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HOUSE BILL 1046

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Jose A. Campos II

AN ACT

RELATING TO WASTE; PROVIDING REQUIREMENTS FOR PERMIT APPLICATIONS FOR LARGE AND SMALL SOLID WASTE FACILITIES; ESTABLISHING NOTICE AND HEARING REQUIREMENTS; PROVIDING ADDITIONAL PENALTIES FOR VIOLATIONS OF THE SOLID WASTE ACT.

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

Section 1. Section 74-9-3 NMSA 1978 (being Laws 1990, Chapter 99, Section 3) is amended to read:

"74-9-3. DEFINITIONS.--As used in the Solid Waste Act:

A. "agricultural" means all methods of production and management of livestock, crops, vegetation and soil. This includes, but is not limited to, raising, harvesting and marketing. It also includes, but is not limited to, the activities of feeding, housing and maintaining animals such as cattle, dairy cows, sheep, goats, hogs, horses and poultry;

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1 B. "board" means the environmental improvement
2 board;

3 C. "commercial hauler" means any person
4 transporting solid waste for hire [~~by whatever means for the~~
5 ~~purpose of disposing of the solid waste in a solid waste~~
6 ~~facility~~], except that the term does not include an individual
7 transporting solid waste generated on or from his residential
8 premises for the purpose of disposing of it in a solid waste
9 facility;

10 D. "construction and demolition debris" means
11 materials generally considered to be not water soluble and
12 nonhazardous in nature, including, but not limited to, steel,
13 glass, brick, concrete, asphalt roofing materials, pipe, gypsum
14 wallboard and lumber from the construction or destruction of a
15 structure as part of a construction or demolition project, and
16 includes rocks, soil, tree remains, trees and other vegetative
17 matter that normally results from land clearing or land
18 development operations for a construction project, but if
19 construction and demolition debris is mixed with any other
20 types of solid waste, whether or not originating from the
21 construction project, it loses its classification as
22 construction and demolition debris;

23 ~~E. "densified refuse-derived fuel" means a product~~
24 ~~resulting from the processing of mixed municipal solid waste in~~
25 ~~a manner that produces a fuel suitable for combustion in~~

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1 ~~existing or new solid-fuel-fired boilers;~~

2 ~~F.]~~ E. "director" means the director of the
3 environmental improvement division of the [~~health and~~
4 ~~environment~~] department of environment;

5 F. "dispose" or "disposal" means causing, allowing
6 or maintaining the abandonment, discharge, deposit, placement,
7 injection, dumping, spilling or leaking of any solid waste into
8 or on any land or water;

9 G. "division" means the environmental improvement
10 division of the [~~health and environment~~] department of
11 environment;

12 H. "large solid waste facility" means a solid waste
13 facility that is not a small solid waste facility;

14 [~~H.]~~ I. "municipality" means any incorporated city,
15 town or village, whether incorporated under general act,
16 special act or special charter, incorporated counties and H
17 class counties;

18 J. "permit" means an authorization to own, operate,
19 construct or close a solid waste facility and may be in the
20 form of:

21 (1) a permit for a large solid waste facility,
22 including any operating landfill;

23 (2) a registration for a small solid waste
24 facility; or

25 (3) a closure and post-closure plan for a

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1 landfill that is no longer accepting solid waste and will close
2 rather than continue to operate;

3 [~~F.~~] K. "person" means an individual or any entity,
4 including federal, state and local governmental entities,
5 however organized;

6 [~~J.~~] L. "plan" or "state plan" means the solid
7 waste management plan required to be developed under Section [~~4~~
8 ~~of the Solid Waste Act~~] 74-9-4 NMSA 1978;

9 [~~K.~~] M. "program" or "state program" means the
10 comprehensive solid waste management program described in
11 Section [~~12 of the Solid Waste Act~~] 74-9-12 NMSA 1978;

12 [~~L.~~] N. "recyclable materials" means materials that
13 would otherwise become solid waste if not recycled and that can
14 be collected, separated or processed and placed in use in the
15 form of raw materials or products; [~~or densified-refuse-derived~~
16 ~~fuels;~~

17 [~~M.~~] O. "recycling" means any process by which
18 recyclable materials are collected, separated or processed and
19 reused or returned to use in the form of raw materials or
20 products;

21 P. "small solid waste facility" means:

22 (1) an animal crematorium that is a multi-
23 chambered unit with a total charging capacity of less than five
24 tons per day and is designed for the purpose of cremating dead
25 animals and animal parts;

