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## FISCAL IMPACT REPORT

	<b>ORIGINAL DATE</b> 1-28-06		
<b>SPONSOR</b>	Heaton	<b>LAST UPDATED</b> 2-8-06	<b>HB</b> 410/aHENRC/aHBIC
	HAZARDOUS WASTE VOLUNTARY FEE		
<b>SHORT TITLE</b>	AGREEMENTS	<b>SB</b>	
		<b>ANALYST</b>	Hadwiger

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	\$1,300.0	\$1.300.0	Recurring	Hazardous Waste Fund (339)

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB521.

Relates to Appropriation in the General Appropriation Act from the Hazardous Waste Fund to the Water Quality Program of the Department of Environment.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Department of Environment (NMED)

Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to House Bill 410 as amended by HENRC clarifies that the voluntary fee agreement would include fees required under existing statute plus any voluntary fees. According to NMED, this was offered to clarify language in the HENRC amendment but not to alter the intent of that amendment.

#### Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee amendment modifies language in the original bill and amends Section 74-4-4.5 NMSA 1978 to clarify that all revenues from fees imposed under Section 74-4-4.2 NMSA 1978 would be deposited in the Hazardous Waste Fund. The amendments also clarify that the Department of Environment, rather than one of its divisions, is responsible for administering the fund. The amendment also would require that volun-

tary fee agreements provide for fees in addition to required fees under existing statute. The previous version of the bill allowed voluntary fee agreements to set fees in lieu of some or all of the required fees.

### Synopsis of Original Bill

House Bill 410 amends a section of the Hazardous Waste Act to allow the Department of Environment (NMED) and a business generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste to enter into a voluntary fee agreement in lieu of paying fees established by the Environmental Improvement Board (EIB).

### **FISCAL IMPLICATIONS**

NMED anticipates that passage of this bill would generate \$1.3-\$1.8 million per year to the Hazardous Waste Fund. The actual revenues will vary depending on the number and type of facilities that would enter into voluntary fee agreements under this legislation.

Currently, NMED has two such agreements with the U.S. Department of Energy for Los Alamos National Laboratory (LANL) and the Waste Isolation Pilot Project (WIPP). In all, the two agreements could generate \$1.8 million a year in federal revenues. The lack of statutory provisions allowing voluntary fee agreements complicated implementation of the LANL consent order, and processing complex permit modifications for WIPP. Moreover, the U.S. Department of Defense (DOD) has not developed similar agreements for New Mexico's military installations, to some degree, because of the lack of these statutory provisions. The NMED revenue estimate is a rough projection reflecting the impact of this bill if it facilitates conclusion of voluntary fee agreements with the DOD sites.

### **SIGNIFICANT ISSUES**

This bill was endorsed by the Radioactive and Hazardous Materials Committee.

NMED indicates that it is the state agency that oversees the handling and disposition of hazardous waste under federal and state law. Current authority under the New Mexico Hazardous Waste Act limits the EIB's rule-making authority for hazardous waste management fee assessment to: 1) a flat business fee on entities that are engaged in a regulated hazardous waste activity; 2) a fee on hazardous waste generators based primarily on the amount and toxicity of waste generated; 3) fees that approximate the Department's cost of investigating a permit application for treatment, storage, or disposal of hazardous waste and issuing a permit; and 4) an annual hazardous permit management fee. The fee schedules adopted by the Board are "one size fits all," whereby the same fees must apply to all facilities, regardless of their size or scope.

NMED further noted that fee assessment authority under the HWA was established in the late 1980s, when the operation of treatment, storage or disposal (TSD) facilities was beginning to be regulated, and therefore the focus of the nascent regulatory program. Since then, cleanup of legacy contamination, especially at federal facilities, has become an equal priority of the hazardous waste regulatory program, but not an equal priority in terms of funding. This issue is particularly important in New Mexico, where 40 per cent of all hazardous waste facilities are federal facilities, most of which have significant clean up requirements. Moreover, many of the health threats

posed by the contamination are long-lived, so the decisions made regarding clean up at the facilities must be backed up with the most robust science. The HWA also did not anticipate permitted facilities as complex as the Waste Isolation Pilot Plant (WIPP) or the Los Alamos National Laboratory (LANL). WIPP's permit is unique in that it requires the Environment Department to indirectly regulate Department of Energy (DOE) sites that generate waste destined for WIPP. This involves Department staff conducting on-site monitoring DOE "audits" of the generator sites before waste is shipped to WIPP to ensure the waste has been sufficiently characterized. Also, WIPP's permit modification requests far exceed the scope and complexity of those from other permitted facilities, requiring a dedicated staff and contractors with specialized expertise. LANL has dozens of permitted units and hundreds of polluted sites that must be cleaned up under a Consent Order signed May 2005. The Order sets tough deadlines for NMED to review documents in a timely manner. The amendments in HB 410 provide a mechanism whereby WIPP and LANL may continue their direct funding of regulatory oversight and allow other facilities to do the same. HB 410 would allow NMED to enter into voluntary agreements with complex facilities like WIPP and LANL to establish sufficient revenue to support adequate regulatory oversight. Because the fee agreements would operate in lieu of the schedule of fees established by the Board, less complex facilities would not be burdened with unreasonable fees that are based on oversight of the more complex facilities.

HB 410 is intended to allow facilities with significant clean-up requirements (like New Mexico's federal facilities) or an unusual permitting framework (like WIPP) to pay the Department's costs of overseeing their permits and cleanup of their contaminated sites. The agreements that govern the payment would be voluntary; facilities that decline to enter into agreements would simply pay fees based on the schedules promulgated by the Board. This bill would provide federal facilities the ability to choose a sensible fee structure that fits their circumstances.

### **PERFORMANCE IMPLICATIONS**

NMED has two performance measures related to hazardous waste fee agreements.

- 1) NMED's ability to take action on WIPP audits in a timely manner (80% within 45 days)
- 2) NMED's ability to provide timely notice to LANL and Sandia National Laboratory under the consent orders that govern cleanup (90% of notice dates in the orders met).

NMED has met the measure concerning WIPP audits, in large part because WIPP funded NMED through an informal fee agreement since 2000. NMED has not met the consent order measure for Sandia and Los Alamos national laboratories due to lack of resources. HB410, in conjunction with NMED expansion request for LANL-dedicated staff, would pave the way for direct facility funding. This would lead to a greater ability by NMED to meet the performance measures.

### **ADMINISTRATIVE IMPLICATIONS**

NMED indicates that it currently has the capability to administer fee agreements.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates Senate Bill 521 and relates to the General Appropriation Act, which includes about \$1.2 million from voluntary fee agreements with the U.S. Department of Energy to oversee clean-up at LANL and WIPP operations as well as the General Appropriation Act which appro-

priates \$2.9 million from the Hazardous Waste Fund for NMED hazardous waste regulatory activities. As amended by HBIC, this bill duplicates SB521 as amended by SCONC.

**TECHNICAL**

With regard to the original bill, NMED recommended that Section 74-4-4.5(B) NMSA 1978 be added to the bill and amended as follows:

All fees collected pursuant to ~~Subsection F~~ of [Section 74-4-4.2](#) NMSA 1978 shall be transmitted to the state treasurer for credit to the hazardous waste fund.

Additionally, the agency proposed an amendment on page 5, lines 23 and 24 of the original bill, to delete “to be deposited to the credit of the hazardous waste fund,”. This text would no longer be necessary if Section 74-4-4.2 is amended as above. NMED also recommended amendments to address obsolete language as Subsection F of that section no longer contains the fee provisions. The HENRC and HBIC amendments addressed these concerns.

DH/mt:yr