

**NEW
MEXICO
REGISTER**

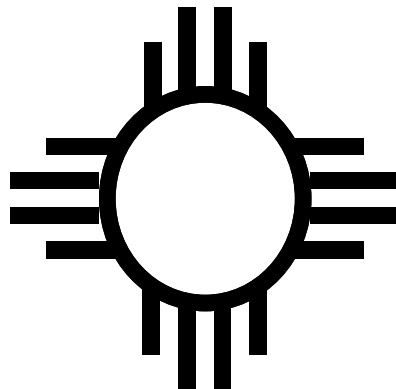


Volume XVIII
Issue Number 13
July 16, 2007

New Mexico Register

Volume XVIII, Issue Number 13

July 16, 2007



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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2007

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New Mexico Register

Volume XVIII, Number 13

July 16, 2007

Table of Contents

Notices of Rulemaking and Proposed Rules

Architects, Board of Examiners for	
Notice of Regular Meeting	515
Economic Development Department	
Notice of Proposed Rulemaking	515
Environment Department	
New Mexico Environment Department Notice of Public Hearing to Consider Proposed Revision of Rural Water Supply Facilities Regulations, 20.7.2 NMAC, and Wastewater Facility Construction Loan Policies and Guidelines, 20.7.6 NMAC	515
Human Services Department	
Medical Assistance Division	
Notice of Public Hearing	516
Personnel Board, State	
State Personnel Board Public Rules Hearing	516
Public Regulation Commission	
Amended Notice of Proposed Rulemaking (In the Matter of Repealing and Replacing the Commission's Rules for the State Fire Marshal)	516
Regulation and Licensing Department	
Manufactured Housing Division	
Legal Notice, Notification of Public Hearing Rulemaking, Manufactured Housing Committee	517
Water Quality Control Commission	
New Mexico Water Quality Control Commission Notice of Public Hearing to Consider Proposed Revision of Wastewater Facility Construction Loans, 20.7.5 NMAC	518

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Environment Department		
20.9.25 NMAC	Rn	Facility Grant Fund 519
Environmental Improvement Board		
EIB/SWP-1	R	New Mexico Solid Waste Management Plan 519
20 NMAC 9.1	R	Solid Waste Management 519
20 NMAC 9.2	R	Tire Recycling 519
20.9.2 NMAC	N	Solid Waste Management General Requirements 519
20.9.3 NMAC	N	Solid Waste Facility Permits and Registrations 529
20.9.4 NMAC	N	Solid Waste and Registered Facility Maximum Size, Siting Criteria and Design Criteria . 542
20.9.5 NMAC	N	Solid Waste Facility and Commercial Haulers Operating Requirements 546
20.9.6 NMAC	N	Solid Waste Facility and Composting Facility Closure and Post-Closure Requirements . . 551
20.9.7 NMAC	N	Solid Waste Facility and Registered Facility Operator Certification 554
20.9.8 NMAC	N	Special Waste Requirements 555
20.9.9 NMAC	N	Solid Waste Facility Ground Water Monitoring System Plan and Ground Water Monitoring Plan; Corrective Action 561
20.9.10 NMAC	N	Financial Assurance 570
20.9.20 NMAC	N	Recycling, Illegal Dumping and Scrap Tire Management 578
Game and Fish, Department of		
19.31.4 NMAC	A/E	Fisheries 593
19.31.4 NMAC	A/E	Fisheries 593

Human Services Department

Income Support Division

8.102.460 NMAC	R/E	Recipient Policies - Defining Group Work Program Activities	593
8.102.460 NMAC	N/E	Recipient Policies - Defining Group Work Program Activities	593
8.102.100 NMAC	A/E	Recipient Policies - Definitions and Acronyms	605
8.102.510 NMAC	A/E	Eligibility Policy - Resources/Property	609

Public Records, Commission of

<i>Letter</i>		<i>Synopsis Approval Letter</i>	613
1.18.795 NMAC	N	ERRDS, Homeland Security and Emergency Management Department (<i>synopsis</i>)	613
1.15.2 NMAC	A	GRRDS, General Administrative Records	613
1.15.3 NMAC	A	GRRDS, General Administrative Records (for use by Local Government and Educational Institutions)	614
1.18.667 NMAC	A	ERRDS, Department of Environment (<i>synopsis</i>)	614
1.18.790 NMAC	A	ERRDS, Department of Public Safety	614

Public Safety, Department of

Motor Transportation Division

18.2.3 NMAC	A	Motor Carrier Safety	615
-------------	---	--------------------------------	-----

Water Quality Control Commission

20.6.4 NMAC	A	Standards for Interstate and Intrastate Surface Waters	618
-------------	---	--	-----

Workforce Solutions, Department of

11.3.400 NMAC	A	Tax Administration	619
---------------	---	------------------------------	-----

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

PO Box 509
Santa Fe, NM
505-982-2869

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, August 17, 2007. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. A public rules hearing will also be held to amend the architectural rules. Content will be the timing for the Architect Registration Examination. Proposed rules are available by contacting the Board office at (505) 982-2869.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

Notice of Proposed Rulemaking

The Economic Development Department ("EDD or Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on amending the following rules:

5.5.50 NMAC (Industrial Development Training Program)

A public hearing regarding the rules will be held on Monday, July 30, 2007 in the Padilla Conference Room, New Mexico Economic Development Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico 87503. The time for the hearing on the proposed rules is 9:30 AM MDT.

Interested individuals may testify at either public hearing or submit written comments regarding the proposed rulemaking to Therese R. Varela, JTIP Program Manager, New Mexico Economic Development Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico 87503 therese.varela@state.nm.us (505) 827-0323, fax (505) 827-1672. Written comments must be received no later than 5:00 pm on July 27, 2007.

The proposed rulemaking actions may be accessed on the Department's website (www.goNM.biz) or obtained from Therese Varela, contact information above.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Therese Varela as soon as possible. The Department requests at least ten days advanced notice to provide requested special accommodations.

NEW MEXICO ENVIRONMENT DEPARTMENT

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF RURAL WATER SUPPLY FACILITIES REGULATIONS, 20.7.2 NMAC, AND WASTEWATER FACILITY CONSTRUCTION LOAN POLICIES AND GUIDELINES, 20.7.6 NMAC

The Secretary of the New Mexico Environment Department, (Secretary) will hold a public hearing at 9:00 a.m. on August 28th, 2007, and continuing thereafter as necessary, at the New Mexico Environment Department, Harold Runnels Building, Room N2167, 2nd floor, Santa Fe, New Mexico to consider proposed amendments to the Rural Water Supply Facilities Regulations, 20.7.2 NMAC, and Wastewater Facility Construction Loan Policies and Guidelines, 20.7.6 NMAC. The Construction Programs Bureau of the New Mexico Environment Department is the proponent of the proposed amendments. Amendments proposed to 20.7.2 NMAC include (i) addition of and amendments to various definitions, (ii) addition of solid waste as an eligible facility, (iii) amendments to establish an administrative fund and allocate up to two percent of the total balance in the fund to pay for administrative expenses necessary to carry out the provisions of the Rural Infrastructure Act (iv)

amendments to loan information and financial report requirements, (v) amendments to maximum loan and grant amounts, (vi) amendments to eligible local authorities, (vii) amendments to repayment installments, and (viii) amendments to remove restrictive language. Amendments proposed to 20.7.6 NMAC include (i) addition of and amendments to various definitions, (ii) amendments to clarify language (iii) changes that allow the Department to create a separate administrative fund to recover administrative costs, and (iv) amendments to remove retainage language to conform with the Retainage Act.

The proposed changes may be reviewed during regular business hours at the Office of the Hearing Clerk for the New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153, Santa Fe, NM, 87505. In addition, a copy of the proposed amendments is posted on the NMED website at <http://www.nmenv.state.nm.us/cpb/cpbtot.html> Written comments may be submitted to the Department regarding the amendments at the above address, and should reference docket number CP 07-31 (R) for 20.7.2 NMAC and docket number CP 07-32 (R) for 20.7.6 NMAC.

The Secretary may conduct the hearing in accordance with 20.1.1 NMAC (Rulemaking Procedures of the Environmental Improvement Board) and other applicable procedures. All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules;

and,

- attach the text of any recommended modifications to the proposed changes. Notices of intent for the hearing must be received in the Office of the Hearing Clerk not later than 5:00 pm on August 10th, 2007, and should reference the name of the regulation and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Sally Worthington
Office of the Hearing Clerk
Harold Runnels Building
1190 St. Francis Dr., Room N-2153
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by August 10th, 2007. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779)

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m., on August 16, 2007, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be *Family Planning Medicaid*.

The New Mexico Human Services Department is proposing to correct the age range of women eligible to participate in the Family Planning Medicaid program from 19 through 44 years to 18 through 50 years of age.

Interested persons may submit written comments no later than 5:00 p.m., August 16, 2007, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation

to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at <http://www.hsd.state.nm.us/mad/registers/>. or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM 87504-2348.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Thursday, August 23, 2007. The meeting will be held during the Board's regular business meeting beginning at 9:00 a.m., located in the State Personnel Office, Willie Ortiz Building at 2600 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to Subsections A and B of 1.7.9.8 Form.

A final agenda for the board meeting will be available at the board office on August 13, 2007.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. August 15, 2007 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Sandra Perez. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.state.nm.us/spo/ beginning July 16, 2007.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the

Director if a summary or other type of accessible format is needed.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF REPEALING AND REPLACING THE COMMISSION'S RULES FOR THE STATE FIRE MARSHAL,

Docket No. 06-00243-FM
STATE FIRE MARSHAL,

Petitioner.

AMENDED NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") proposes to adopt replacements to the Commission's Rules for the State Fire Marshal. Notice is further given that the rules proposed by the Fire Marshal pursuant to the original Notice of Proposed Rulemaking in this matter have been amended and are attached to the original and mailed copies of this Amended Notice of Proposed Rulemaking ("Amended NOPR") as Exhibit 1. This matter comes before the Commission on the Commission's own motion. Being fully advised,

THE COMMISSION FINDS AND CONCLUDES:

1. The state fire board is directed to "formulate, adopt and promulgate, and amend or revise regulations for fire prevention and safe conduct or use of public occupancies." NMSA 1978 Section 59A-52-15. The Commission is the state fire board, as provided in NMSA 1978 Section 8-8-21.E.

2. In June 2006, the Fire Marshal proposed new and amended rules to replace current Fire Marshal rules.

3. On August 31, 2006, the Commission issued a Notice of Proposed Rulemaking ("NOPR") in this matter, which gave notice of the proposed new and amended rules, set dates for the submission of written comments, set public comment hearing dates, and required the Commission to publish the NOPR in the New Mexico Register and two newspapers of general circulation.

4. The Commission published notice in the New Mexico Register on September 15, 2006, and the

Albuquerque Journal on September 10, 2006. Although the Commission arranged to have notice published in the Las Cruces Sun News, the newspaper did not actually publish the notice.

5. In accordance with the NOPR, the Commission accepted written comments on the proposed rules and held public hearings between September 20 and October 25, 2006, in Albuquerque, Alamogordo, Artesia, Carlsbad, Clovis, Española, Farmington, Hobbs, Las Cruces, Los Alamos, Raton, Rio Rancho, Roswell, Santa Fe, Socorro, and Tucumcari.

6. The Fire Marshal has reviewed all of the public comments and has amended the proposed rules in response to public comment. The amended proposed rules are attached to the original and mailed versions of this Amended NOPR as Exhibit 1. (They are not provided with the published versions. See Paragraph 10 below to obtain copies.) Although the amended proposed rules remain largely the same as the rules proposed pursuant to the original NOPR, the amended proposed rules: eliminate all references to the design of fire protection systems because only professional licensed engineers may design fire protection systems and because the statutes and rules governing licensed engineers control the design of these systems; include provisions to protect the due process rights of licensees, permittees, and certificate holders by incorporating rules of procedure; clarify the occupant load and means of egress required in correctional facilities; indicate that the Commission's definitions of terms and the definitions of terms in rules promulgated by the Construction Industries Division of the Regulation and Licensing Department shall supersede definitions of the same terms in the International Fire Code where the definitions differ; indicate that the New Mexico Board of Licensure for Professional Engineers and Surveyors has adopted rules that apply to fire protection systems; and incorporate a \$20.00 fee for the replacement of lost or damaged fireworks permits, pursuant to Section 60-2C-4 NMSA 1978 (as amended in 2007).

7. Because of the changes to the proposed rules made in response to earlier public comment and the failure to meet the legal requirement of publishing the NOPR in two newspapers of general circulation, the Commission finds that it should issue this Amended NOPR and should issue the amended proposed rules for comment.

8. The Commission will take written comments on the rules proposed in this Amended NOPR from any interested person. Interested persons shall file their written comments no later than August 1, 2007. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the sug-

gested changes and include specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules should be in legislative format. A copy of the proposed rules in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to the amended proposed rules in Exhibit 1 shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 format). The label on the floppy disk shall clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice.

9. Comments on the proposed amendments to the Rules for the State Fire Marshal shall be sent to:

Bettie Cordova
ATTN: Proposed Rules for Public Safety and Law Enforcement
New Mexico Public Regulation Commission
P.O. Box 1269

Santa Fe, NM 87504-1269
Telephone: (505) 827-4526

10. Copies of the amended proposed rules can be obtained from:

Paul Linville
ATTN: Proposed Rules for Public Safety and Law Enforcement
New Mexico State Fire Marshal's Office
P.O. Box 1269
Santa Fe, NM 87504-1269
Telephone: (505) 827-3734

11. The Commission will review all timely submitted written comments and will hold a public hearing to take oral comment regarding the proposed rules. The hearing will be held on Wednesday, August 22, 2007 at 10:00 a.m., at Marian Hall, 1st floor hearing room, 224 East Palace Avenue, Santa Fe, New Mexico.

12. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, since hearings are occasionally rescheduled.

13. Any person with a disability requiring special assistance in order to participate in a hearing should contact Bettie Cordova at (505) 827-4526 at least 48 hours prior to the commencement of the hearing.

14. Copies of this Notice should be sent to all persons who have made a written request for advance notice and to

any other person requesting service, and should be published in at least two newspapers of general circulation in the State and in the New Mexico Register.

IT IS THEREFORE ORDERED:

A. The amended proposed Rules for the State Fire Marshal, attached to the original and mailed versions of this Amended NOPR as Exhibit 1, are proposed for adoption as provided by this Notice.

B. Interested persons shall file their written comments on the amended proposed rules as provided in this Amended NOPR.

C. The Commission shall hold a public hearing as provided in this Notice.

D. Staff of the Fire Marshal's Office shall mail a copy of this Notice, including Exhibit 1, to all persons who have made a written request for advance notice and to any other person requesting service. The Commission shall cause this Amended NOPR, excluding Exhibit 1, to be published in at least two newspapers of general circulation in the State and in the New Mexico Register.

E. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 28th day of June, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON A. MARKS, VICE-CHAIRMAN

SANDY JONES, COMMISSIONER

DAVID W. KING, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

**NEW MEXICO REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION**

**State Of New Mexico
Regulation and Licensing Department
Manufactured Housing Division**

**LEGAL NOTICE
NOTIFICATION OF PUBLIC HEARING
RULEMAKING
Manufactured Housing Committee**

The Manufactured Housing Committee has

scheduled a Public Hearing for July 20, 2007. The purpose of this hearing will be to receive public comment on a proposed change to the Manufactured Housing Rules and Regulations, Section 14.12.2.59 New Mexico Administrative Code (NMAC). The specific proposed changes to these sections are outlined below.

The Hearing will be held at the Regulation and Licensing Department, located at 2550 Cerrillos Road, Santa Fe, New Mexico 87505, Toney Anaya Building, 2nd Floor, Hearing Room 1, at 10:00 a.m. The hearing will be conducted by Hearing Officer Sondra Frank

The specific proposed rule change reads as follows:

14.12.2.59: LOCAL PLANNING, AND ZONING JURISDICTIONS OR UNITS INSTALLED IN FLOODPLAIN OR MUDSLIDE AREAS:

B. Every dealer prior to delivery of a manufactured home sold, shall have a ~~written statement from [acknowledged by the consumer a document advising the consumer to check with]~~ the local governing body in the locality of the site where the home will be installed that either the home is not in a flood zone, or a floodplain use permit that gives the conditions that must be met to install the home [to determine installation requirements] in flood zone areas.

[14.12.2.59 NMAC - Rp, 14 NMAC 12.2.52, 9-14-00]

In addition to receiving public comment at the July 20, 2007 public hearing, the Manufactured Housing Committee will receive written comments between the time period of July 1, 2007 and July 20, 2007. Written comments should be mailed, or delivered to, the Manufactured Housing Division of the Regulation and Licensing Department, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico, 87505. Written comments may also be faxed to (505) 476-4856.

Pursuant to the Americans with Disabilities Act, participants with special needs should contact the Manufactured Housing Division no later than July 18, 2007.

Benito J. Martinez, Jr., MHD Director
Manufactured Housing Division
2550 Cerrillos Road
P.O. Box 25101
Santa Fe, New Mexico 87505
(505) 476-4775

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF WASTEWATER FACILITY CONSTRUCTION LOANS, 20.7.5 NMAC

The New Mexico Water Quality Control Commission (Commission) will hold a public hearing at 9:00 a.m. on September 11, 2007, and continuing thereafter as necessary, at the New Mexico Energy, Minerals & Natural Resources Department, 1220 St. Frances Drive, Wendell Chino Building, Porter Hall, Santa Fe, New Mexico, 87505 to consider proposed amendments to the Wastewater Facility Construction Loans, 20.7.5 NMAC. The New Mexico Environment Department is the proponent of the proposed amendments. Amendments proposed by the New Mexico Environment Department include (i) new definitions, (ii) changes that allow the Department to create a separate administrative fund to recover administrative costs, and (iii) amendments to clarify language.

The proposed changes may be reviewed during regular business hours at the office of the Water Quality Control Commission, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153, Santa Fe, NM, 87505. In addition, a copy of the proposed amendments is posted on the NMED website at <http://www.nmenv.state.nm.us/cpb/cpbtop.html> Written comments may be submitted to the WQCC regarding the amendments at the address below, and should reference docket number WQCC 07-04 (R).

Joyce Medina, WQCC Administrator
Harold Runnels Building
1190 St. Francis Dr., Room N-2153
Santa Fe, NM 87502
(505) 827-2425 or
Joyce.Medina@state.nm.us

The hearing will be conducted in accordance with the *Guidelines for Water Quality Control Commission Regulation Hearings* and other applicable procedures.

Any person who intends to present technical evidence or testimony at the hearing must file a Statement of Intent to Present Technical Testimony with the WQCC Administrator by August 22, 2007 at 5:00 p.m. and should reference docket number WQCC 07-04 (R). The Statement of Intent must include (a) the name of the person filing the statement, (b) whether the person supports or opposes the amendments, (c)

the name of each witness and their qualifications, (d) an estimate of the length of the direct testimony of each witness, (e) a list of exhibits to be offered into evidence at the hearing, and (f) a summary or outline of the anticipated direct testimony of each witness.

Oral public comment of a non-technical nature may be given at the hearing without prior notification. A member of the general public may submit a written non-technical statement for the record in lieu of giving oral testimony. Written comments may be submitted to the WQCC Administrator at the above address.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by August 22, 2007. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO ENVIRONMENT DEPARTMENT

20 NMAC 9.3, Facility Grant Fund (filed 10/31/1995) renumbered and reformatted to 20.9.25 NMAC, Facility Grant Fund, in conformance with current NMAC requirements, effective 8/2/2007.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

EIB/SWP-1, Solid Waste Management Plan (filed 09/09/1993) repealed, 8/2/2007.

20 NMAC 9.1, Solid Waste Management (filed 10/27/1995) repealed, 8/2/2007.

20 NMAC 9.2, Tire Recycling (filed 07/18/1995) repealed, 8/2/2007.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 9 SOLID WASTE PART 2 SOLID WASTE MANAGEMENT GENERAL REQUIREMENTS

20.9.2.1 ISSUING AGENCY.
New Mexico Environmental Improvement Board.
[20.9.2.1 NMAC - Rp, 20 NMAC 9.1.I.001, 08/02/07]

20.9.2.2 SCOPE. This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.
[20.9.2.2 NMAC - Rp, 20 NMAC 9.1.I.002, 08/02/07]

20.9.2.3 STATUTORY AUTHORITY. NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.
[20.9.2.3 NMAC - Rp, 20 NMAC 9.1.I.003, 08/02/07]

20.9.2.4 DURATION. Permanent.
[20.9.2.4 NMAC - Rp, 20 NMAC 9.1.I.004, 08/02/07]

20.9.2.5 EFFECTIVE DATE. August 2, 2007, unless a later date is cited at

the end of a section.
[20.9.2.5 NMAC - Rp, 20 NMAC 9.1.I.005, 08/02/07]

20.9.2.6 OBJECTIVE. The objective of Part 2 of Chapter 9 is to establish regulations in the following areas of solid waste management:

- A. general requirements;
 - B. requirements for public entities;
 - C. prohibited acts and exceptions;
 - D. entry by the department; and
 - E. procedures for exemptions, specific approvals, waivers for small municipal landfills and variances.
- [20.9.2.6 NMAC - Rp, 20 NMAC 9.1.I.006, 08/02/07]

20.9.2.7 DEFINITIONS. Whenever a term used in 20.9.2 - 20.9.10 NMAC is defined in the Solid Waste Act, the term shall have the meaning given in the Solid Waste Act, unless otherwise defined in this part.

A. Terms starting with the letter 'A' are defined as follows.

(1) "Act" means the Solid Waste Act, NMSA 1978, Sections 74-9-1, et seq.

(2) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with 20.9.6 NMAC.

(3) "Active portion" means that part of a facility that has received or is receiving wastes and that has not been closed in accordance with 20.9.6 NMAC.

(4) "Air curtain incinerator" means an incineration facility used for burning yard refuse that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs, controls emission of the combustion products, is not designed to burn more than ten tons of yard refuse per hour, and has obtained an air quality permit or registration.

(5) "Airport" means public use airports open to the public without prior permission and without restrictions within the physical capacities of available facilities, but does not include aero-club airports operated on a military installation.

(6) "Alluvial fan" means a low, outspread, relatively flat to gentle sloping mass of loose sediment, shaped like an open fan or a segment of a cone, deposited by a stream at a place where it issues from a narrow mountain valley upon a plain or broad valley.

(7) "Aquifer" means a geologic formation, group of formations, or portions

of a formation capable of yielding ground water to wells or springs. The uppermost aquifer is the aquifer nearest the natural ground surface including lower aquifers that are hydraulically interconnected with this aquifer.

(8) "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or man-induced events, results in the down slope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, solifluction, block sliding, and rock fall.

(9) "Asbestos waste" means a solid waste that contains more than 1 percent asbestos:

(a) "friable asbestos material" means any material containing more than 1 percent asbestos, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure;

(b) "category I non-friable asbestos containing material" means asbestos containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos;

(c) "category II non-friable asbestos containing material" means any material, excluding category I non-friable asbestos containing material, containing more than one percent asbestos, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand; and

(d) "regulated asbestos waste" means friable asbestos material; category I non-friable asbestos containing material that has become friable; category I non-friable asbestos containing material that will be or has been subjected to sanding, grinding, cutting or abrading; or category II non-friable asbestos containing material that has a high probability of becoming or has become broken, crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of excavation, renovation, demolition, storage, transportation, or while exposed during disposal operations.

(10) "Ash" means the ash that results from the incineration or transformation of solid waste at a power generating facility or solid waste facility and includes both fly ash and bottom ash, and ash from the incineration of densified-refuse-derived fuel and refuse-derived fuel, but does not include residue from structure fires, fireplaces, air curtain incinerators, or small animal crematoria or ash generated by the

combustion of yard waste for energy production, or fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion.

B. Terms starting with the letter 'B' are defined as follows.

(1) "Background" means, for purposes of 20.9.2 - 20.9.10 NMAC, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or level of water contamination that the owner or operator establishes is from a source other than the responsible person's facility. This definition shall not prevent the secretary from requiring abatement of commingled plumes of pollution, shall not prevent the owner or operator from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law.

(2) "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.

(3) "Biological conversion" means, as a form of transformation, the conversion of organic waste materials into an energy source by an aerobic or anaerobic process other than composting.

C. Terms starting with the letter 'C' are defined as follows.

(1) "Cell" means a confined area engineered for the disposal of solid waste.

(2) "Certified operator" means any individual who meets the experience and training requirements of 20.9.7 NMAC, has successfully completed the testing requirement of the department, and has been issued a New Mexico certificate.

(3) "Change in ownership" means the sale or other transfer of a partner's interest in a partnership, a change in controlling interest of a partnership, corporation, limited liability company or limited liability partnership or the sale or other transfer of a sole proprietorship.

(4) "Clean fill" means broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is uncontaminated, meaning the fill has not been mixed with any waste other than the foregoing and has not been subjected to any known spill or release of chemical contam-

inants, including petroleum product, nor treated to remediate such contamination; reinforcement materials which are an integral part, such as rebar, may be included as clean fill; clean fill must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste.

(5) "Closed cell" means a cell at finished grade which has been covered with intermediate cover or final cover.

(6) "Collection center" means a facility managed for the collection and accumulation of solid waste with an operational rate of less than 240 cubic yards per day monthly average and that serves the general public.

(7) "Commercial hauler" means any person transporting solid waste for hire by whatever means for the purpose of transferring, processing, storing or disposing of the solid waste in a solid waste facility, except that the term does not include an individual transporting solid waste generated on his residential or business premises for the purpose of disposing of it in a solid waste facility.

(8) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding household and industrial solid wastes.

(9) "Commission" means the New Mexico water quality control commission.

(10) "Commission regulations" means the regulations of the New Mexico water quality control commission, including 20.6.1 NMAC and 20.6.2 NMAC.

(11) "Community" for purposes of preparation of a community impact assessment, means an area of human habitation within a four mile radius around a proposed landfill, transformation facility or existing landfill that is proposing a lateral or vertical expansion.

(12) "Compost" means organic material that has undergone a controlled process of biological decomposition and pathogen reduction, and has been stabilized to a degree that the final product is potentially beneficial to plant growth and can be used as a soil amendment, growing medium amendment or other similar uses. Compost does not include final product that contains sewage sludge that fails to meet the requirements of 40 CFR 503.

(13) "Composting" means the process by which biological decomposition of organic material is carried out under controlled conditions. The process stabilizes the organic fraction into a material which can be easily and safely stored, handled and used in an environmentally acceptable manner.

(14) "Composting facility" means

a facility, other than a transformation facility, that is capable of providing biological stabilization of organic material.

(15) "Construction and demolition landfill" means a landfill that receives only construction and demolition debris in quantities equal to or less than 50 tons per day monthly average. Any landfill that receives more than 50 tons per day monthly average of construction and demolition debris waste in any month is defined as a municipal landfill.

(16) "Cooperative association" means a refuse disposal district created pursuant to the Refuse Disposal Act, NMSA 1978, Sections 4-52-1 through 4-52-15, or a sanitation district created pursuant to the Water and Sanitation District Act, NMSA 1978, Sections 73-21-1 through 73-21-54, a special district created pursuant to the Special District Procedures Act, NMSA 1978, Sections 4-53-1 through 4-53-11, a solid waste authority created pursuant to the Solid Waste Authority Act, NMSA 1978, Sections 74-10-1 through 74-10-100, or other such association created pursuant to the Joint Powers Act, NMSA 1978, Sections 11-1-1 through 11-1-7.

D. Terms starting with the letter 'D' are defined as follows.

(1) "Department" means the New Mexico environment department.

(2) "Discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or ground water.

(3) "Disease vectors" means any rodents, flies, mosquitoes, or other animals and insects, capable of transmitting disease to humans.

(4) "Displacement of a fault" means the relative movement of any two sides of a fault fracture measured in any direction.

(5) "Dispose or disposal" means causing, allowing, or maintaining the abandonment, discharge, deposit, placement, injection, dumping, burning, spilling, or leaking of any solid waste into or on any land or water.

(6) "Distillation" means a process by which components in a chemical mixture are purified or separated by the application and removal of heat and the separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

E. Terms starting with the letter 'E' are defined as follows.

(1) "Economically stressed household" means a household that reports at or less than 150 percent of the poverty level as set forth in the most recent federal department of health and human services

poverty guidelines for a family of four.

(2) "Environmental justice" is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

F. Terms starting with the letter 'F' are defined as follows.

(1) "Fault" means a fracture or a zone of fractures in lithified rock or unconsolidated sediments along which material on one side has been displaced with respect to that on the other side.

(2) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by the 100 year flood. The 100 year flood has a one percent chance of recurring in any given year or a flood of magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

G. Terms starting with the letter 'G' are defined as follows.

(1) "Gasification" means a thermal process for the generation of combustible gas from a solid waste material.

(2) "Generator" means any person, whose act or process produces solid waste or whose act first causes solid waste to become subject to regulation.

(3) "Geosynthetic" means the generic classification of all synthetic materials used in geotechnical applications, including the following classifications:

(a) "geocomposite" means a manufactured material using geotextiles, geogrids, geomembranes, or combinations thereof, in a laminated or composite form;

(b) "geogrid" means a deformed or non-deformed netlike polymeric material used to provide reinforcement to soil slopes;

(c) "geomembrane" means an essentially impermeable membrane used as an integral part of an engineered structure or system designed to limit the movement of liquid or gas in the system;

(d) "geonet" means a type of a geogrid that allows planar flow of liquids and serves as a drainage system;

(e) "geosynthetic clay liner (GCL)" means a layer of sodium bentonite which is held between or on carrier layers of geotextiles or a geomembrane; and

(f) "geotextile" means any permeable textile used as an integral part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into drainage systems, to provide planar flow for drainage, or to serve as a cushion to protect geomembranes, or to provide structural support.