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1 (2) a composting facility that occupies less
2 than five acres and has a design capacity of twenty-five tons
3 or less per day on a dry weight basis and that only utilizes
4 less than five dry tons per day of sewage sludge, yard refuse
5 or other types of feedstock;

6 (3) a recycling facility that has a design
7 capacity of twenty-five tons or less per day;

8 (4) a transfer station with a total
9 operational rate of one hundred twenty cubic yards or less per
10 day of solid waste, which does not include separated recyclable
11 material; or

12 (5) an incineration facility used for burning
13 yard refuse that operates by forcefully projecting a curtain of
14 air across an open chamber or pit in which combustion occurs,
15 controls emission of the combustion products and is not
16 designed to process more than twenty tons of yard refuse per
17 hour;

18 [N-] Q. "solid waste" means any garbage, refuse,
19 sludge from a waste treatment plant, water supply treatment
20 plant or air pollution control facility and other discarded
21 material, including solid, liquid, semisolid or contained
22 gaseous material resulting from industrial, commercial, mining
23 and agricultural operations and from community activities.

24 "Solid waste" does not include:

25 (1) drilling fluids, produced waters and other

1 non-domestic wastes associated with the exploration,
2 development or production, transportation, storage, treatment
3 or refinement of crude oil, natural gas, carbon dioxide gas or
4 geothermal energy;

5 (2) fly ash waste, bottom ash waste, slag
6 waste and flue gas emission control waste generated primarily
7 from the combustion of coal or other fossil fuels and wastes
8 produced in conjunction with the combustion of fossil fuels
9 that are necessarily associated with the production of energy
10 and that traditionally have been and actually are mixed with
11 and are disposed of or treated at the same time with fly ash,
12 bottom ash, boiler slag or flue gas emission control wastes
13 from coal combustion;

14 (3) waste from the extraction, beneficiation
15 and processing of ores and minerals, including phosphate rock
16 and overburden from the mining of uranium ore, coal, copper,
17 molybdenum and other ores and minerals;

18 (4) agricultural waste, including, but not
19 limited to, manures and crop residues returned to the soil as
20 fertilizer or soil conditioner;

21 (5) cement kiln dust waste;

22 (6) sand and gravel;

23 (7) solid or dissolved material in domestic
24 sewage or solid or dissolved materials in irrigation return
25 flows or industrial discharges that are point sources subject

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1 to permits under Section 402 of the Federal Water Pollution
2 Control Act, 33 U.S.C. Section 1342 or source, special nuclear
3 or by-product material as defined by the Atomic Energy Act of
4 1954, 42 U.S.C. Section 2011 et seq.; or

5 ~~[(8) densified refuse derived fuel; or~~
6 ~~(9)]~~ (8) any material regulated by Subtitle C
7 of the federal Resource Conservation and Recovery Act of 1976,
8 substances regulated by the Federal Toxic Substances Control
9 Act or low-level radioactive waste;

10 ~~[Q.]~~ R. "solid waste district" means a geographical
11 area designated by the board as a solid waste district under
12 Section ~~[11 of the Solid Waste Act]~~ 74-9-11 NMSA 1978;

13 ~~[P.]~~ S. "solid waste facility" means any public or
14 private system, facility, location, improvements on the land,
15 structures or other appurtenances or methods used for
16 processing, transformation, recycling or disposal of solid
17 waste, including landfill disposal facilities, transfer
18 stations, resource recovery facilities, incinerators and other
19 similar facilities not specified, but does not include
20 equipment specifically approved by order of the director to
21 render medical waste noninfectious or a facility which is
22 permitted pursuant to the provisions of the Hazardous Waste
23 Act; ~~[and does not apply to a facility fueled by a densified-~~
24 ~~refuse-derived fuel that accepts no other solid waste;~~

25 ~~Q.]~~ T. "source reduction" means any action that

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1 causes a net reduction in the generation, volume or toxicity of
2 solid waste;

3 [R-] U. "special waste" means solid waste that has
4 unique handling, transportation or disposal requirements to
5 assure protection of the environment and the public health and
6 safety;

7 [S-] V. "transformation" means incineration,
8 pyrolysis, distillation, gasification or biological conversion
9 other than composting; and

10 [F-] W. "yard refuse" means vegetative matter
11 resulting from landscaping, land maintenance and land clearing
12 operations."

