public health, safety or welfare, it shall continue
21 only until the necessary means for the prevention of the
22 degradation or risk become known and available; or

23 (2) if the variance is granted on the grounds
24 that it is justified to relieve or prevent hardship of a kind
25 other than that provided for in Paragraph (1) of this

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1 subsection, it shall not be granted for more than one year;

2 L. establish a list of solid wastes that shall not
3 be transferred, disposed of or transformed in a solid waste
4 facility and prohibit the disposal or transformation of those
5 solid wastes in solid waste facilities;

6 M. establish recordkeeping procedures for solid
7 waste transfer, landfill disposal and transformation facilities
8 that shall include requirements for recording the type, amount
9 and origin of solid waste transferred, disposed of or
10 transformed at the facility and that require operators of
11 landfill disposal, solid waste transfer and transformation
12 facilities within the state to:

13 (1) maintain records in a form required by the
14 division and file them with the division indicating the type,
15 amount, origin and location in a landfill disposal facility of
16 solid waste accepted by the facility;

17 (2) maintain copies of the records required
18 under Paragraph (1) of this subsection after closure in a
19 manner and for the length of time prescribed by the division;
20 and

21 (3) make all required records available for
22 inspection by the division and the general public during normal
23 business hours; and

24 N. require the division to establish a solid waste
25 facility operator certification program."

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1 SECTION 18. Section 74-13-8 NMSA 1978 (being Laws 2005,
2 Chapter 171, Section 8) is amended to read:

3 "74-13-8. RULES--AUTHORITY AND CONTENT.--The board shall
4 adopt rules to implement the provisions of the Recycling and
5 Illegal Dumping Act. The rules shall be adopted pursuant to
6 the provisions of the Environmental Improvement Act and shall
7 include:

8 A. requirements and procedures for the issuance of
9 permits and registrations to tire recycling facilities, civil
10 engineering applications, scrap tire generators and scrap tire
11 haulers;

12 B. standards and requirements for tire recycling
13 and scrap tire storage and processing;

14 C. record-keeping requirements for tire recycling
15 facilities, scrap tire haulers and scrap tire generators;

16 D. financial assurance criteria for tire recycling
17 facilities;

18 E. fire rules for storage of scrap tires and
19 tire-derived products that are consistent with the rules or
20 recommendations adopted by the state fire marshal;

21 F. criteria and procedures for making disbursements
22 pursuant to grant and loan programs authorized from the
23 recycling and illegal dumping fund;

24 G. requirements and procedures for contracting with
25 counties, municipalities, Indian nations, pueblos and tribes,

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1 land grant communities and cooperative associations for the
2 abatement of illegal dumpsites and recycling;

3 H. requirements and procedures for a scrap tire
4 manifest system; and

5 I. a fee schedule applicable to:

6 (1) scrap tire haulers and tire recycling
7 facilities not exceeding the estimated cost of investigating
8 and issuing permits and registrations and conducting regulatory
9 oversight of permitted and registered activities; [~~and~~

10 ~~J. a fee schedule applicable to]~~ (2) scrap
11 tire generators not exceeding the estimated cost of conducting
12 regulatory oversight of scrap tire generators; and

13 (3) scrap tire haulers, tire recycling
14 facilities and scrap tire generators for other operational
15 expenses of the department."

16 SECTION 19. Section 74-13-19 NMSA 1978 (being Laws 2005,
17 Chapter 171, Section 19) is amended to read:

18 "74-13-19. RECYCLING AND ILLEGAL DUMPING FUND CREATED.--

19 A. The "recycling and illegal dumping fund" is
20 created in the state treasury. Fees and penalties collected
21 pursuant to the Recycling and Illegal Dumping Act shall be
22 deposited into the fund. Except as provided in Subsection B of
23 this section, money in the fund is appropriated to the
24 department for abatement of illegal dumpsites; for processing,
25 transportation or recycling of all recyclable materials and

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1 scrap tires; for providing funds to public landfills in New
2 Mexico to offset the cost of collecting or recycling of tires;
3 and for carrying out the provisions of the Recycling and
4 Illegal Dumping Act. Any unexpended or unencumbered balance or
5 income earned from the money in the recycling and illegal
6 dumping fund remaining at the end of a fiscal year shall not
7 revert to the general fund. Disbursements from the fund shall
8 be by warrant drawn by the secretary of finance and
9 administration pursuant to vouchers signed by the secretary of
10 environment or the secretary's designee.