(4) "Ground water" means interstitial water which occurs in the earth's saturated zone and which is capable of entering a well in sufficient amounts to be uti-

lized as a water supply.

(5) "Ground water scientist" means a scientist or engineer who has received a baccalaureate or post graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective action.

H. Terms starting with the letter 'H' are defined as follows.

(1) "Hauler" means any person transporting solid waste.

(2) "Hazardous constituent" means any constituent listed in 40 CFR 258 Appendix I or II or Subsection A of 20.6.2.3103 NMAC, and any potential toxic pollutant listed in 20.6.2.7 NMAC.

(3) "Hazardous waste" means a hazardous waste as defined in 40 CFR 261.3.

(4) "Hot waste" means any waste which is on fire or smoldering when delivered to the solid waste facility.

(5) "Household waste" means any solid waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

I. Terms starting with the letter 'I' are defined as follows.

(1) "Impact" means a present or future effect on the environment or the health of residents of a community.

(2) "Incineration" means the reduction of combustible solid wastes by burning in an enclosed device under conditions of controlled airflow and temperature.

(3) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid waste, including, but not limited to, rotary kiln, fluidized bed, and liquid injection incinerators, but does not include air curtain incinerators or small animal crematoria.

(4) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals, plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous

plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment, and water treatment. This term does not include mining waste or commercial solid waste.

(5) "Infectious waste" means a solid waste that carries a probable risk of transmitting disease to humans or animals, and includes the following which shall be considered infectious waste:

(a) cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stock of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines except for residue in emptied containers; and culture dishes, assemblies and devices used to conduct diagnostic tests or to transfer, inoculate, and mix cultures;

(b) human pathological wastes, including tissues, organs, and body parts that are removed during surgery, autopsy, other medical procedures, or laboratory procedures, but not including hair, or nails;

(c) human and body fluid waste, including:

(i) liquid waste human blood;

(ii) blood products;

(iii) items with human blood (caking, flaking, saturated or dripping);

(iv) items with human blood, including serum, plasma, and other blood components, which were used or intended for use in patient care, specimen testing, or the development of biological products or pharmaceuticals;

(v) intravenous bags that have been used for blood transfusions;

(vi) items, including dialysate, that have been in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers;

(vii) items contaminated by body fluids from persons at trauma scenes, during surgery, autopsy, other medical procedures, or laboratory procedures;

(viii) specimens of blood products, and their containers; and

(ix) other potentially infectious materials as defined by the U.S. department of labor occupational safety and health administration at 29 CFR 1910.1030(b), including the following body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(d) contaminated animal carcass-

es, body parts, blood, blood products, secretions, excretions, and bedding of animals that were known to have been exposed to zoonotic infectious agents or non-zoonotic human pathogens, including during research (including research in veterinary schools and hospitals), production of biologicals, or testing of pharmaceuticals;

(e) biological wastes and waste contaminated with bloody excretions, exudates, or secretions from:

(i) humans who are isolated to protect others from rare diseases such as viral hemorrhagic fevers (Ebola, Lassa, Marburg) or other emerging infectious diseases whose biological wastes and waste contaminated with bloody excretions, exudates, or secretions are deemed infectious waste as described by advisory agencies such as the center for disease control (CDC);

(ii) isolated animals known or suspected to be infected with rare diseases such as bovine spongiform encephalopathy (BSE) or other emerging infectious diseases identified by an advisory agency;

(f) discarded sharps, used or unused (unless in original packaging), generated at a facility, that have, or are likely to have, come in contact with infectious agents while involved in human or animal patient care, treatment, or research, including hypodermic needles, syringes (with the attached needle), Pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, culture dishes, suture needles, slides, cover slips, and other broken or unbroken glass or plasticware, unless properly treated or otherwise specifically exempted;

(g) infectious waste does not include:

(i) wastes generated in a household (except for infectious wastes generated by home health care professionals);

(ii) human corpses, remains, and anatomical parts that are intended for interment or incineration as specified in Paragraphs (4) and (5) of Subsection E of 20.9.8.13 NMAC, or are donated and used for scientific or medical education, research, or treatment;

(iii) etiological agents being transported for purposes other than waste processing or disposal pursuant to the requirements of the United States department of transportation (49 CFR 171.1-190) and the New Mexico department of transportation and other applicable shipping requirements;

(iv) reusable or recyclable containers or other non-disposable materials, if they are cleaned and disinfected by a method approved by the secretary pursuant to NMSA 1978 74-9-3 P, or if there has been no direct contact between the

surface of the container and materials identified as "infectious waste;"

(v) soiled diapers that do not contain materials identified as infectious waste;

(vi) body excretions such as feces and secretions such as nasal discharges, saliva, sputum, sweat, tears, urine, and vomitus unless visibly contaminated with blood or waste from a person or animal as described in Subparagraph (e) of Paragraph (5) of Subsection I of 20.9.2.7 NMAC; or

(vii) used or unused syringes that have not come into contact with human blood or other bodily fluids or infectious agents and do not have a needle attached.

J. Terms starting with the letter 'J'. [RESERVED]

K. Terms starting with the letter 'K'. [RESERVED]

L. Terms starting with the letter 'L' are defined as follows.

(1) "Landfill" means a solid waste facility that receives solid waste for disposal and includes the following categories and classifications:

(a) "category 1 landfill" means a landfill that closed between April 11, 1974 and May 14, 1989;

(b) "category 2 landfill" means a landfill that stopped receiving waste between May 14, 1989, and October 9, 1993

(c) "category 3 landfill" means a landfill that began operations before October 9, 1993 and continued to operate after October 9, 1993;

(d) "category 4 landfill" means a landfill that began operations after October 9, 1993;

(e) "category 5 landfill" means a landfill that began operations after the effective date of these regulations;

(f) "municipal landfill";

(g) "construction and demolition landfill";

(h) "special waste landfill"; and

(i) "monofill."

(2) "Lateral expansion" means a horizontal expansion of the permitted waste boundaries of a landfill.

(3) "Leachate" means the liquid that has passed through, or emerged from solid waste and contains soluble, suspended, or miscible materials removed from that solid waste.

(4) "Lift" means an accumulation of solid waste which is compacted into a cell and over which compacted cover is placed.

(5) "Liner" means a continuous layer constructed of natural or man-made materials beneath and on the sides of a surface impoundment, landfill, or landfill cell that restricts the downward and lateral

movement of solid waste, gases or leachate.

(6) "Liquid waste" means any waste material that is determined to contain free liquids, defined by the Paint Filter Liquids Test, described in "Test Methods for Evaluating Solid Waste" referenced in Paragraph (5) of Subsection C of 20.9.8.11 NMAC.

(7) "Lithified earth material" means all rock, including metamorphic, igneous, and sedimentary.

(8) "Locked facility" means any solid waste facility which has permanently stopped receiving solid waste, but has not yet met the requirements of 20.9.6 NMAC.

(9) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees C and atmospheric pressure.

M. Terms starting with the letter 'M' are defined as follows.

(1) "Manure" means an agricultural waste composed of excreta of animals, residual bedding materials, or other materials that have been used for sanitary or feeding purposes for such animals.

(2) "Maximum contaminant level" (MCL) means, the level that has been promulgated under Section 1412 of the Safe Drinking Water Act (42 U.S.C. Sections 300f, et seq.) at 40 CFR Part 141.

(3) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration as depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(4) "Modify" means:

(a) to change material terms or any conditions of a permit, including:

(i) types of solid waste included in the permit;

(ii) except as provided in Items (v) and (vi) of Subparagraph (b) of Paragraph (4) of this subsection, to change pollution control systems or water, soil, or gas monitoring programs from those permitted;

(iii) any change in the fundamental design or method of operation of a solid waste facility from that permitted;

(iv) any lateral or vertical expansion beyond permitted waste boundaries;

(v) any change in the facility boundary; or

(vi) any change in the approved process or method for the treatment of infectious waste; but

(b) "modify" does not include:

(i) routine maintenance, repair, or replacement;

(ii) an increase in the

disposal rate or process rate, if such increase does not exceed the design capacity of the solid waste facility;

(iii) a change in the hours of operation, unless such hours are specified in a permit condition;

(iv) a change in the operating plan that is not the subject of a permit condition;

(v) substitution, addition, or elimination of a construction material or operational process that provides equivalent or greater environmental protection than the permitted design or process, if specifically approved in writing by the secretary under 20.9.2.13 NMAC;

(vi) installation of a gas collection and control system required by 40 CFR Part 60, Subparts Cc and WWW or 20.9.4.16 NMAC and 20.9.5.9 NMAC;

(vii) a permit transfer approved pursuant to 20.9.3.23 NMAC;

(viii) any approval granted under the provisions of 20.9.2.13;

(ix) temporary changes allowed by the secretary under Subsection C of 20.9.5.8 NMAC when there is an imminent danger to public health, welfare, or the environment;

(x) changes to comply with an order of the secretary approving or withdrawing approval of an infectious waste treatment method under Paragraph (4) of Subsection F of 20.9.8.13 NMAC and Subsection G of 20.9.8.13 NMAC;

(xi) changes to implement a remedy selected by the secretary under 20.9.9.16 NMAC;

(xii) changes to implement interim measures ordered by the secretary under Subsection F of 20.9.9.15 NMAC; or

(xiii) addition of a type of solid waste (except for a special waste) if the type is within the definition of construction and demolition debris, and there will be no adverse effect on health and the environment, unless the permit or 20.9.2 - 20.9.10 NMAC specifically excludes the type of waste.

(5) "Monofill" means a landfill or cell that receives only scrap tires or only asbestos waste.

(6) "Mulch" means a protective covering spread and left upon the ground to reduce evaporation, maintain even soil temperature, prevent erosion, or control weeds.

(7) "Municipal landfill" means a discrete area of land or an excavation that receives municipal solid waste and that is not a land application unit, surface impoundment, injection well or waste pile as these terms are defined in 40 CFR 257.2; "municipal landfill" may include a landfill that is designed to receive other types of RCRA Subtitle D waste such as construction and demolition debris, conditionally

exempt small quantity generator waste, industrial solid waste, and special wastes as defined in Paragraph (13) of Subsection S of this section.

(8) "Municipal solid waste" means household solid waste, commercial solid waste, and industrial solid waste or petroleum contaminated soils that are not a special waste.

N. Terms starting with the letter 'N'. [RESERVED]

O. Terms starting with the letter 'O' are defined as follows.

(1) "Open burning" means the combustion of solid waste without:

(a) control of combustion air to maintain adequate temperature for efficient combustion;

(b) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) control of the emission of the combustion products.

(2) "Operator" means the person(s) responsible for the overall operation of all or any portion of a solid waste facility.

(3) "Owner" means the person(s) who owns all or part of a solid waste facility.

P. Terms starting with the letter 'P' are defined as follows.

(1) "Permitted waste boundary" means the outside boundary of the proposed cells over the expected life of a landfill as specified in the permit or registration.

(2) "Person" means any individual, partnership, company, corporation, firm, association, trust, estate, state or federal agency, government instrumentality or agency, institution, county, city, town, village, or municipal authority, or other legal entity however organized.

(3) "Petroleum waste" means those liquids and sludges that are accumulated as a result of exploration or production activities regulated under the New Mexico Oil and Gas Act.

(4) "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a landfill.

(5) "Practical quantitation limit" or "PQL" means the lowest concentration of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy under routine laboratory operating conditions.

(6) "Processing" means techniques to change the physical, chemical, biological, or pathological character or composition of solid waste, but does not include composting, transformation, grinding or chipping of yard refuse, compaction,

or incineration.

(7) "Processing facility" means a facility where processing of solid waste occurs.

(8) "Putrescible" means organic material subject to decomposition by microorganisms.

(9) "Pyrolysis" means the process whereby solid waste is thermally decomposed in an oxygen-deficient atmosphere.

Q. Terms starting with the letter 'Q' are defined as follows. "Quasi-judicial proceeding" means a public hearing held after notice reasonably calculated to reach people interested in the subject matter of the proceeding that affords all people with a significant interest in the proceeding (parties) an opportunity to present their views as well as to cross-examine other parties. Other interested individuals also have an opportunity to state their views. Testimony is taken under oath or affirmation and is included in a record of proceedings. The planning and zoning commission or the governing body of the local government is required to make its decision based upon the testimony and evidence contained in the record of the hearing. The proceeding must consider whether the facility at issue would result in a disproportionate effect on the health or environment of a particular socioeconomic group or in an unreasonable concentration of regulated facilities.

R. Terms starting with the letter 'R' are defined as follows.

(1) "Radioactive waste" means:

(a) high-level radioactive waste or spent nuclear fuel as defined in Section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

(b) transuranic waste as defined in Section 11(e) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(ee);

(c) waste source material as defined in Section 11(z) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(z);

(d) waste special nuclear material as defined in Section 11(aa) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(aa);

(e) waste by-product material as defined in Section 11e of the Atomic Energy Act of 1954, 42 U.S.C. 2014(e);

(f) material the nuclear regulatory commission, consistent with existing law, classifies as low level radioactive waste; and

(g) waste radioactive material that requires licensure in accordance with the New Mexico radiation protection regulations, 20.3.3 NMAC.

(2) "RCRA" means the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as amended.

(3) "Recyclable materials" means materials that would otherwise become

solid waste if not recycled and that can be collected, separated, processed, reclaimed or composted and placed in use in the form of raw materials, products or densified-refuse-derived fuels.

(4) "Recycling" means any process by which recyclable materials are collected, separated, processed, reclaimed or composted and reused or returned to use in the form of raw materials or products.

(5) "Recycling facility" means a facility that collects, transfers, or processes recyclable materials for recycling, but does not include a composting facility.

(6) "Regulated facility" means a facility that is:

(a) a solid waste facility permitted to construct, operate, or close pursuant to the Solid Waste Act, NMSA 1978, Sections 74-9-1, et. seq. and 20.9.2 - 20.9.10 NMAC, or pursuant to the laws or regulations of a neighboring state;

(b) a hazardous waste facility authorized to operate pursuant to interim status or permitted to construct, operate, or close pursuant to the Hazardous Waste Act, NMSA 1978, Sections 74-4-1, et. seq. and the New Mexico hazardous waste management regulations, 20.4.1 NMAC, or pursuant to the laws or regulations of a neighboring state, including all units or areas subject to corrective action requirements under the facility permit or order;

(c) a site listed on the National Priorities List pursuant 42 U.S.C. 9605 or a federal facility required to take response or remedial action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, et. seq.;

(d) a facility that has, or is required to obtain a Title V air quality permit, 42 U.S.C. 7661 et seq. and 20.7.2.70 NMAC.