13 Section 2. Section 74-9-21 NMSA 1978 (being Laws 1990,
14 Chapter 99, Section 21) is amended to read:

15 "74-9-21. PERMIT APPLICANT DISCLOSURE--LARGE SOLID WASTE
16 FACILITY.--

17 A. Every applicant for a permit for a large solid
18 waste facility shall file a disclosure statement with the
19 information required by and on a form developed by the division
20 in cooperation with the department of public safety at the same
21 time he files his application for a permit with the director.

22 B. Upon request of the director, the department of
23 public safety shall, within ninety days after receipt of the
24 disclosure statement from an applicant for a permit for a large
25 solid waste facility, prepare and transmit to the director an

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1 investigative report on the applicant, based in part upon the
2 disclosure statement, except that this deadline may be extended
3 for a reasonable period of time, for good cause, by the
4 director. In preparing this report, the department of public
5 safety may request and receive criminal history information
6 from the federal bureau of investigation and any other law
7 enforcement agency or organization. The director may also
8 request information under this subsection regarding any person
9 who will be or could reasonably be expected to be involved in
10 management activities of the solid waste facility or any person
11 who has a controlling interest in any permittee. The
12 department of public safety shall provide such confidentiality
13 regarding the information received from a law enforcement
14 agency as may be imposed by that agency as a condition for
15 providing that information to the department.

16 C. All persons required to file a disclosure
17 statement shall provide any assistance or information requested
18 by the director or the department of public safety and shall
19 cooperate in any inquiry or investigation conducted by the
20 department and any inquiry, investigation or hearing conducted
21 by the director. If, upon issuance of a formal request to
22 answer any inquiry or produce information, evidence or
23 testimony, any person required to file a disclosure statement
24 refuses to comply, the application of an applicant or the
25 permit of a permittee may be denied or revoked by the director.

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1 D. If any of the information required to be
2 included in the disclosure statement changes or if any
3 additional information should be added after the filing of the
4 statement, the person required to file it shall provide that
5 information to the director in writing within thirty days after
6 the change or addition. The failure to provide such
7 information within thirty days may constitute the basis for the
8 revocation of or denial of an application for any permit issued
9 or applied for in accordance with Section [~~24 of the Solid~~
10 ~~Waste Act~~] 74-9-24 NMSA 1978, but only if, prior to any such
11 denial or revocation, the director notifies the applicant or
12 permittee of the director's intention to do so and gives the
13 applicant or permittee fourteen days from the date of the
14 notice to explain why the information was not provided within
15 the required thirty-day period. The director shall consider
16 this information when determining whether to revoke or deny the
17 permit.

18 E. No person shall be required to submit the
19 disclosure statement required by this section if the person is
20 a corporation or an officer, director or shareholder of that
21 corporation and that corporation:

22 (1) has on file and in effect with the federal
23 securities and exchange commission a registration statement
24 required under Section 5, Chapter 38, Title 1 of the Securities
25 Act of 1933, as amended, 15 U.S.C. Section 77e (c);

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1 (2) submits to the director with the
2 application for a permit evidence of the registration described
3 in Paragraph (1) of this subsection and a copy of the
4 corporation's most recent annual form 10-K or an equivalent
5 report; and

6 (3) submits to the director on the anniversary
7 of the date of the issuance of any permit it holds under the
8 Solid Waste Act evidence of registration described in Paragraph
9 (1) of this subsection and a copy of the corporation's most
10 recent annual form 10-K or an equivalent report."

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

13 "74-9-22. SOLID WASTE FACILITY PERMIT--NOTICE OF
14 APPLICATION.--Each application filed with the division for a
15 permit [~~under~~] pursuant to the provisions of Section 74-9-20
16 NMSA 1978 shall include documentary proof that the applicant
17 has provided notice of the filing of the application to the
18 public and other affected individuals and entities. The board
19 shall adopt a [~~regulation~~] rule specifying the required content
20 of the notice. The notice shall be:

21 A. provided by certified mail to the owners of
22 record, as shown by the most recent property tax schedule, of
23 all properties:

24 (1) within one hundred feet of the property on
25 which the facility is located or proposed to be located if the

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1 facility is or will be in a class A or H class county or a
2 municipality with a population of more than two thousand five
3 hundred persons; or

4 (2) within one-half mile of the property on
5 which the facility is located or proposed to be located if the
6 facility is or will be in a county or municipality other than
7 those specified in Paragraph (1) of this subsection;

8 B. provided by certified mail to all municipalities
9 and counties in which the facility is or will be located and to
10 the governing body of any county, municipality, Indian tribe or
11 pueblo when the boundary of the territory of the county,
12 municipality, Indian tribe or pueblo is within a ten mile
13 radius of the property on which the facility is proposed to be
14 constructed, operated or closed;

