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SENATE BILL 202

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Richard C. Martinez

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE
HAZARDOUS WASTE ACT TO PROVIDE FOR A HAZARDOUS WASTE PERMIT
MANAGEMENT FEE.

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

Section 1. Section 74-4-4.2 NMSA 1978 (being Laws 1981
(1st. S.S.), Chapter 8, Section 6, as amended) is amended to
read:

"74-4-4.2. PERMITS--ISSUANCE--DENIAL--MODIFICATION--
SUSPENSION--REVOCATION.--

A. [~~Each~~] An application for a permit pursuant to
the Hazardous Waste Act shall contain information [~~as may be~~]
required pursuant to Section 74-4-4.7 NMSA 1978 or [~~pursuant~~]
to regulations promulgated by the board [~~including information~~
~~with respect to~~] and shall include:

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1 (1) estimates ~~[with respect to]~~ of the
2 composition, quantity and concentration of any hazardous waste
3 identified or listed under Subsection A of Section 74-4-4 NMSA
4 1978 or combinations of any hazardous waste and other solid
5 waste proposed to be disposed of, treated, transported or
6 stored and the time, frequency or rate at which the waste is
7 proposed to be disposed of, treated, transported or stored; and

8 (2) an identification and description of, and
9 other pertinent information about, the site where hazardous
10 waste or the products of treatment of hazardous waste will be
11 disposed of, treated, transported to or stored.

12 B. Hazardous waste permits ~~[issued after April 8,~~
13 ~~1987]~~ shall require corrective action for all releases of
14 hazardous waste or constituents from any solid waste management
15 unit at a treatment, storage or disposal facility seeking a
16 permit under this section.

17 C. The ~~[division]~~ department shall provide timely
18 review on all permit applications. Upon a determination by the
19 secretary that the applicant has met the requirements adopted
20 pursuant to Section 74-4-4 NMSA 1978, the secretary may issue a
21 permit or a permit subject to any conditions necessary to
22 protect human health and the environment for the facility.

23 D. The secretary may deny any permit application or
24 modify, suspend or revoke any permit issued pursuant to the
25 Hazardous Waste Act if the applicant or permittee has:

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1 (1) knowingly and willfully misrepresented a
2 material fact in the application for a permit;

3 (2) refused to disclose the information
4 required under the provisions of Section 74-4-4.7 NMSA 1978;

5 (3) been convicted in any court, within ten
6 years immediately preceding the date of submission of the
7 permit application, of:

8 (a) a felony or other crime involving
9 moral turpitude; or

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

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

15 (5) had any permit revoked or permanently
16 suspended for cause under the environmental laws of any state
17 or the United States; or

18 (6) violated any provision of the Hazardous
19 Waste Act, any regulation adopted and promulgated pursuant to
20 that act or any condition of a permit issued under that act.

21 E. In making a finding under Subsection D of this
22 section, the secretary may consider aggravating and mitigating
23 factors.

24 F. If an applicant or permittee whose permit is
25 being considered for denial or revocation, respectively, on any

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1 basis provided by Subsection D of this section has submitted an
2 action plan that has been approved in writing by the secretary,
3 and plan approval includes a period of operation under a
4 conditional permit that will allow the applicant or permittee a
5 reasonable opportunity to demonstrate its rehabilitation, the
6 secretary may issue a conditional permit for a reasonable
7 period of time. In approving an action plan intended to
8 demonstrate rehabilitation, the secretary may consider:

- 9 (1) implementation by the applicant or
10 permittee of formal policies;
- 11 (2) training programs and management control
12 to minimize and prevent the occurrence of future violations;
- 13 (3) installation by the applicant or permittee
14 of internal environmental auditing programs;
- 15 (4) the applicant's release or the permittee's
16 release subsequent to serving a period of incarceration or
17 paying a fine, or both, after conviction of any crime listed in
18 Subsection D of this section; and
- 19 (5) any other factors the secretary deems
20 relevant.

21 G. Notwithstanding the provisions of Subsection D
22 of this section:

- 23 (1) a research, development and demonstration
24 permit may be terminated upon the determination by the
25 secretary that termination is necessary to protect human health

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1 or the environment; and

2 (2) a permit may be modified at the request of
3 the permittee for just cause as demonstrated by the permittee.

4 H. No ruling shall be made on permit issuance,
5 major modification, suspension or revocation without an
6 opportunity for a public hearing at which all interested
7 persons shall be given a reasonable chance to submit data,
8 views or arguments orally or in writing and to examine
9 witnesses testifying at the hearing; provided, however, that
10 the secretary may, pursuant to Section 74-4-10 NMSA 1978, order
11 the immediate termination of a research development and
12 demonstration permit whenever the secretary determines that
13 termination is necessary to protect human health or the
14 environment and may order the immediate suspension or
15 revocation of a permit for a facility that has been ordered to
16 take corrective action or other response measures for releases
17 of hazardous waste into the environment.

18 I. The secretary shall hold a public hearing on a
19 minor permit modification if the secretary determines that
20 there is significant public interest in the minor modification.

21 J. The board shall provide a schedule of fees for
22 businesses generating hazardous waste, conducting permitted
23 hazardous waste management activities or seeking a permit for
24 the management of hazardous waste, to be deposited to the
25 credit of the hazardous waste fund, including but not limited

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1 to:

2 (1) a hazardous waste business fee applicable
3 to any business engaged in a regulated hazardous waste
4 activity, which shall be an annual flat fee based on the type
5 of activity;

6 (2) a hazardous waste generation fee
7 applicable to any business generating hazardous waste, which
8 shall be based on the quantity of hazardous waste generated
9 annually; however, when any material listed in Paragraph (2) of
10 Subsection [F] K of Section 74-4-3 NMSA 1978 is determined by
11 the board to be subject to regulation under Subtitle C of the
12 federal Resource Conservation and Recovery Act of 1976, the
13 board may set a generation fee under this paragraph for that
14 waste based on its volume, toxicity, mobility and economic
15 impact on the regulated entity; [~~and~~]

16 (3) a hazardous waste permit application fee,
17 not exceeding the estimated cost of investigating the
18 application and issuing the permit, to be paid at the time the
19 secretary notifies the applicant by certified mail that the
20 application has been deemed administratively complete and a
21 technical review is scheduled; and

22 (4) an annual hazardous waste permit
23 management fee based on and not exceeding the estimated cost of
24 conducting regulatory oversight of permitted activities. "