(7) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste facility.

(8) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a solid waste facility.

S. Terms starting with the letter 'S' are defined as follows.

(1) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(2) "Scavenging" means the uncontrolled removal of solid waste from a solid waste facility.

(3) "Secretary" means the secretary of the New Mexico environment department or her or his designee.

(4) "Seismic impact zone" means an area with a 10 percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(5) "Septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank, as defined in 20.7.3.7 NMAC.

(6) "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes domestic septage, scum or solids removed in primary, secondary, or advanced wastewater treatment processes, and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(7) "Sludge" means any solid, semi-solid, or liquid waste generated by a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air pollution control facility, but does not include treated effluent from a waste water treatment plant.

(8) "Small animal crematoria" means a multi-chambered facility designed for the purpose of cremating dead animals and animal parts with a charging capacity of less than five tons per day.

(9) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, construction, demolition and agricultural operations and from community activities, but does not include:

(a) drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy, except for waste that has been authorized for disposal at a solid waste facility under provisions of 19.15.9.712 NMAC and has been delivered to a solid waste facility permitted to receive such waste;

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

(c) waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores

and minerals;

(d) agricultural waste, including, but not limited to, manures and crop residues converted to beneficial value added products such as energy products or building materials or returned to the soil as fertilizer or soil conditioner;

(e) cement kiln dust waste;

(f) sand and gravel;

(g) solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1342;

(h) source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Sections 2011, et seq., as amended;

(i) densified-refuse-derived fuel;

(j) any material regulated by Subtitle C or Subtitle I of RCRA (except petroleum contaminated soils);

(k) substances other than asbestos regulated by the Federal Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq., as amended;

(l) radioactive waste;

(m) whole or processed scrap tires that are stored or used in compliance with provisions of the New Mexico Tire Recycling rule, 20.9.20 NMAC, and applicable law;

(n) any recyclable material in transit or temporary storage;

(o) compost; or

(p) materials, other than those that are regulated as hazardous, toxic or special waste, that are retained as evidence in a criminal proceeding and that are required to be destroyed or managed in accordance with a court or administrative order.

(10) "Solid waste disposal area" means an area where solid waste has been disposed and includes all landfills, and areas where more than 120 cubic yards of solid waste have been disposed but does not include landfills and areas identified as solid waste management units in a hazardous waste facility permit or administrative order.

(11) "Solid waste facility" means any public or private system, facility, location, improvements on the land, structures or other appurtenances or methods used for processing, transformation, or disposal of solid waste, including landfill disposal facilities, transfer stations, resource recovery facilities, incinerators and other similar facilities not specified. Solid waste facility does not include:

(a) equipment or processing methods approved by order of the secretary to render infectious waste generated on site non-infectious;

(b) a facility that is permitted pur-

suant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14, as amended;

(c) a facility fueled by a densified-refuse-derived fuel as long as that facility accepts no other solid waste;

(d) a recycling facility that accepts only source separated recyclable materials;

(e) that portion of a facility that refurbishes or re-sells used clothing, furniture or appliances for reuse;

(f) commercial scrap metal or auto salvage operations;

(g) a composting facility that accepts only source separated compostable materials;

(h) manufacturing facilities that use recyclable material in production of a new product;

(i) facilities designed and operated to dispose of sewage sludge on land, such as land application or land injection;

(j) landfarming of petroleum contaminated soils unless within a landfill, where "landfarming" is the remediation of petroleum contaminated soils on the land surface;

(k) any facility or location where clean fill material is accepted, stockpiled, or used, if the facility or location would not otherwise be classified as a solid waste facility;

(l) collection centers;

(m) a facility that uses tire-derived fuel for the purpose of extracting its stored energy; or

(n) air curtain incinerators.

(12) "Source separation" means the separation of recyclable or compostable materials from solid waste at the point of generation by the generator.

(13) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety, including:

(a) treated formerly characteristic hazardous wastes (TFCH);

(b) packing house and killing plant offal;

(c) regulated asbestos waste;

(d) ash;

(e) infectious waste;

(f) sludge, except; sludge that is land applied under 40 CFR Part 503 as intermediate or final cover at a landfill and meets the requirements of Subpart B of 40 CFR Part 503;

(g) industrial solid waste that, unless specially handled or disposed, may harm the environment or endanger the public health or safety;

(h) spill of a chemical substance or commercial product that, unless specially handled or disposed, may harm the environment or endanger the public health or

safety; and

(i) petroleum contaminated soils, that have a sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations of greater than 50 mg/kg, or benzene individually greater than 10 mg/kg, or a total petroleum hydrocarbon concentration of greater than 100 mg/kg.

(14) "Special waste landfill" means a landfill that receives one or more types of special wastes as defined in Paragraph 13 of Subsection S of this Section.

(15) "Stabilized" means, for composting, that the biological decomposition of the wastes has ceased or diminished to a level such that decomposition no longer poses a health, odor, or safety hazard and does not violate any provisions of these or other applicable regulations.

(16) "Storage" means the accumulation of solid waste for the purpose of transfer, processing or disposal;

(17) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, gas collection and control systems, and any other component used in the construction or operation of the landfill that is necessary for protection of public health, welfare and the environment.

T. Terms starting with the letter 'T' are defined as follows.

(1) "Tire-derived fuel" means a fuel product derived from scrap tires that is suitable for efficient combustion.

(2) "Transfer" means the handling and storage of solid waste for reshipment, resale, or disposal, or for waste reduction or resource conservation.

(3) "Transfer station" means a facility managed for the collection and accumulation of solid waste with an operational rate of greater than 240 cubic yards per day monthly average.

(4) "Transformation facility" means a facility used for the transformation of solid waste, but does not include air curtain incinerators or small animal crematoria.

U. Terms starting with the letter 'U' are defined as follows. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Examples of unstable areas are poor foundation conditions, areas susceptible to mass movements, and Karst terrain areas where Karst topography, with its characteristic surface and subterranean features, is developed as a result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in Karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

V. Terms starting with the letter 'V' are defined as follows.

(1) "Vadose zone" means earth material below the land surface and above ground water, or in between bodies of ground water.

(2) "Vertical expansion" means an upward or downward expansion of the permitted waste boundaries of a landfill.

(3) "Vulnerable area" means an area within a four mile radius from the geographic center of a facility or proposed facility, and:

(a) has a percentage of economically stressed households greater than the state percentage based on the most recent actual census bureau data within any square mile within the four mile radius surrounding the facility or proposed facility; and

(b) where the New Mexico portion has a population of 50 people or more within any square mile within the four mile radius; and

(c) has within it 3 or more regulated facilities not including the applicant's facility.

W. Terms starting with the letter 'W' are defined as follows.

(1) "Waste management unit boundary" means a vertical surface located at the hydraulically down gradient limit of the landfill. This vertical surface extends down into the uppermost aquifer.

(2) "Watercourse" means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and beds, with visible evidence of continuous or intermittent flow of water.

(3) "Water table" means that surface in unconfined ground water at which the pressure is atmospheric; defined by the levels at which water stands in wells that penetrate the water just far enough to hold standing water.

(4) "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

(5) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(6) "White goods" means large household appliances (such as ovens, washers, dryers, freezers, water heaters and refrigerators) that have been discarded for disposal or recycling.

X. Terms starting with the letter 'X'. [RESERVED]

Y. Terms starting with the letter 'Y'. [RESERVED]

Z. Terms starting with the letter 'Z'. [RESERVED]

[20.9.2.7 NMAC - Rp, 20 NMAC 9.1.I.105,

08/02/07]

20.9.2.8 GENERAL REQUIREMENTS.

A. Any person who hauls solid waste or recyclable materials or provides solid waste or recyclable collection services shall only haul to a permitted or registered facility, and shall use vehicles that have covers or enclosures to prevent the solid waste or recyclable materials from blowing from the vehicle during collection and transportation, and that are cleaned at such times and in such manner as to prevent offensive odors and unsightliness, and that use devices to retain or control free liquids.

B. Any person who generates solid waste shall store the solid waste in suitable storage containers for the solid waste, unless the solid waste is construction and demolition debris, yard refuse, or white goods. Storage containers shall prevent insect and rodent harborage and shall be kept covered and reasonably clean. Outside containers shall also prevent blowing litter, be leak-proof and shall:

(1) if manually handled by a commercial or municipal hauler, be of sufficient size and weight bearing capacity to be safely handled without presenting undue risk of harm to human health or the environment, with safe, usable handles, or shall be bags that are not filled to an extent that they rupture with normal handling; or

(2) if mechanically handled, be compatible with collection vehicles.

C. Any person who stores solid waste, recyclable materials, yard refuse or white goods shall store such materials in a manner that prevents blowing litter, insect and rodent harborage and does not create a public nuisance or public health hazard.

D. Any person who generates, stores, processes, transports or disposes of solid waste shall do so in a manner that does not create a public nuisance.

E. All notifications to the department required by 20.9.2 - 20.9.10 NMAC shall be directed to the bureau chief of the solid waste bureau.

F. Soil, water, and special waste testing methods used to demonstrate compliance with the Solid Waste Act or 20.9.2 - 20.9.10 NMAC shall conform with permit requirements or otherwise be specifically approved by the department prior to use.

G. Any person who excavates a closed cell or solid waste disposal area in response to an emergency situation shall notify the department of such excavation within 48 hours.

H. Any person who accepts, stockpiles, or uses clean fill material shall:

(1) manage the material in a man-

ner that does not create a public nuisance or potential safety hazard, or adversely impact the environment;

(2) not place the material in a watercourse or wetland unless appropriate permits are obtained; and

(3) cover the material with two feet of clean earth within 30 days after being deposited, unless the clean fill material is clean soil, or unless a longer period or alternative material or depth is specifically approved by the department.

[20.9.2.8 NMAC - Rp, 20 NMAC 9.1.I.106, 08/02/07]

20.9.2.9 REQUIREMENTS FOR PUBLIC ENTITIES.

A. Any municipality with a population greater than 3,000 shall provide solid waste collection services at least once weekly or as often as otherwise necessary to comply with the requirements of 20.9.2 - 20.9.10 NMAC.

B. The state, and each municipality, county, or cooperative association shall provide a means to dispose of solid waste generated within its respective jurisdiction that has been approved by the secretary and complies with 20.9.2 - 20.9.10 NMAC.

C. The state, municipality, county, or cooperative association may contract with any person for the collection, transportation, recycling, or disposal of solid waste. Contracting for the collection, transportation, recycling, or disposal of solid waste does not relieve the state, municipality, county or cooperative association of the responsibility for compliance with 20.9.2 - 20.9.10 NMAC.

[20.9.2.9 NMAC - Rp, 20 NMAC 9.1.I.106, 08/02/07]

20.9.2.10 PROHIBITED ACTS.

A. In addition to the prohibited acts identified in Section 74-9-31(A) and Section 74-13-4(J), and subject to the exemptions in Section 74-9-31(B) of the Solid Waste Act, no person shall:

(1) store, process, or dispose of solid waste except by means approved by the secretary and in accordance with board regulations;

(2) dispose of any solid waste in this state in a manner that the person knows or should know will harm the environment or endangers the public health, welfare or safety;

(3) dispose of any solid waste in a place other than a solid waste facility that meets the requirements of 20.9.2 - 20.9.10 NMAC;

(4) dispose of any solid waste, including special waste, in a solid waste facility when that facility's permit does not authorize the disposal of the particular type of solid waste in that facility;

(5) construct, operate, modify or close a solid waste facility unless the facility has approval under 20.9.2 - 20.9.10 NMAC from the department for the described action;

(6) modify permit conditions or modify a solid waste facility unless the facility has applied for and received permission from the secretary for the modification pursuant to 20.1.4 NMAC Permit Procedures - Environment Department;

(7) dispose of petroleum waste, sludge which that does not meet the analytical criteria of 20.9.8.16 NMAC, septage, domestic sewage, or treated domestic sewage at any solid waste facility;

(8) dispose of hazardous wastes which are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act, 42 USC 6901 et seq, at any solid waste facility, unless the facility is permitted for the disposal of hazardous wastes;

(9) dispose of liquid waste at any landfill unless:

(a) the liquid waste is household waste other than septic waste and is in a small container similar in size to that normally found in household waste and the container is designed to hold liquids for use other than storage;

(b) the liquid waste is leachate or landfill gas condensate generated on-site which is recirculated in accordance with applicable laws and regulations; or

(c) the liquid waste is managed in accordance with an approval issued by the secretary;

(d) the use of uncontaminated water for dust control or to improve vegetation on a final or intermediate cover is not considered disposal;

(10) process, recycle, transfer, transform, or dispose of radioactive waste in a solid waste facility;

(11) dispose of lead-acid batteries at any landfill or incinerator;

(12) dispose of any infectious waste in a landfill;

(13) dispose of any material regulated under the Federal Toxic Substances Control Act, 15 U.S.C. Sections 2601-2692, except in a solid waste facility, registered facility or operation authorized to accept such waste;

(14) allow open burning at a solid waste facility;

(15) excavate or trench a closed cell or solid waste disposal area without written approval by the department and a determination whether an excavation plan will be required, unless in response to an emergency situation; excavation and trenching do not include excavations or trenches of less than 120 cubic yards or exploratory borings for the purpose of waste characterization, site investigation or mapping, nor

does it include removal of waste for routine maintenance on gas collection and control and venting systems;

(16) violate a term or condition of a closure and post-closure care plan, a registration, or conditions contained in an approval of the department under 20.9.2.17 NMAC;

(17) allow liquid extraction from sludge at a solid waste facility unless authorized by permit; or

(18) process, transfer, store, dispose, or allow the disposal of special waste at a collection center.

(19) dispose at a solid waste facility any type of non-hazardous material that is excluded from the definition of solid waste, unless permitted to do so, except that a landfill may dispose of non-hazardous excluded waste listed under the following subparagraphs of Paragraph (9) of Subsection S of 20.9.2.7 NMAC unless prohibited from doing so in its permit; Subparagraphs (d) (agricultural), (f) (sand and gravel), (i) (densified refuse derived fuel), (m) (scrap tires), (n) (recyclable materials), (o) (compost), and (p) (materials, other than those that are regulated as hazardous, toxic or special waste, that are retained as evidence in a criminal proceeding and that are required to be destroyed or managed in accordance with a court or administrative order, and ash derived from such materials).

B. Any person who generates, stores, processes, transports or disposes of solid waste shall take reasonable measures to determine the characteristics of the waste being handled to assure that no prohibited act is being performed.

C. A Subtitle C facility authorized to accept special waste for disposal may accept solid waste if allowed under its permit.