15 C. published once in a newspaper of general
16 circulation in each county in which the property on which the
17 facility is proposed to be constructed, operated or closed is
18 located. This notice shall appear in either the classified or
19 legal advertisements section of the newspaper and at one other
20 place in the newspaper calculated to give the general public
21 the most effective notice and, when appropriate, shall be
22 printed in both English and Spanish; ~~and~~

23 D. posted in at least four publicly accessible and
24 conspicuous places, including the proposed or existing facility
25 entrance on the property on which the facility is or is

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1 proposed to be located; and

2 E. provided to residents of each community
3 significantly affected by the proposed solid waste facility
4 through at least one other medium and in a manner designed to
5 reach the maximum number of residents, such as radio,
6 television or a newsletter distributed to the community."

7 Section 4. Section 74-9-23 NMSA 1978 (being Laws 1990,
8 Chapter 99, Section 23) is amended to read:

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

11 A. An application for a solid waste facility permit
12 under the provisions of Section [~~20 of the Solid Waste Act~~]
13 74-9-20 NMSA 1978 shall be deemed complete when the director
14 has received all information required under that section and
15 Section [~~21 of the Solid Waste Act~~] 74-9-21 NMSA 1978. At any
16 time during the application process that the director
17 determines that additional information is required from an
18 applicant or that information furnished is incomplete, he shall
19 notify the applicant in writing within ten days of the date
20 that determination is made.

21 B. Within sixty days of the director's
22 determination that a permit application for a large solid waste
23 facility is complete, the director shall set a date, time and
24 location for a hearing on the application and give notice of
25 the hearing date, time and location and a brief description of

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1 the application in the same manner as required in Section [22
2 ~~of the Solid Waste Act]~~ 74-9-22 NMSA 1978 and to any person who
3 makes a written request to the director for notice regarding a
4 specific application. [~~Except as otherwise provided in this~~
5 ~~section, hearings shall be conducted in accordance with the~~
6 ~~provisions of Section 29 of the Solid Waste Act.~~]

7 C. Within sixty days of the director's
8 determination that a permit application for a small solid waste
9 facility is complete, the director shall determine if there is
10 significant public interest to justify a public hearing. If
11 such interest exists, the director shall set a date, time and
12 location for a hearing on the application and give notice of
13 the hearing date, time and location and a brief description of
14 the application in the same manner as required in Section
15 74-9-22 NMSA 1978 and to any person who makes a written request
16 to the director for a notice regarding a specific application.

17 D. Except as otherwise provided in this section,
18 hearings shall be conducted in accordance with the provisions
19 of Section 74-9-29 NMSA 1978."

20 Section 5. Section 74-9-24 NMSA 1978 (being Laws 1990,
21 Chapter 99, Section 24, as amended) is amended to read:

22 "74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND
23 DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING
24 REQUIREMENT.--

25 A. The director, within one hundred eighty days

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

14 B. The director may deny any permit application or
15 revoke a permit if he has reasonable cause to believe that any
16 person required to be listed on the application pursuant to
17 Section 74-9-20 NMSA 1978 has:

18 (1) knowingly misrepresented a material fact
19 in application for a permit;

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

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

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

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

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

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

14 D. If an applicant whose permit is being considered
15 for denial or revocation on any basis provided in this section
16 has submitted an affirmative action plan that has been approved
17 in writing by the director and plan approval includes a period
18 of operation under a conditional permit or license that will
19 allow the applicant a reasonable opportunity to affirmatively
20 demonstrate its rehabilitation, the director may issue a
21 conditional license for a reasonable period of time of
22 operation. In approving an affirmative action plan intended to
23 affirmatively demonstrate rehabilitation, the director may
24 consider the following factors: implementation by the
25 applicant of formal policies; training programs and management

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1 control to minimize and prevent the occurrence of future
2 violations; installation by the applicant of internal
3 environmental auditing programs; the discharge of individuals
4 convicted of any crimes set forth in Subsection B of this
5 section; and such other factors as the director may deem
6 relevant.