11 B. In addition to how money in the fund may be
12 expended pursuant to Subsection A of this section, money in the
13 fund may be used for other operational expenses of the
14 department."

15 SECTION 20. Section 75-1-3 NMSA 1978 (being Laws 1973,
16 Chapter 333, Section 3, as amended) is amended to read:

17 "75-1-3. RURAL INFRASTRUCTURE REVOLVING LOAN FUND
18 CREATED--ADMINISTRATION--EMERGENCY FUND.--

19 A. A special fund is created to be known as the
20 "rural infrastructure revolving loan fund". Money appropriated
21 to the fund or to the department to carry out the provisions of
22 the Rural Infrastructure Act may be used to make loans and
23 grants to local authorities, individually or jointly, for water
24 supply, wastewater or solid waste facilities. Appropriations
25 made to the fund but not expended at the end of the fiscal year

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underscored material = new
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1 for which appropriated shall not revert to the general fund but
2 shall accrue to the credit of the fund. Earnings on the
3 balance in the fund shall be credited to the fund. In
4 addition, when the proceeds from the issuance of severance tax
5 bonds appropriated to the fund are deposited in the state
6 treasury, interest earned on that money during the period from
7 deposit in the state treasury until the actual transfer of the
8 money to the fund shall be credited to the fund.

9 B. Ten percent of any appropriation to the fund or
10 to the department to carry out the provisions of the Rural
11 Infrastructure Act shall be set aside for emergency grants and
12 loans pursuant to Section 75-1-5 NMSA 1978.

13 C. All water supply, wastewater and solid waste
14 facilities shall be designed in compliance with the engineering
15 requirements established by the secretary after consulting with
16 and considering the recommendations of the professional
17 engineering societies operating in New Mexico. The secretary
18 shall also establish, by ~~[regulation]~~ rule, guidelines for the
19 ranking of projects for top priority based on public health
20 needs.

21 D. The department shall administer the fund and
22 shall make grant and loan disbursements in accordance with the
23 Rural Infrastructure Act. The secretary shall adopt
24 ~~[regulations]~~ rules to govern the application procedure and
25 requirements for disbursing grants and loans under the Rural

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~~[bracketed material] = delete~~

1 Infrastructure Act, including requirements consistent with the
2 purpose of the act for determining the eligibility and priority
3 of local authorities for such grants and loans.

4 E. Receipts from the repayment of loans, including
5 loans approved by the state board of finance pursuant to
6 Section 75-1-5 NMSA 1978, shall be deposited in the fund by the
7 department, including receipts from the repayment of loans made
8 pursuant to appropriations to carry out the purposes of the
9 Water Supply Construction Act made prior to the effective date
10 of the Rural Infrastructure Act.

11 F. Money in the fund is appropriated to the
12 department to carry out the provisions of the Rural
13 Infrastructure Act. The department may allocate ~~[up to two~~
14 ~~percent of the total balance in the fund]~~ an amount necessary
15 to pay for administrative expenses necessary to carry out the
16 provisions of the Rural Infrastructure Act and for other
17 operational expenses of the department. Money allocated for
18 administrative expenses shall be placed in a separate
19 administrative account in the fund to be used solely for
20 administrative expenses, and the department shall at the
21 beginning of the fiscal year determine the projected
22 administrative costs for the year and deposit in the account
23 the appropriate amount; provided that the amount to be
24 deposited does not exceed two percent of the total balance in
25 the fund. Money in the account shall remain in the account at

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underscoring material = new
~~[bracketed material] = delete~~

1 the end of a fiscal year.

2 G. Loans and grants made pursuant to the provisions
3 of the Rural Infrastructure Act shall not be used by the local
4 authority on any project constructed in fulfillment or partial
5 fulfillment of requirements made of a subdivider by the
6 provisions of the Land Subdivision Act or the New Mexico
7 Subdivision Act."

8 SECTION 21. REPEAL.--Laws 1991, Chapter 185, Section 2 is
9 repealed.