[20.9.2.10 NMAC - Rp, 20 NMAC 9.1.I.107, 08/02/07]

20.9.2.11 EXCEPTIONS.

20.9.2 - 20.9.10 NMAC does not apply to:

A. disposal of solid waste by a homeowner, residential lessee or tenant, or agricultural enterprise, on the property she or he owns, rents or leases, if the waste was generated on that property, and the disposal by the homeowner, residential lessee or tenant, or agricultural enterprise of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of 20.9.2 - 20.9.10 NMAC;

B. on-site disposal of domestic solid waste generated by a person residing and occupying that same property only if that property is located in a place where it is not feasible, as determined by the department, to dispose of the solid waste in a permitted solid waste facility and the dis-

posal of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of 20.9.2 - 20.9.10 NMAC; or

C. disposal of construction and demolition debris or yard refuse by a person in possession of property if the material was generated on the property and if the disposal of the solid waste does not violate any provision of 20.9.2 - 20.9.10 NMAC.

[20.9.2.11 NMAC - Rp, 20 NMAC 9.1.I.108, 08/02/07]

20.9.2.12 SOLID WASTE FACILITIES; ENTRY BY DEPARTMENT; AVAILABILITY OF RECORDS TO DEPARTMENT.

The secretary or any authorized representative, employee or agent of the department may enter, inspect, monitor, sample, or obtain records of a solid waste facility, or commercial hauler as provided in Section 74-9-33 of the Solid Waste Act.

[20.9.2.12 NMAC - Rp, 20 NMAC 9.1.I.111, 08/02/07]

[(Facilities, entry by the department and availability of records was formerly in 20 NMAC 9.1.I.111; recordkeeping was moved to 20.9.5.16 NMAC)]

20.9.2.13 SPECIFIC APPROVALS.

A. Where a specific approval or authorization for an alternative time period, test method or other requirement is allowed under 20.9.2 - 20.9.10 NMAC, the following procedures apply.

(1) The owner or operator shall submit a written request to the department seeking the specific approval or authorization and indicate the regulatory provision allowing the approval or authorization. If the requested approval is for a background ground water quality determination, the request shall include all sample results, approved practical quantitation limits, and a detailed explanation supporting the requested levels. If the request is for an alternative time period, test method or other requirement under 20.9.2 - 20.9.10 NMAC, the request shall explain why the proposed alternative is at least as protective of the public health, safety and welfare as the requirement for which an alternative is requested. In addition, the request shall provide any technical information required in the section allowing the specific approval. The department may request further information prior to acting on the request.

(2) The department shall approve, approve with terms and conditions, or deny the request in writing.

(3) Any affected person who is dissatisfied with action taken by the department on a request for a specific approval or authorization may appeal to the secretary.

The request must be made in writing to the secretary within fifteen (15) days after notice of the department's action has been issued. Unless an appeal is received by the secretary within fifteen (15) days after notice to the applicant of the department's action the decision of the department shall be final.

B. If an appeal is received within the fifteen (15) day time limit, the secretary shall hold a hearing within fifteen (15) days after receipt of the request, unless extended for good cause. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

C. In the appeal hearing, the burden of proof is on the person who requested the hearing.

D. Appeal hearings shall be held at a place designated by the secretary. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

E. Upon request the hearing shall be recorded or transcribed by a court reporter. The person who requests the recording or transcription shall pay recording or transcription costs. A request for recording or transcription shall be made at least 5 working days prior to the hearing.

F. In appeal hearings, the rules governing civil procedure and evidence in district court do not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits, and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary or his designee shall decide and announce if the hearing record will remain open and for how long and for what reason it will be left open.

G. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within fifteen (15) days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice. Appeals from the secretary's final decision are by Rule 1-075 NMRA.

[20.9.2.13 NMAC - N, 08/02/07]

20.9.2.14 WAIVERS FOR SMALL MUNICIPAL LANDFILLS.

A. Owners or operators of new or existing municipal landfills that dispose of less than 20 tons of solid waste daily, based on an annual average, and do not accept any special waste other than regulated asbestos, may apply in the permit application or for a specific approval for a waiver from the design requirements of 20.9.4.13 - 20.9.4.15 NMAC and ground water monitoring requirements in 20.9.9.8 - 20.9.9.11 NMAC. To obtain a waiver, the owner or operator must demonstrate that:

(1) the groundwater protection standards for constituents listed or referenced in 20.9.9.20 NMAC will not be exceeded in the uppermost aquifer, and, for an existing landfill, there is no groundwater contamination attributable to the landfill;

(2) the community has no practicable waste management alternative; and

(3) the landfill is located in an area that receives, on average, 25 inches or less annual precipitation.

B. If a waiver is granted under this section, then the secretary may require the owner or operator to submit a ground water monitoring system plan and ground water monitoring plan for approval, and to conduct periodic ground water and vadose zone monitoring, at any time during the active life or post-closure period to demonstrate the landfill is not contaminating ground water. The secretary may also require a ground water monitoring system plan and a ground water monitoring plan to be submitted in the application. If ground water contamination from the landfill is detected after a waiver has been granted under this section, the waiver is revoked and the requirements of 20.9.4.13 - 20.9.4.15 NMAC and 20.9.9.8 - 20.9.9.11 NMAC shall thereafter apply.

[20.9.2.14 NMAC - Rp, 20 NMAC 9.1.I.110, 08/02/07]

20.9.2.15 VARIANCES.

A. Any person seeking a variance from any requirements of 20.9.2 - 20.9.10 NMAC shall do so in accordance with Permit Procedures - Environment Department, 20.1.4 NMAC.

B. Variance petitions shall be accompanied by proof of public notice as in accordance with the Solid Waste Act and with Permit Procedures - Environment Department, 20.1.4 NMAC. The public notice shall:

(1) contain the name of the owner and operator of the solid waste facility;

(2) address and telephone number at which interested persons may obtain further information;

(3) briefly describe for what the variance is being sought and the proposed alternative;

(4) state the time period for which the variance is sought;

(5) be provided by certified mail to the owners of record, as shown by the most recent property tax schedule and tax exempt entities of record, of all properties:

(a) within one hundred feet of the property on which the facility is located if the facility is in a class A or H class county or a municipality with a population of more than 2,500 persons; or

(b) within one-half mile of the property on which the facility is located in a county or municipality other than those specified in Subparagraph (a) of Paragraph (5) of Subsection B of this section;

(6) be provided by certified mail to all municipalities and counties within a 10 mile radius of the property on which the facility is located;

(7) be published once in a newspaper of general circulation in each county in which the property on which the facility is located; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, and when appropriate shall be printed in both English and Spanish; and

(8) be posted in at least four publicly accessible and conspicuous places, including the existing facility entrance on the property on which the facility is located.

C. The secretary shall deny the variance petition unless the petitioner establishes evidence that:

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

(2) granting the variance will not result in any condition injurious to public health, safety or welfare or the environment.

D. No variance shall be granted until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected, and the general public.

E. Variance or renewal of a variance shall be granted for time periods and under conditions consistent with reasons for the variance but within the following limitations:

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

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

section, it shall not be granted for more than one year.

F. Any variance granted by the secretary shall be reviewed for consistency with existing federal regulations.

[20.9.2.15 NMAC - Rp, 20 NMAC 9.1.X.1001, 08/02/07]

20.9.2.16 EXEMPTIONS.

A. Any person seeking an exemption pursuant to NMSA 1978, Section 74-9-32 shall do so by filing a written petition with the board, and serving a copy of the petition to the secretary. The petition shall be reviewed in accordance with Adjudicatory Procedures - Environmental Improvement Board, 20.1.2 NMAC.

B. A petition for exemption shall:

(1) state each provision of the Solid Waste Act or 20.9.2 - 20.9.10 NMAC from which exemption is sought;

(2) cite, and have attached as exhibits, each provision of applicable federal or state law the petitioner alleges that imposes as stringent or more stringent requirements than those imposed by the Solid Waste Act or 20.9.2 - 20.9.10 NMAC;

(3) be signed by the petitioner or the petitioner's representative; and

(4) contain proof of public notice in accordance with the Solid Waste Act's requirements for applications for solid waste facility permits.

C. Each petition filed with the board for an exemption shall include proof that the applicant has provided notice of the filing of the petition to the public and other affected individuals and entities. The notice shall be:

(1) provided by certified mail to the owners of record, as shown by the most recent property tax schedule and tax exempt entities of record, of all properties:

(a) within one hundred feet of the property on which the facility is located or proposed to be located if the facility is or will be in a class A or H county or a municipality with a population of more than 2,500 persons; or

(b) within one-half mile of the property on which the facility is located or proposed to be located if the facility is or will be in a county or municipality other than those specified in Subparagraph (a) of this paragraph;

(2) provided by certified mail to all municipalities, counties, and tribal governments in which the facility is or will be located and to all municipalities, counties, and tribal governments within a ten mile radius of the property on which the facility is proposed to be constructed, operated or closed;

(3) published once in a newspaper of general circulation in each county in

which the property in which the facility is proposed to be constructed, operated or closed is located; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish; and

(4) posted in at least four publicly accessible and conspicuous places, including the proposed or existing facility entrance on the property on which the facility is or is proposed to be located.

[20.9.2.16 NMAC - Rp, 20 NMAC 9.1.X.1002, 08/02/07]

20.9.2.17 SEVERABILITY. If any provision or application of 20.9.2 - 20.9.10 NMAC is held invalid by a court of competent jurisdiction, the remainder, or its application to other situations or persons, shall not be affected.

[20.9.2.17 NMAC - Rp, 20 NMAC 9.1.X.1003, 08/02/07]

20.9.2.18 COMPLIANCE WITH OTHER REGULATIONS.

Compliance with 20.9.2 - 20.9.10 NMAC does not relieve a person of the obligation to comply with other applicable local, state and federal laws.

[20.9.2.18 NMAC - Rp, 20 NMAC 9.1.X.1004, 08/02/07]

20.9.2.19 SAVINGS CLAUSE.

20.9.2 - 20.9.10 NMAC does not apply to pending litigation or affect violations of prior, effective regulations, permits, registrations, closure and post-closure care plans.

[20.9.2.19 NMAC - Rp, 20 NMAC 9.1.X.1005, 08/02/07]

20.9.2.20 INTERPRETATION.

20.9.2 - 20.9.10 NMAC shall be liberally construed to carry out its purpose.

[20.9.2.20 NMAC - Rp, 20 NMAC 9.1.X.1006, 08/02/07]

20.9.2.21 CONTINUING EFFECT OF PRIOR ACTIONS; EXCEPTIONS.

A. All permits and certificates of registration issued, and all closure and post-closure care plans approved, pursuant to previous regulations shall remain in effect until they expire or they are suspended, revoked, or otherwise modified.

B. Landfills that were in operation prior to May 14, 1989 may continue to operate without a permit until final action is taken upon a permit application or closure plan. Such landfills are not allowed to construct or operate a lateral expansion until permitted to do so.

C. If a permit application,

permit renewal application, permit modification application, closure plan, or registration application has been submitted to the department prior to the effective date of this part, the relevant sections of permit application, permit renewal application, permit modification application, closure plan or registration application requirements under 20 NMAC 9.1.201 - 208, 210, 212, 213, and 501-505 shall remain in effect for that application or closure plan. However, all other requirements of 20.9.2 - 20.9.10 NMAC shall apply.

[20.9.2.21 NMAC, Rp, 20 NMAC 9.1.X.1008, 08/02/07]

20.9.2.22 DOCUMENTS .

Copies of all documents cited in 20.9.2 - 20.9.10 NMAC may be viewed at the department's Solid Waste Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico.

[20.9.2.22 NMAC - Rp, 20 NMAC 9.1.X.1009, 08/02/07]

HISTORY OF 20.9.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center.

EIB 74-1, Solid Waste Management Regulations, filed 5/3/74.

EIB/SWMR-2, Solid Waste Management Regulations, filed 4/14/89.

EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/91.

EIB/SWMR-4, Solid Waste Management Regulations, filed 7/18/94.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/95) repealed 08/02/07.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 7/18/94) was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 9.1, Solid Waste Management Regulations, effective 11/30/95.

Those applicable portions of 20 NMAC 9.1, Subpart I and Subpart X, Solid Waste Management Regulations, General Provisions and Miscellaneous, (filed 10/27/95), were **renumbered, reformatted and replaced** by 20.9.2 NMAC, Solid Waste Management General Requirements, effective 08/02/07.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 9 SOLID WASTE PART 3 SOLID WASTE

FACILITY PERMITS AND REGISTRATIONS

20.9.3.1 ISSUING AGENCY.

New Mexico Environmental Improvement Board.

[20.9.3.1 NMAC - Rp, 20 NMAC 9.1.I.001, 08/02/07]

20.9.3.2 SCOPE.

This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.3.2 NMAC - Rp, 20 NMAC 9.1.I.002, 08/02/07]

20.9.3.3 STATUTORY AUTHORITY.

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.3.3 NMAC - Rp, 20 NMAC 9.1.I.003, 08/02/07]

20.9.3.4 DURATION .

Permanent.

[20.9.3.4 NMAC - Rp, 20 NMAC 9.1.I.004, 08/02/07]

20.9.3.5 EFFECTIVE DATE.

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.3.5 NMAC - Rp, 20 NMAC 9.1.I.005, 08/02/07]

20.9.3.6 OBJECTIVE.

The objective of Part 3 of Chapter 9 is to establish regulations in the following areas of solid waste management:

- A. solid waste facility permits;
- B. permitting procedures, application review, issuance, denial and revocation;
- C. permit modification, transfer, renewal and expiration;
- D. registration of composting and recycling facilities, collection centers and air curtain incinerators;
- E. nuisance abatement plans;
- F. commercial hauler registrations;
- G. registration of haulers of special waste; and
- H. fee schedules.

[20.9.3.6 NMAC - Rp, 20 NMAC 9.1.I.0016, 08/02/07]

20.9.3.7 DEFINITIONS .

[RESERVED]

[See 20.9.2.7 NMAC for Definitions.]

20.9.3.8 PERMIT APPLICATION REQUIREMENTS.

A. Any person seeking to

construct, operate, modify or close a solid waste facility shall first obtain a permit.

B. Any person who owns or operates an existing solid waste facility for which a permit application has not been submitted shall submit a permit application within one year of the effective date of this part. If the facility is a landfill that seeks to close rather than continue to operate, the owner or operator shall submit a plan for closure and post closure care for approval within one year of the effective date of this part. The closure and post closure care plan shall meet the requirements of 20.9.6 NMAC.