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

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

19 G. Except as otherwise provided by law:

20 (1) each permit issued for a publicly owned
21 and publicly operated new or re-permitted existing landfill,
22 transfer station, recycling facility or composting facility
23 shall remain in effect throughout the active life of the
24 landfill, transfer station, recycling facility or composting
25 facility as described in the approved permit or for twenty

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1 years, whichever is less. Each permit issued for a publicly
2 owned landfill, transfer station, recycling facility or
3 composting facility that is privately operated pursuant to a
4 contract of no more than four years duration entered into in
5 accordance with the state or local procurement code shall
6 remain in effect throughout the active life of the landfill,
7 transfer station, recycling facility or composting facility as
8 described in the approved permit or for twenty years, whichever
9 is less. Each time the contract is renewed, the director shall
10 review the contract to determine whether the term of the permit
11 shall be governed by this paragraph or Paragraph (2) of this
12 [~~section~~] subsection. Each permit shall be reviewed by the
13 department of environment at least once every ten years. The
14 review shall address the operation, compliance history,
15 financial assurance and technical requirements for the
16 landfill, transfer station, recycling facility or composting
17 facility. At the time of the review there shall be public
18 notice in the manner prescribed by Section 74-9-22 NMSA 1978.
19 If the secretary of environment determines that there is
20 significant public interest, a nonadjudicatory hearing shall be
21 held as part of the review. The secretary may require
22 appropriate modifications of the permit, including
23 modifications necessary to make the permit terms and conditions
24 consistent with statutes, regulations or judicial decisions;

25 (2) each permit issued for a privately owned

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1 new or re-permitted existing landfill, transfer station,
2 recycling facility or composting facility shall remain in
3 effect for ten years or for the active life of the facility,
4 whichever is less. Each permit issued for a publicly owned
5 landfill, transfer station, recycling facility or composting
6 facility that is leased to a private person or that is operated
7 by a private person pursuant to a contract of more than four
8 years duration shall remain in effect for ten years or for the
9 active life of the landfill or facility, whichever is less.
10 Each permit shall be reviewed at least every five years by the
11 department of environment. Interested parties may petition the
12 department for review, in addition to the five-year review,
13 provided that the director shall have discretion to determine
14 whether there is good cause for such an additional review. The
15 review shall address the operation, compliance history,
16 financial assurance and technical requirements for the
17 landfill, transfer station, recycling facility or composting
18 facility. At the time of the review there shall be public
19 notice in the manner prescribed by Section 74-9-22 NMSA 1978.
20 If the secretary of environment determines that there is
21 significant public interest, a nonadjudicatory hearing shall be
22 held as part of the review. The secretary may require
23 appropriate modifications of the permit, including
24 modifications necessary to make the permit terms and conditions
25 consistent with statutes, regulations or judicial decisions;

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1 and

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

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

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

11 "74-9-28. PRIOR HEARING REQUIREMENT FOR ~~[ALL]~~
12 ADJUDICATORY ACTIONS.--

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

18 (1) issuance, ~~[refusal to issue or modify]~~
19 denial, modification and revocation of permits for large solid
20 waste facilities;

21 (2) issuance, denial, modification and
22 revocation of permits for small solid waste facilities and for
23 landfills that are no longer accepting waste and will close
24 rather than continue to operate if the director determines
25 there is significant public interest for a hearing;

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1 [~~2~~] (3) administrative enforcement actions;

2 and

3 [~~3~~] (4) actions on requests for variances
4 and exemptions.

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

11 Section 7. Section 74-9-30 NMSA 1978 (being Laws 1990,
12 Chapter 99, Section 30) is amended to read:

13 "74-9-30. JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS.--

14 A. Any person adversely affected by an
15 administrative action taken by the board or the director may
16 appeal the action to the court of appeals. The appeal shall be
17 on the administrative record or the record made at the hearing.
18 To support his appeal, the appellant shall make arrangements
19 with the division for a sufficient number of transcripts of the
20 record of [~~the~~] any hearing on which the appeal is based. The
21 appellant shall pay for the preparation of the transcripts.

22 B. On appeal, the court of appeals shall set aside
23 the administrative action only if it is found to be:

24 (1) arbitrary, capricious or an abuse of
25 discretion;

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1 (2) not supported by substantial evidence in
2 the record; or

3 (3) otherwise not in accordance with law."

