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HOUSE BILL 252

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

INTRODUCED BY

Thomas C. Taylor

AN ACT

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

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

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

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

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

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1 provided that the notice shall include a statement that:

2 (1) a hearing may occur on the application,
3 subject to a later determination that the application is
4 complete and that there is significant public interest;

5 (2) no hearing may be held if there is not
6 significant public interest; and

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

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

11 [~~A-~~] (1) provided by certified mail to the
12 owners of record, as shown by the most recent property tax
13 schedule, of all properties:

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

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

24 [~~B-~~] (2) provided by certified mail to all
25 municipalities and counties in which the facility is or will be

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1 located and to the governing body of any county, municipality
2 or Indian tribe or pueblo when the boundary of the territory of
3 the county, municipality or Indian tribe or pueblo is within a
4 ten-mile radius of the property on which the facility is
5 proposed to be constructed, operated or closed;

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

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

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

20 "74-9-23. SOLID WASTE FACILITY PERMIT--WHEN APPLICATION
21 DEEMED COMPLETE--NOTICE OF HEARING.--

22 A. An application for a solid waste facility permit
23 under the provisions of Section [~~20 of the Solid Waste Act~~]
24 74-9-20 NMSA 1978 shall be deemed complete when the director
25 has received all information required under that section and

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1 Section [~~21 of the Solid Waste Act~~] 74-9-21 NMSA 1978. At any
2 time during the application process that the director
3 determines that additional information is required from an
4 applicant or that information furnished is incomplete, [~~he~~] the
5 director shall notify the applicant in writing within ten days
6 of the date that determination is made.

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

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

21 "74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND
22 DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING
23 REQUIREMENT.--

24 A. In the event a public hearing is held on an
25 application, the director, within one hundred eighty days after

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

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

21 (1) knowingly misrepresented a material fact
22 in application for a permit;

23 (2) refused to disclose or failed to disclose
24 the information required pursuant to the provisions of Section
25 74-9-21 NMSA 1978;

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

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

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

11 (6) had any permit revoked or permanently
12 suspended for cause under the environmental laws of any state
13 or the United States.

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

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

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1 affirmatively demonstrate rehabilitation, the director may
2 consider the following factors:

3 (1) implementation by the applicant of formal
4 policies;

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

7 (3) installation by the applicant of internal
8 environmental auditing programs;

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

11 (5) such other factors as the director may
12 deem relevant.

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

22 F. No permit for the operation of a solid waste
23 facility shall be valid until the permit or a notice of the
24 permit and a legal description of the property on which the
25 facility is located are filed and recorded in the office of the

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1 county clerk in each county in which the facility is located.

2 G. Except as otherwise provided by law:

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

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1 by Section 74-9-22 NMSA 1978. If the secretary of environment
2 determines that there is significant public interest, a
3 nonadjudicatory hearing shall be held as part of the review.
4 The secretary may require appropriate modifications of the
5 permit, including modifications necessary to make the permit
6 terms and conditions consistent with statutes, regulations or
7 judicial decisions;

8 (2) each permit issued for a privately owned
9 new or repermited existing landfill, transfer station,
10 recycling facility or composting facility shall remain in
11 effect throughout the active life of the facility as described
12 in the approved permit or for twenty years, whichever is less.
13 Owners of privately owned facilities permitted prior to July 1,
14 2011 shall submit in writing to the division no later than
15 September 1, 2011 their decision to opt into the twenty-year
16 permit cycle and provide information that demonstrates that
17 such period is less than the remaining active life of the
18 facility. If a privately owned facility opts into the
19 twenty-year permit cycle, the twenty-year permit term shall be
20 reduced by the number of years the facility has operated under
21 its current permit. For privately owned facilities that opt
22 into the twenty-year permit term, the facility owners shall
23 adjust financial assurance coverage to accommodate requirements
24 pursuant to the solid waste management regulations. Each
25 permit shall be reviewed at least every five years by the