C. Any person seeking a permit to construct, operate or modify a solid waste facility shall file an application, which shall:

(1) contain all information required by the Solid Waste Act and 20.9.2 - 20.9.10 NMAC;

(2) comply with Permit Procedures - Environment Department, 20.1.4 NMAC;

(3) contain information required by Section 74-9-21 of the Solid Waste Act, and if applicable, disclosure statements shall be on forms provided by the department;

(4) provide site information including:

(a) the name and address of the applicant, property owner, and solid waste facility owner and operator;

(b) total acreage, legal description and maps of the proposed facility site, including land use and zoning of the site and adjacent properties;

(c) a description of the facility's water source and its location;

(d) a description of the prevailing winds, including a wind rose diagram;

(e) a demonstration of compliance with the siting criteria in 20.9.4.9-12 NMAC;

(f) facility plans and drawings of the existing or proposed facility, with corresponding elevations and contours, signed and sealed by a professional engineer registered in New Mexico; and

(g) the latitude and longitude of the geographical center of the existing or proposed facility (as approved by the department) in NAD-83 or equivalent;

(5) contain a plan for compliance with 20.9.4.17 NMAC, if appropriate;

(6) contain an operating plan for compliance with operational criteria, including

(a) the means for controlling access to the facility and controlling and mitigating odors and litter;

(b) a listing and description of the number, type and size of equipment to be used at the proposed solid waste facility for processing, recovering, diversion of recy-

clables, transforming or disposing of solid wastes;

(c) a description of the proposed solid waste facility, including:

(i) the anticipated origin, composition and weight or volume of solid waste and other materials that are projected to be received at the facility;

(ii) the processes to be used at the facility;

(iii) the daily operational methodology of the proposed process;

(iv) the loading rate, the expected life of the facility; and

(v) the design capacity through the expected life of the facility and through the permit life of the facility;

(d) a plan for an alternative waste handling or disposal system during periods when the proposed solid waste facility is not in operation, including procedures to be followed in case of equipment breakdown; procedures may include the use of standby equipment, extension of operating hours and contractual agreements for diversion of waste to other facilities;

(e) the anticipated start-up date of the facility;

(f) the planned operating hours of the proposed facility;

(g) the plans for transportation to and from the facility including:

(i) the size and approximate number of vehicles that will deliver waste to the facility daily;

(ii) the anticipated routes that will be used by waste vehicles and the suitability of roads and bridges involved;

(iii) measures for controlling litter, dust and noise caused by traffic;

(iv) other predicted impacts of traffic to and from the facility; and

(v) plans, if any, for diverting solid waste from the waste stream; and

(h) a plan for complying with record keeping requirements in 20.9.5.16 NMAC as applicable;

(7) contain an emergency contingency plan that meets the requirements of 20.9.5.15 NMAC;

(8) contain a closure and post-closure care plan in compliance with 20.9.6 NMAC;

(9) demonstrate the ability to comply with any applicable special waste requirements in 20.9.8 NMAC;

(10) contain a proposed ground water monitoring system plan in compliance with 20.9.9 NMAC, including, if site assessment bore holes are drilled to obtain data, a certification that the holes were plugged or sealed in accordance with the

New Mexico office of state engineer's requirements for plugging or sealing of test holes, or will be converted to monitoring wells as part of the ground water monitoring system;

(11) include a cost estimate in accordance with the requirements of 20.9.10 NMAC, in a format as specified by the department; and

(12) contain any other information required by the secretary.

D. Any person seeking an initial permit for a landfill or a transformation facility, or for a permit modification of a landfill resulting in a lateral or vertical expansion, excluding an on-site scrap tire monofill, shall first submit to the secretary the information that is necessary for the secretary to determine if the proposed site is in a vulnerable area. If the secretary determines that the site or the proposed site is in a vulnerable area, and the applicant is proposing to site the facility, or expand the facility, in an area that has not been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity for public participation, the applicant shall follow the following procedures.

(1) Prior to filing the application, the applicant shall give notice to the public of its proposed plans, and of the procedures allowing residents to file comments on the proposal with the department. This notice shall contain the following.

(a) For a proposed new facility, the name and location of the proposed facility, a description of the proposed facility, a description of any transportation routes to be used to and from the proposed facility and expected hours of operation, contact information stating where a person may obtain further information from the applicant, contact information for the environment department solid waste bureau, and procedures for filing comments on the proposal with the department. The notice shall be approved by the department prior to publication. The notice shall also give notice of a community meeting for the purpose of informing the surrounding community of the plans for the proposed facility, and for taking comments and questions. The meeting shall not be held less than 30 days following publication of the notice.

(b) For a proposed permit modification of a landfill resulting in a lateral or vertical expansion, the name and location of the facility, a description of the proposed modification, a description in any changes in operation resulting from the modification, contact information stating where a person may obtain further information from the applicant, contact information for the environment department solid waste bureau, and procedures for filing comments

with the department. The notice shall be approved by the department prior to publication. The notice shall also give notice of a community meeting for the purpose of informing the surrounding community of the plans for the proposed facility. The community meeting shall not be held less than 30 days following publication of the notice.

(2) Community residents shall have 60 days following the community meeting to submit comments to the department. If the secretary determines that there is significant community opposition to the proposed landfill; transformation facility; or permit modification resulting in a lateral or vertical expansion, excluding on-site scrap tire monofill, then the secretary shall require that the applicant prepare a community impact assessment. If a community impact assessment is required, the applicant shall give notice of a scoping meeting, pre-assessment meeting and opportunity for comment on the resulting community impact assessment. The applicant can either provide combined notice or separate notices of each event. At the scoping meeting, the public shall be given the opportunity to identify specific concerns regarding the proposed facility or modification, and the applicant will advise the public that the issues listed below will be addressed in a community impact assessment. The public will be asked if additional issues should be included in the scope of the assessment, if existing issues need additional consideration, and if the community impact assessment should be produced in a language in addition to English. The secretary may order that the assessment be produced in a language in addition to English based on, but not limited to expressions of interest at the scoping meeting. After the applicant incorporates public input from the scoping meeting, the applicant shall hold a pre-assessment meeting to describe the final scope of the study to the public. The public shall be given opportunities to make comments and raise questions at this meeting. Before completion of the community impact assessment, a draft assessment shall be issued and made available to the public for comment. The public shall be allowed to submit comments on the assessment to the applicant for a period of 30 days following the issuance of the draft assessment. The applicant shall consider the comments and modify the community impact assessment as appropriate. The applicant shall file the community impact assessment, all written comments, and the applicant's resolution of the comments with its application. The community impact assessment shall contain an executive summary that is in English and, if appropriate, in any other predominant language of the community, and in plain language so it can be understood by

the residents of the community. At a minimum the community impact assessment will address, to the extent New Mexico residents are affected, the following issues in the four mile radius around the proposed facility or existing facility that is proposing a horizontal or vertical expansion:

- (a) description of:
 - (i) purpose and need for the project;
 - (ii) site location and description;
 - (iii) land use;
 - (iv) known existing and documented proposed regulated facilities within the vulnerable area;
 - (v) other existing development and documented planned development in the vulnerable area;
 - (vi) historic and cultural resources;
 - (vii) visual and scenic resources; and
 - (viii) climatology, meteorology, and air quality, including odors and dust;
- (b) socioeconomic profile and environmental justice:
 - (i) population, demographic profile, education, age and language; and
 - (ii) occupational profile and household income;
- (c) noise;
- (d) litter;
- (e) transportation:
 - (i) local roads and highways;
 - (ii) railroads;
 - (iii) other transportation issues;
 - (iv) access to facility;
 - (v) air quality, including odors and dust;
 - (vi) noise; and
 - (viii) traffic;
- (f) public and occupational health and safety issues;
- (g) positive and negative socioeconomic impacts:
 - (i) local employment;
 - (ii) community services;
 - (iii) revenue to local funds;
 - (iv) property values;
 - (v) property taxes;
 - (vi) cost effective disposal of community solid waste; and
 - (vii) other quality of life concerns raised at public meetings;
- (h) cumulative and individual impacts of the proposed facility, other existing development and other planned development submitted to a local government within the vulnerable area, to:
 - (i) land use in the area;

- (ii) historical and cultural resources;
- (iii) visual and scenic resources;
- (iv) air quality, including odors and dust;
- (v) socioeconomic and environmental justice, including population, demographic profile, education, age, language, occupational profile and household income;
- (vi) transportation;
- (vii) unavoidable adverse environmental impacts; and
- (viii) analysis of short-term, intermediate term and long term effects of the proposed facility;
 - (i) summary of reasonable mitigation measures proposed to address the facility's contribution to any expected adverse impacts; these measures may include but are not limited to:
 - (i) historical and cultural resources impact mitigation measures;
 - (ii) visual and scenic resource impact mitigation measures;
 - (iii) air quality impact mitigation measures, including for odors and dust;
 - (iv) socioeconomic and environmental justice impacts mitigation measures;
 - (v) noise impact mitigation measures;
 - (vi) transportation impact mitigation measures; and
 - (vii) public and occupational health impacts mitigation measures; and
 - (j) consultation, coordination and public involvement:
 - (i) agencies and local governments consulted;
 - (ii) public involvement;
 - (iii) responsive summary; and
 - (iv) comments.

E. If the proposed landfill, transformation facility or landfill modification resulting in a lateral or vertical expansion is proposed in a vulnerable area, or is not sited in an area that has been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity of public participation, the applicant shall demonstrate that, within the state of New Mexico, granting the permit or permit modification will not result in a disproportionate effect on the health and environment of a particular socioeconomic group in the vulnerable area.

F. If the proposed initial landfill or transformation facility permit, or landfill modification resulting in a lateral or vertical expansion is not in a vulnerable

area, or is sited in an area that has been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity for public participation, the applicant is not required to prepare a community impact assessment.

G. Each permit application filed with the secretary shall include proof that the applicant has provided notice of the filing of the application and any community impact assessment scoping meetings, pre-assessment meetings or other notifications required by 20.9.2 - 20.9.10 NMAC, and unless otherwise specified by 20.9.2 - 20.9.10 NMAC, to the public and other affected individuals and entities. The notice shall:

(1) be provided by certified mail to the owners of record, as shown by the most recent property tax schedule, and tax exempt entities of record, of all properties:

(a) within one hundred feet of the property on which the facility is located or proposed to be located if the facility is or will be in a class A or class H county or a municipality with a population of more than two thousand five hundred (2,500) persons; or

(b) within one-half mile of the property on which the facility is located or proposed to be located if the facility is or will be in a class B county or municipality with a population of 2,500 or less;

(2) be provided by certified mail to all municipalities and counties in which the facility is or will be located and to the governing body of any county, municipality, Indian tribe or pueblo when the boundary of the territory of the county, municipality, Indian tribe or pueblo is within ten miles of the property on which the facility is proposed to be constructed, operated or closed;

(3) be provided to all parties and interested participants of record for a permit modification or renewal;

(4) be published once in a newspaper of general circulation in each county where the facility is proposed to be constructed, operated or closed; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice; notice also shall be provided to residents of each community that is or will be affected significantly by the existing or proposed solid waste facility at least once in one or more other media in a manner that effectively reaches a substantial number of members of each community, and where printed shall be printed in both English and Spanish;

(5) be posted in at least eight publicly accessible and conspicuous places, including the proposed or existing entrance

to the property on which the facility is or is proposed to be located; and

(6) include the following:

(a) name, address, and telephone number of the applicant and contact person;

(b) the anticipated start-up date of the facility or modification, and planned hours of operation;

(c) a description of the facility, including the general process, location, size, quantity, rate, and type of waste to be handled and a description of any proposed modification;

(d) the anticipated origin of the waste; and

(e) a statement that comments regarding the application should be provided to the applicant and the department.

H. Notices shall be submitted to the department for approval prior to publication, service and posting. The applicant shall submit a certificate from an American translators association certified translator showing that English versions have been accurately translated into Spanish.

[20.9.3.8 NMAC - Rp, 20 NMAC.9.1.II.201, 08/02/07]

20.9.3.9 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR MUNICIPAL, MONOFILL OR SPECIAL WASTE LANDFILL FACILITIES.

A. Prior to the submission of a permit application or an application for a modification resulting in a lateral or vertical expansion for a municipal, monofill or special waste landfill, the applicant shall:

(1) meet with department representatives to discuss the proposed facility or modification; and

(2) submit a site assessment boring plan for departmental approval, including a demonstration that the installation of any monitoring well will comply with 20.9.9.9 NMAC:

(a) an applicant for approval of a site assessment boring plan shall submit a notice of intent to the secretary at least 14 days prior to the installation or decommissioning of any borings; and

(b) borings may be converted into piezometers or ground water monitoring wells provided they are constructed in accordance with 20.9.9.9 NMAC, and the conversion is consistent with the ground water monitoring plan and system plan approved by the department.

B. Any person seeking a permit for a municipal or special waste landfill shall submit the following information in addition to that required under 20.9.3.8 NMAC:

(1) a schedule of filling and methods of compaction of solid waste;

(2) a soil balance calculation and

types and sources of daily, intermediate and final cover;

(3) site plans and cross-sections of the facility, drawn to scale, indicating the location of any:

(a) ground water monitoring wells and landfill gas monitoring points;

(b) materials recovery operation(s);

(c) borrow and fill areas;

(d) fire protection equipment;

(e) barriers for concealing the site from public view and noise abatement;

(f) surface drainage;

(g) water supply, including lines, tanks and wells;

(h) buildings, roads, utilities, storage ponds, fences and other site improvements;

(i) electric power transmission and distribution lines, pipelines, railroads, water, gas, oil wells, and public and private roads within 300 feet of the facility; and

(j) access roads to and within the landfill, including description, slopes, grades, length, load limits and points of entrance and exit;

(4) a topographic map of the site at a scale of 1"=200 feet, with a contour interval of two feet or less where relief is less than 50 feet; and five feet or less where relief exceeds 50 feet, with property boundaries of the landfill indicated;

(5) the most recent full size United States geological survey topographic map of the area, showing the waste facility boundary and existing utilities and structures within 500 feet of the boundary of the facility site;

(6) if available, the most recent federal emergency management agency 100-year frequency floodplain map, and if not available, the applicant shall otherwise demonstrate the site is not located in a 100-year frequency floodplain;

(7) a description of site geology and hydrology including:

(a) characterization of the uppermost aquifer including depth, estimated thickness, estimated sustainable yield, water quality (including all constituents referenced in Subsection A of 20.9.9.20 NMAC, flow direction, gradient and velocity unless the application includes a petition for suspension of ground water monitoring requirements in accordance with Subsection C of 20.9.9.8 NMAC;

(b) characterization of the geology, including:

(i) the results of the site assessment borings conducted in accordance with the approved boring plan;

(ii) a site plan showing the location, surface elevation and total depth of each boring;

(iii) lithologic log results of each boring, drawn to a scale of

1"=10' (except that borings of greater than 200 feet may be drawn to a scale of 1"=20'), graphically depicting the soil and/or rock strata penetrated and describing each layer; a) if soil: color, degree of compaction, moisture content, and any additional information necessary for an adequate description and visual classification of each stratum based on the unified soils classification system; and b) if rock: a detailed lithologic description, including rock type, degree of induration, presence of fractures, fissility, porosity (including vugs), and any other information necessary for an adequate description; the descriptions shall be certified by a qualified ground water scientist who shall be on-site at all times during drilling operations (all field notes of the ground water scientist shall be made available upon request of the department); and

(iv) if ground water was encountered, the initial depth it was encountered shall be indicated on the lithologic log;

(8) a demonstration that run-off from the landfill will not discharge contaminants in violation of the New Mexico Water Quality Act, commission regulations or standards, or the Federal Clean Water Act, including an analysis of proposed run-on and run-off flow and control systems;

(9) a groundwater monitoring plan in conformance with 20.9.9.10 NMAC;

(10) plans and specifications for ground water monitoring systems in accordance with 20.9.9.9 NMAC;

(11) plans and specifications for liner and leachate collection systems in accordance with 20.9.4.13 NMAC and 20.9.4.15 NMAC;

(12) plans and specifications for landfill gas monitoring and management programs in accordance with 20.9.4.16 NMAC; and

(13) provide proof the applicant has notified the federal aviation administration and the affected airport if the facility is to be located within six miles of an airport used by the public and that the federal aviation administration does not object to the site being operated as a solid waste facility.