4 Section 8. Section 74-9-31 NMSA 1978 (being Laws 1990,
5 Chapter 99, Section 31, as amended) is amended to read:

6 "74-9-31. PROHIBITED ACTS.--

7 A. Except as provided in Laws 1990, Chapter 99,
8 Section 73 [~~of the Solid Waste Act~~] and Subsection B of this
9 section, no person shall:

10 (1) dispose of or transport or cause to be
11 transported any solid waste in a place other than a solid waste
12 facility:

13 (a) having a permit issued under the
14 Solid Waste Act;

15 (b) having a permit for solid waste
16 disposal issued under the Environmental Improvement Act; or

17 (c) otherwise authorized to accept solid
18 waste for disposal or transformation under regulations adopted
19 by the board under the Environmental Improvement Act;

20 (2) dispose of any solid waste in a solid
21 waste facility when a regulation of the board prohibits the
22 disposal of that particular type of solid waste in that
23 facility;

24 (3) construct, operate or close a solid waste
25 facility unless the facility has a permit from the division for

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1 the described action;

2 (4) modify a solid waste facility unless the
3 facility has applied for and received permission from the
4 director for the modification pursuant to regulations adopted
5 under Section 74-9-25 NMSA 1978; or

6 (5) dispose of any solid waste in this state
7 in a manner that harms the environment or endangers the public
8 health or safety.

9 B. The provisions of Subsection A of this section
10 do not prohibit:

11 (1) a person who is a homeowner, residential
12 lessee or tenant or agricultural enterprise from disposing on
13 the property he owns, rents or leases solid waste generated on
14 that property;

15 (2) a person occupying property from disposing
16 of domestic solid waste generated on the property if the
17 property is located in a place that makes it not feasible to
18 dispose of the solid waste in a permitted solid waste facility
19 and the disposal of the solid waste does not harm the
20 environment or endanger the public health or safety and does
21 not violate any provision of the Solid Waste Act or any
22 regulation adopted under that act; or

23 (3) a person in possession of property from
24 disposing on that property construction and demolition debris
25 or yard refuse generated on the property if the disposition of

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1 the solid waste does not violate any provision of the Solid
2 Waste Act or any regulation adopted under that act."

3 Section 9. Section 74-9-37 NMSA 1978 (being Laws 1990,
4 Chapter 99, Section 37, as amended) is amended to read:

5 "74-9-37. PENALTY--CRIMINAL.--

6 A. Any person who [~~knowingly~~] violates any
7 paragraph of Subsection A of Section 74-9-31 NMSA 1978:

8 (1) if the violation involves a quantity of
9 solid waste that is more than five pounds but less than five
10 [~~thousand~~] hundred pounds or has a volume of more than five
11 gallons but less than one hundred cubic feet, is guilty of a
12 misdemeanor and shall be sentenced pursuant to the provisions
13 of Section 31-19-1 NMSA 1978; or

14 (2) if the violation involves a quantity of
15 solid waste that is five [~~thousand~~] hundred pounds or greater
16 or has a volume of more than one hundred cubic feet or is in a
17 closed barrel or drum, is guilty of a fourth degree felony and
18 shall be sentenced pursuant to the provisions of Section
19 31-18-15 NMSA 1978.

20 B. Any person who [~~knowingly~~] violates any
21 paragraph of Subsection A of Section 74-9-31 NMSA 1978 and the
22 violation involves any quantity of infectious waste is guilty
23 of a fourth degree felony and shall be sentenced pursuant to
24 the provisions of Section 31-18-15 NMSA 1978.

25 C. Any person who is convicted of a second or

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1 subsequent violation of Section 74-9-31 NMSA 1978 pursuant to
2 the provisions of:

3 (1) Paragraph (1) of Subsection A of this
4 section is guilty of a fourth degree felony and shall be
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA
6 1978; or

7 (2) Paragraph (2) of Subsection A or
8 Subsection B or D of this section is guilty of a third degree
9 felony and shall be sentenced pursuant to the provisions of
10 Section 31-18-15 NMSA 1978.

11 D. Any person who [~~knowingly~~] omits any material
12 information or [~~knowingly~~] makes a false material statement or
13 representation required pursuant to the provisions of Section
14 74-9-20 or 74-9-21 NMSA 1978 is guilty of a fourth degree
15 felony and shall be sentenced in accordance with the provisions
16 of Section 31-18-15 NMSA 1978.

17 E. A motor vehicle shall be subject to seizure and
18 forfeiture, and the provisions of the Forfeiture Act apply to
19 the seizure, forfeiture and disposal of such property, when
20 used by a person in the commission of a crime that results in
21 the person's second conviction for a felony offense pursuant to
22 this section.

23 F. Upon a conviction for a felony offense pursuant
24 to this section, the court shall provide written notice to the
25 person that a subsequent violation of Section 74-9-37 NMSA 1978

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1 that amounts to a felony may result in the seizure and
2 forfeiture of a motor vehicle used in the commission of the
3 crime."

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