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1 department of environment. Interested parties may petition the
2 department for review, in addition to the five-year review,
3 provided that the director has discretion to determine whether
4 there is good cause for such an additional review. The review
5 shall address the operation, compliance history, financial
6 assurance and technical requirements for the landfill, transfer
7 station, recycling facility or composting facility. At the
8 time of the review there shall be public notice in the manner
9 prescribed by Section 74-9-22 NMSA 1978. If the secretary of
10 environment determines that there is significant public
11 interest, a nonadjudicatory hearing shall be held as part of
12 the review. The secretary may require appropriate
13 modifications of the permit, including modifications necessary
14 to make the permit terms and conditions consistent with
15 statutes, regulations or judicial decisions; and

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

19 H. The director shall issue separate special
20 waste permits for all solid waste facilities that transfer,
21 process, transform, recycle or dispose of special waste
22 pursuant to regulations adopted by the board."

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

25 "74-9-28. PRIOR HEARING REQUIREMENT FOR ~~ALL~~ CERTAIN

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1 ADJUDICATORY ACTIONS.--

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

7 (1) issuance, refusal to issue or modify and
8 revocation of permits for solid waste facilities if the
9 director determines that there is significant public
10 interest;

11 (2) administrative enforcement actions; and

12 (3) actions on requests for variances and
13 exemptions.

14 B. In any adjudicatory hearing, the director has
15 and may delegate to the hearing officer the power to issue
16 subpoenas for the attendance and testimony of witnesses and
17 the production of relevant documentary evidence. The
18 subpoenas may be enforced by action brought in the district
19 court for the county in which the hearing is held."

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

22 "74-9-29. HEARING PROVISIONS FOR ADJUDICATORY
23 ACTIONS.--

24 A. The director shall adopt procedural
25 regulations to govern the procedures to be followed in

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1 hearings on adjudicatory actions of the director. No
2 [~~adjudicatory actions under the Solid Waste Act shall be~~
3 ~~taken until these regulations are adopted~~] permitting actions
4 may be taken without a prior hearing until thirty-one days
5 after the board has adopted a definition of "significant
6 public interest" and a procedure to determine whether there
7 is significant public interest warranting a hearing on the
8 permit application. As a minimum, the procedural regulations
9 shall provide:

- 10 (1) for hearings, if any, to be public;
- 11 (2) requirements for prior notice of the
12 variance or exemption request hearings and the methods for
13 giving that notice, which shall be designed to inform
14 interested and affected persons of the nature of the action
15 to be considered and the date, time and place of the hearing;
- 16 (3) for maintenance of a list of persons
17 that desire to have notice of variance request hearings and
18 provisions for giving notice to those persons;
- 19 (4) a reasonable opportunity for all persons
20 desiring to be heard on a variance or exemption request or a
21 permit action to be heard without making the hearing process,
22 if any, unreasonably lengthy or cumbersome or burdening the
23 record with unnecessary repetition;
- 24 (5) procedures for discovery;
- 25 (6) assurance that procedural due process

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1 requirements are satisfied;

2 (7) for the director to designate a hearing
3 officer to conduct a hearing and make a report and
4 recommendation to the director;

5 (8) for the maintenance of a record of the
6 hearing proceedings and assessment of the costs of any
7 transcription of testimony that is required for judicial
8 review purposes; and

9 (9) for the place of the hearing to be in
10 Santa Fe, and at other places the board may prescribe, for
11 hearings on actions of general statewide application, for
12 hearings on actions of limited local application to be held
13 at a place in the area affected and for enforcement actions
14 to be heard in Santa Fe.

15 B. Actions taken by the director following a
16 hearing, if any, on adjudicatory actions shall be:

17 (1) written and shall state the reasons for
18 the action;

19 (2) made public when taken;

20 (3) communicated to all persons that have
21 made a written request for notification of the action taken;
22 and

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

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