C. Applicants shall include disposal management plans for all types of special waste proposed to be disposed at the landfill. Such disposal management plans shall include, at a minimum:

(1) a description of methods to identify the various special wastes, including the use of test parameters in 20.9.8.11 NMAC;

(2) disposition procedures for incoming special wastes;

(3) procedures for notifying the department in the event wastes either fail the tests listed in 20.9.8.11 NMAC or prove not to be one of the listed special wastes;

(4) the tracking system to be used to:

(a) compile and record the amounts and types of wastes received;

(b) identify the area or disposal coordinates where the waste was placed in the disposal cell; and

(c) complete the manifest requirements of 20.9.8.19 NMAC;

(5) emergency and mitigation measures in case of a spill or leak; and

(6) a description of procedures to meet applicable requirements in 20.9.8.12-17 NMAC.

D. Applicants shall identify any types of material not within the definition of solid waste that the owner or operator seeks to dispose.

[20.9.3.9 NMAC - Rp, 20 NMAC 9.1.II.202, 08/02/07]

20.9.3.10 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR CONSTRUCTION AND DEMOLITION LANDFILLS. Any person seeking a permit for a construction and demolition landfill shall submit the following information in addition to that required under 20.9.3.8 NMAC:

A. site plans and cross-sections of the proposed facility, drawn to scale, indicating the location of:

(1) the tipping areas;

(2) fencing and gates;

(3) entrances, exits and access roads;

(4) locations of buildings within 500 feet of the facility;

(5) public water supply wells and private wells within 1000 feet of the facility; and,

(6) borrow and fill areas;

B. frequency of construction and demolition debris disposal; and

C. if recycling operations are conducted, the method of diversion and storage of the recyclable materials, the frequency of collection for reuse from the facility, method of transport, and destination; the recycling operation shall comply with 20.9.3.29 NMAC.

[20.9.3.10 NMAC - Rp, 20 NMAC 9.1.II.203, 08/02/07]

20.9.3.11 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR PROCESSING FACILITIES AND FOR RECYCLING FACILITIES THAT ACCEPT SOLID WASTE THAT ACCOMPANIES THE RECYCLABLE MATERIAL.

A. Any person seeking a permit for a processing facility or for a recycling facility that accepts solid waste shall submit the following information in addition to that required under 20.9.3.8 NMAC:

(1) a description of the survey and

analysis process used to determine the characteristics of all solid waste expected to be accepted or processed;

(2) plans and elevations, drawn to scale, of all structures used for processing, storage, alternate storage, and disposal of waste materials;

(3) a process description of the sampling capability and locations designed into the facility so the process stream can be safely sampled and analyzed;

(4) a description of the methods to be employed for the containment or removal of residues and spills in a manner that protects the public health, welfare, safety and the environment; and

(5) an operation and maintenance manual that addresses all of the operating requirements.

B. Any person seeking a permit for a processing facility that will process special waste shall, in addition to the requirements of this section, submit the following additional information:

(1) the proposed location and method for storage or processing of liquid or solid residues and end products produced by operation of the facility;

(2) the process for separation, storage and disposal of waste generated by the process, including the temporary storage of wastes;

(3) the minimum and maximum volumes of the types of material or solid waste to be stored prior to processing or disposal, and the minimum and maximum time that material or waste will be stored;

(4) facility plans and elevations, drawn to scale, and specifications including:

(a) equipment layout;

(b) the most recent full size United States geological survey topographic map of the area, showing the waste facility boundary, the property boundary, and existing utilities and structures within 500 feet of the property boundary;

(c) the location of electric power transmission and distribution lines, pipelines, railroads and public and private roads within 300 feet of the proposed facility;

(d) the processing unit, with loading area and residue removal;

(e) all conveyors, ramps and other devices used to move material through the facility;

(f) control room and equipment; and

(g) pollution control equipment;

(5) an operations and maintenance manual that includes:

(a) current policies and procedures;

(b) the operating requirements for the various stages of processing; and

(c) all information that would

enable supervisory and operating personnel, and persons evaluating the operation of the facility, to determine the sequence of operation, plans, diagrams, policies, procedures and legal requirements which must be followed for orderly and successful operations;

(6) a description of the facility operation which includes:

(a) a sequential description of the major components used for the processing of the solid waste starting from its delivery at the facility and continuing through the treatment and loading operations;

(b) procedures for facility start-up, and scheduled and unscheduled shut downs;

(c) a description of potential safety hazards and methods of control, including, but not limited to, arrangements to detect explosion potential and equipment installed to minimize the impact of explosion; and

(d) a description of personnel safety equipment and protective gear, including, but not limited to, showers, eye wash, fire extinguishers, hoses, hard hats, safety goggles, hearing protection, and proposed personnel hygiene facilities;

(7) an operations plan that includes all plant systems complete with process flow and instrumentation diagrams and heat and material balances; and

(8) residue testing methods and procedures.

[20.9.3.11 NMAC - Rp, 20 NMAC 9.1.II.204 NMAC, 08/02/07]

20.9.3.12 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR TRANSFORMATION FACILITIES.

A. Any person seeking a permit for a transformation facility shall submit the following information in addition to that required under 20.9.3.8 NMAC:

(1) the composition of the waste to be received at the facility;

(2) the method to be used to convert the waste into a feedstock for the transformation process, including material separation and recovery systems;

(3) if the transformation process is other than biological, a characterization of the feedstock used as the design basis of the facility that shows:

(a) composition by material type; and

(b) physical and chemical properties, including moisture content, ash content, and higher heating value;

(4) if the transformation is by means of a biological process, a characterization of the feedstock used as the design basis of the facility that shows:

- (a) composition by material type;
(b) physical and chemical proper-

ties, including moisture content and percent organic and inorganic matter;

(c) process efficiency, as measured by conversion of volatile solids; and

(d) end products or residue;

(5) the proposed location and method for disposal, storage or processing of liquid or solid residues and end products produced by operation of the facility;

(6) the process for separation, storage and disposal of waste generated by the process, including the temporary storage of bulky wastes;

(7) the minimum and maximum volumes of the types of material or solid waste to be stored prior to sale, reuse or disposal, and the minimum and maximum time that material or waste will be stored;

(8) facility plans and elevations, drawn to scale, and specifications including:

(a) equipment layout;

(b) the most recent full size United States geological survey topographic map of the area, showing the waste facility boundary, the property boundary, and existing utilities and structures within 500 feet of the property boundary;

(c) the location of electric power transmission and distribution lines, pipelines, railroads and public and private roads within 300 feet of the proposed facility;

(d) the transformation unit, with feed area and residue removal;

(e) all conveyors, ramps and other devices used to move material the facility;

(f) control room and equipment;

and

(g) pollution control equipment;

(9) an operations and maintenance manual that includes:

(a) current policies and procedures;

(b) the operating requirements for the various stages of transformation; and

(c) all information that would enable supervisory and operating personnel, and persons evaluating the operation of the facility, to determine the sequence of operation, plans, diagrams, policies, procedures and legal requirements which must be followed for orderly and successful operations;

(10) a description of the facility operation which includes:

(a) a sequential description of the major components used for the treatment of the solid waste starting from its delivery at the facility and continuing through the residue and ash treatment and loading operations;

(b) procedures for facility start-up, and scheduled and unscheduled shut downs;

(c) a description of potential safety hazards and methods of control, includ-

ing, but not limited to, arrangements to detect explosion potential and equipment installed to minimize the impact of explosion; and

(d) a description of personnel safety equipment and protective gear, including, but not limited to, showers, eye wash, fire extinguishers, hoses, hard hats, safety goggles, hearing protection, and proposed personnel hygiene facilities;

(11) an operations plan that includes all plant systems complete with process flow and instrumentation diagrams and heat and material balances; and

(12) residue testing methods and procedures.

B. The design and operation of the transformation facility shall conform to all applicable codes and standards including, but not limited to, the American society of testing materials, the American national standards institute, the American society of mechanical engineers, the American concrete institute, and the uniform building code, most recent edition, as well as the building code requirements in the city, county, or municipality in which the facility is to be located.

C. Within 30 days of permit issuance, the permittee shall submit to the department a comprehensive project schedule that indicates each major design, procurement, construction, and start-up activity in a properly sequenced and coordinated fashion. Progress reports shall be submitted at least once a month indicating major activities accomplished and percentage of work completed.

[20.9.3.12 NMAC - Rp, 20 NMAC 9.1.II.205 NMAC, 08/02/07]

20.9.3.13 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR SOLID WASTE FACILITIES THAT ACCEPT SPECIAL WASTE.

Any person seeking a permit to accept special waste at a solid waste facility shall submit the following information in addition to that required under 20.9.3.8 NMAC:

A. a list of the types of wastes to be accepted and the anticipated sources of such wastes;

B. the anticipated amount and frequency of receipt of the wastes, including the anticipated amount of each type of special waste expected to be accepted over the life of the permit;

C. a description of the method of handling, including, but not limited to, disposal, processing, or transformation;

D. a general disposal management plan, in accordance with 20.9.8 NMAC, for each type of special wastes proposed to be accepted at the facility; and

E. emergency and mitigation measures in case of a spill or leak.

[20.9.3.13 NMAC - Rp, 20 NMAC 9.1.II.206 NMAC, 08/02/07]

20.9.3.14 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR COMPOSTING FACILITIES THAT ACCEPT SOLID WASTE. Any person seeking a permit for a composting facility that accepts solid waste shall submit the following information in addition to the information required by 20.9.3.8 NMAC.

A. Operating plans for the facility, including, but not limited to, the origin, expected composition and weight or volume of materials to be composted, the process, the loading rate, the proposed capacity of the facility, proposed size and operational rate, and the expected disposition rate of the compost from the facility.

B. The composition and weight or volume of the non-compostable solid waste to be received at the facility.

C. The process or method used to separate the non-compostable solid waste from the compostable material.

D. The disposal path for the non-compostable solid waste.

E. A characterization of the feedstock used as the design basis of the composting facility shall be included showing:

- (1) composition by material type;
- (2) physical and chemical properties including moisture content and percent organic and inorganic matter; and
- (3) process efficiency as measured by conversion of volatile solids.

F. A description of methods used to assure that rodents and other animals will be kept from the facility.

G. For composting facilities that accept sewage sludge, a plan showing testing methods and procedures for compliance with 40 CFR 503 and 20.6.2 NMAC.

H. A demonstration that a groundwater discharge permit has been applied for, if applicable.

[20.9.3.14 NMAC - Rp, 20 NMAC 9.1.II.207 NMAC, 08/02/07]

20.9.3.15 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR TRANSFER STATIONS.

A. Any person seeking a permit for a transfer station shall submit the following information in addition to that required by 20.9.3.8 NMAC:

B. plans and elevations, drawn to scale, of all structures proposed to be used for handling and storage of solid waste and diversion of recyclables;

C. a site plan of the proposed facility, drawn to scale, indicating the location of:

- (1) storage, loading and unloading areas;

(2) fencing and gates;

(3) entrances, exits, and access roads; and

(4) area map showing locations of structures within 100 feet of the facility boundary;

D. methods of collection, treatment, or disposal of waste water from the facility;

E. the frequency of solid waste and recyclables deposit and pick-up from the facility, method of transport, and destination;

F. specific operational procedures, including traffic patterns and procedures for handling recyclables, household hazardous waste, white goods, bulky items, tires, yard refuse, and used oil; and

G. a demonstration that the facility will be capable of handling the predicted waste stream.

[20.9.3.15 NMAC - Rp, 20 NMAC 9.1.II.208 NMAC, 08/02/07]

20.9.3.16 PERMITTING PROCEDURES.

A. The permitting procedures in 20.9.3.8 - 20.9.3.25 NMAC supplement the permitting requirements in the Solid Waste Act and Permitting Procedures - Environment Department, 20.1.4 NMAC.

B. A permit shall be issued only after a public hearing as required by NMSA 1978 Section 74-9-24 A of the Solid Waste Act. If a public hearing is held for a permit application, modification, renewal, or petition, the applicant shall pay one-half the actual cost of:

(1) court reporting services, including the cost to provide a copy of the transcript to the department;

(2) any translation or interpretation services; and

(3) providing the facility where the public hearing is held, including any security and ancillary costs.

C. The department shall submit an invoice to the applicant for payment. Payment shall be made before action on a permit will be finalized. A public entity may seek a waiver of payment for its share of hearing costs if it demonstrates to the secretary that payment would impose a financial hardship to the entity.

[20.9.3.16 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

20.9.3.17 PERMIT APPLICATION REVIEW.

A. The applicant shall submit three copies of the initial permit application for approval. Upon receipt of an application for a permit, the department shall review the application to determine if additional information is necessary or shall determine the application administratively complete. The department shall issue a

notice of administrative completeness or a notice that additional information is necessary within 120 days after receipt of the application and within 90 days of any subsequent responses to requests for further information. The secretary may extend the time for good cause.

B. In the event the department requests additional information, the applicant shall submit any information requested within 120 days of receipt of the first request, and 90 days of receipt of subsequent requests, or the application may be denied without prejudice. The secretary may extend the response time for good cause, and set up an alternative permit review schedule. When submitting the information in response to a request for additional information, the applicant shall submit three copies. If the permit application is not administratively complete after two requests for additional information, the secretary may deny the permit application without prejudice. This subsection is not intended to limit informal informational exchanges during the permit review period or prior to submission of an application. Denial of a renewal application under this subsection does not automatically terminate the existing permit of a facility.

C. Within 14 days after the application is deemed administratively complete, the applicant shall submit to the department:

(1) six complete new copies of the application; and

(2) an updated list of all property owners as specified in Subsection G of 20.9.3.8 NMAC; the list must be date stamped and signed by the appropriate county agent, or certified as accurate by the applicant as of the date the application is deemed complete.

D. Acceptance of the application as administratively complete allows the permit application to be processed according to the permitting procedures. Acceptance of the application as administratively complete is not an indication that the department supports the permit without conditions or that it will be approved.

[20.9.3.17 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

20.9.3.18 PERMIT ISSUANCE.

A. The secretary shall issue a permit if the applicant demonstrates that the requirements of 20.9.2 - 20.9.10 NMAC and the Solid Waste Act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

B. The secretary shall consider the information in the community impact assessment and any demonstrations made pursuant to Subsection E of 20.9.3.8

NMAC, together with other information in the record, in any decisions to issue, issue with conditions or deny the permit.

C. The terms and conditions of the permit or permit modification shall be specifically identified by the secretary.

D. Multiple contiguous facilities may be permitted under one solid waste facility permit provided each facility meets the applicable requirements of 20.9.2 - 20.9.10 NMAC and the Solid Waste Act. [20.9.3.18 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

20.9.3.19 PERMIT DENIAL OR REVOCATION.

A. In addition to the causes for denial or revocation listed in Subsections A and B of 74-9-24 of the Solid Waste Act and 20.9.3.18 NMAC, the secretary may deny or revoke a permit during its term for:

(1) a material violation of any term or condition of the permit, any requirement of 20.9.2 - 20.9.10 NMAC, or any requirement of the Solid Waste Act by the owner or operator, after taking into consideration the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors;

(2) failure of the applicant in the application or during the permit issuance process to disclose fully all material facts;

(3) misrepresentation by the owner or operator of any material facts at any time;

(4) a determination that the permitted activity endangers public health, welfare or the environment;

(5) failure of the owner or operator to demonstrate the knowledge and ability to operate a facility in accordance with 20.9.2 - 20.9.10 NMAC; and

(6) a history of non-compliance by the owner or operator with environmental regulations or statutes at another facility.

B. A permit shall be revoked in accordance with the procedures set forth in Adjudicatory Procedures - Environment Department, 20.1.5 NMAC. Construction, modification and operation, if any, shall cease upon the effective date of the revocation.

[20.9.3.19 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

20.9.3.20 EFFECT OF PERMIT.

A. Any terms or conditions of the permit shall be enforceable to the same extent as a regulation of the board.

B. The existence of a permit issued under 20.9.2 - 20.9.10 NMAC shall not constitute a defense to a violation of 20.9.2 - 20.9.10 NMAC or the Solid

Waste Act.

[20.9.3.20 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

20.9.3.21 PERMITTED FACILITIES - DUTIES PRIOR TO OPERATION.

A. At least 14 days prior to the start of solid waste facility construction, the owner or operator shall provide the department with a major milestone schedule.

B. After a permit is granted for a solid waste facility or for the expansion of a solid waste facility, and at least 14 days prior to disposal, processing, or transforming of any solid waste at the solid waste facility or expansion, the owner or operator shall:

(1) provide to the department a written notice of construction completion with "as built" construction drawings signed and sealed by a registered professional engineer; and

(2) for landfills, provide the department a quality assurance/quality control report, certified by a registered professional engineer licensed in New Mexico and experienced in liner installation, for construction of the liner and leachate collection system.

C. The owner and operator shall prohibit the disposal, processing, or transformation of solid waste at a new or modified portion of a solid waste facility until the department has either inspected the solid waste facility or modified portion and determined that the site has been developed in accordance with the permit or permit modification, 20.9.2 - 20.9.10 NMAC and the Solid Waste Act, or the department fails to inspect the solid waste facility within 30 calendar days of receipt of written notice of construction completion and any quality assurance/quality control report or engineer's certification that the facility or modification has been constructed in accordance with the permit or permit modification, 20.9.2 - 20.9.10 NMAC and the Solid Waste Act, and that a quality assurance/quality control report is being prepared.

D. The owner and operator shall prohibit the disposal, processing, or transformation of solid waste at a new or modified portion of a solid waste facility until the owner or operator has secured financial assurance and has submitted appropriate documentation to the department prior to the initial receipt of waste at a new or modified portion of a solid waste facility.

[20.9.3.21 NMAC - N, 08/02/07]

20.9.3.22 PERMIT OR FACILITY MODIFICATION.

A. Any owner or operator of a solid waste facility who seeks to modi-

fy such facility or permit conditions shall obtain a permit modification prior to making any modifications. A permit modification shall not extend the initial term of any permit.

B. An application for a modification shall demonstrate compliance with the portions of 20.9.2 - 20.9.10 NMAC that pertain to such a modification.

C. The secretary may initiate the modification of permit conditions or require modification of the facility if:

(1) changes occur after permit issuance which justify permit conditions that are different from or are not included in the existing permit;

(2) the secretary has received information that was not in the record at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance;

(3) the standards or regulations on which the permit was based have changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) the secretary determines good cause exists for modification, such as an act of God, strike, flood, or materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable remedy.

D. All permit modifications, whether initiated by the owner or operator or by the secretary, shall be subject to Permit Procedures - Environment Department, 20.1.4 NMAC and permitting procedures in this part.

[20.9.3.22 NMAC - Rp, 20 NMAC 9.1.II.210 NMAC, 08/02/07]

20.9.3.23 TRANSFER OF PERMITS AND CHANGE IN PERMIT APPLICANT.

A. A change in ownership of a permitted entity requires a permit transfer and shall be allowed according to the following procedure.

(1) Where a permitted entity undergoes a change in ownership, but the permitted entity remains the same, the new owner shall, within 30 days after the change submit the following:

(a) a description of the change in ownership;

(b) the date of the change in ownership;

(c) a statement that the current financial assurance will remain in effect, or a new proposed financial assurance to meet the requirements of 20.9.10 NMAC;

(d) information required by Section 74-9-21 of the Solid Waste Act, and if applicable, disclosure statements shall be submitted for the new owner on forms provided by the department;

(e) a statement whether the new owner has been convicted of a felony or other crime within 10 years immediately preceding the date of the transfer, and if so details of the crime and conviction;

(f) a statement whether the new owner has been fined within the past 5 years for alleged violations of any environmental laws of this state, any other state or the United States, and if so, details of any allegations, settlements or compliance orders;

(g) proof of public notice of the change in ownership; and

(h) any other information required by the secretary.

(2) The permittee shall provide public notice of the ownership change by publishing once in a newspaper of general circulation in the county where the facility is located, and shall indicate in the public notice that the department will accept public comment on the ownership change for a period of 30 days after the date of publication.

(3) The existing financial assurance required by 20.9.10 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the new owner.

B. A change in the permittee requires a permit transfer and shall be allowed according to the following procedure.

(1) Where the person owning the permit seeks to transfer the permit to a new person to be named as permittee, the existing owner and the proposed new owner shall file an application with the department requesting transfer of the permit. The application shall contain the following information:

(a) a description of the proposed change of permittee;

(b) an explanation of whether the change in permittee will have any effect on the operations;

(c) a new proposed financial assurance to meet the requirements of 20.9.10 NMAC;

(d) information required by Section 74-9-21 of the Solid Waste Act, and if applicable, disclosure statements shall be submitted for the new proposed permittee on forms provided by the department;

(e) a statement whether the new owner has been convicted of a felony or other crime within 10 years immediately preceding the date of the transfer, and if so, details of the crime and conviction;

(f) a statement whether the new owner has been fined within the past five years for alleged violations of any environmental laws of this state, any other state or the United States, and if so, details of any allegations, settlements or compliance orders;

(g) proof of public notice of the

proposed change in permittee; and

(h) any other information required by the secretary;

(2) The permittee shall provide public notice of a proposed permit transfer by publishing once in a newspaper of general circulation in the county where the facility is located, and shall indicate in the public notice that the department will accept public comment on the permit transfer for a period of 30 days after the date of publication.

(3) The existing financial assurance required by 20.9.10 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the proposed new permittee.

C. If a permit applicant changes ownership or seeks to transfer the application to a new proposed permittee, the applicant and transferee shall follow the procedures in this section. If the application has already been deemed complete, the application shall be re-noticed and re-submitted.

[20.9.3.23 NMAC - Rp, 20 NMAC 9.1.II.211 NMAC, 08/02/07]

20.9.3.24 PERMIT REVIEW.

No later than 60 days before a permit review is required by Section 74-9-24 of the Solid Waste Act, the owner or operator shall submit to the department a complete description of the following:

A. facility operations;

B. compliance history;

C. environmental monitoring results, releases, and any remediation;

D. changes in information from the disclosure forms;

E. any other technical requirements requested by the secretary;

F. financial assurance;

G. any behavior or incidents of the nature described in Subsection B of 74-9-24 of the Solid Waste Act; and

H. proof of public notice of the review provided in accordance with Section 74-9-22 of the Solid Waste Act and 20.9.2 - 20.9.19 NMAC.

[20.9.3.24 NMAC - Rp, 20 NMAC 9.1.II.212, 08/02/07]

20.9.3.25 PERMIT RENEWAL.

A. To renew a permit, the owner or operator of a solid waste facility shall file a permit renewal application no later than 12 months prior to the expiration date of the facility permit. A permit renewal application shall include a complete description of the following:

(1) facility operations;

(2) compliance history;

(3) environmental monitoring results, releases, and any remediation;

(4) changes in information from

the most recent disclosure forms filed with the department;

(5) any other technical requirements requested by the secretary;

(6) financial assurance;

(7) any behavior or incidents of the nature described in Subsection B of 74-9-24 of the Solid Waste Act;

(8) compliance demonstrations under Subsection A of 20.9.4.9 NMAC; and

(9) proof of public notice of the renewal application provided in accordance with Section 74-9-22 of the Solid Waste Act.

B. A solid waste facility may continue to operate under the terms and conditions of the existing permit until the renewal permit is issued or denied provided that:

(1) the owner and operator are in compliance with the existing permit, 20.9.2 - 20.9.10 NMAC, the Solid Waste Act, and any federal regulations which apply;

(2) a permit renewal application was submitted in a timely fashion in accordance with this section; and

(3) the owner or operator submits any requested additional information by the deadline(s) specified by the secretary.

C. The secretary may establish new deadlines for the permit renewal application if the application is denied under 20.9.3.17 NMAC. The secretary may issue an order for the revocation of the existing permit if the provisions in Subsection B of 20.9.3.17 NMAC are not met.

[20.9.3.25 NMAC - Rp, 20 NMAC 9.1.II.212, 08/02/07]

20.9.3.26 PERMIT EXPIRATION; AUTOMATIC CLOSURE.

A. A permit shall automatically expire when the secretary verifies that the closure and any post-closure care plan, including corrective action, have been completed.

B. If a permitted facility begins operation, and thereafter suspends operation in full for at least five years, authorization to accept waste is suspended and closure activities shall begin.

[20.9.3.26 NMAC - Rp, 20 NMAC 9.1.II.212, 08/02/07]

20.9.3.27 REGISTRATION OF RECYCLING AND COMPOSTING FACILITIES THAT ACCEPT ONLY SOURCE SEPARATED RECYCLABLE OR COMPOSTABLE MATERIALS, COLLECTION CENTERS AND AIR CURTAIN INCINERATORS.

A. The owner or operator of the following facilities shall file an application for a registration at least 30 days prior to any operations and every five years thereafter. Existing facilities of the type

listed below shall apply for a registration at least 30 days prior to the expiration of their existing permit or registration, or within two years after the effective date of these regulations, whichever occurs first. Facilities covered by this section that do not timely file a complete application for registration are hereby deemed unpermitted solid waste facilities, and the owner or operator may be subject to penalties, permit requirements and nuisance abatement orders. Facilities required to register are:

(1) recycling facilities that accept only source separated recyclable materials;

(2) composting facilities that accept only source separated compostable materials;

(3) collection centers;

(4) small animal crematoria; and

(5) air curtain incinerators.

B. Registration is not required for a recycling facility that accepts only source separated recyclable materials and accepts the recyclables for less than seven days in any calendar year.

C. Registration is not required for collection facilities that are part of a commercial hauler operation, that have an operational rate of less than 240 cubic yards per day monthly average, and that do not serve the general public, but such facilities shall be included in the registration of the commercial hauler under Paragraph (10) of Subsection A of 20.9.3.31 NMAC.

D. Any person who is required to register under this section with the department shall provide the following information:

(1) the name, address, and telephone number of the business, owner, operator and contact person;

(2) the anticipated start up date (unless it is an existing operation);

(3) a legal description, and map of the proposed facility site, including land use and zoning of the site and surrounding area, including setbacks;

(4) a description of means that will be used to prevent the facility from becoming a public nuisance, including:

(a) signs to indicate the location of the site, the hours of operation, emergency telephone numbers, delivery instructions, and that fires and scavenging are prohibited;

(b) storage containers that are leak-proof and manufactured of non-biodegradable material;

(c) means to control litter and prevent and extinguish fires;

(d) conducting any recycling operations in a safe and sanitary manner;

(e) storing any recyclable materials in a manner that does not create a nuisance, harbor vectors, or create a public health hazard;

(f) providing sufficient unloading

areas to meet peak demands;

(g) for collection centers, providing separate storage areas for bulky wastes, such as brush, white goods, appliances and scrap tires, and removing the bulky wastes at a frequency approved in the registration;

(h) for collection centers, confining unloading of solid waste to as small an area as possible;

(i) for collection centers, removal of solid waste from the center at the end of the operating day unless otherwise approved in the registration;

(j) a means of controlling access to the facility;

(k) a means of controlling and mitigating noise and odors;

(l) operating plans for the facility, including, but not limited to, the origin, expected composition and weight or volume of materials to be composted or recycled or incinerated, the process, loading rate, proposed capacity, size and operational rate, and the expected disposition rate of the recyclables, compost, ash or waste from the facility;

(m) for composting facilities that accept sewage sludge, a plan showing testing methods and procedures for compliance with 40 CFR 503 and 20.6.2 NMAC;

(n) for composting facilities, a demonstration that a groundwater discharge permit has been applied for, if applicable;

(o) for air curtain incinerators, a copy of the air quality permit, registration or notice of intent filed with the air quality bureau;

(p) for air curtain incinerators, a designation of the intended recipient of ash waste; and

(q) any additional information requested by the secretary.

E. The owner or operator shall comply with the terms of its approved registration.

F. A violation of the terms of an approved registration may be deemed to be a public nuisance or the facility may be deemed to be an unpermitted solid waste facility subject to enforcement orders under the Solid Waste Act.

G. The owner or operator of a facility required to be registered under this section shall update its registration to reflect any material change in its operations.

H. The owner or operator of a recycling facility, composting facility, collection center, small animal crematorium or an air curtain incinerator shall not create a public nuisance. Failure to comply with the terms of the registration may be deemed a public nuisance. If the secretary determines, based on the information submitted with the registration or based upon any other information that the facility will be or has become a public nuisance, or that a facility covered by this section is in viola-

tion of the Solid Waste Act or 20.9.2 - 20.9.10 NMAC, the secretary may deny the registration, issue an order requiring the owner or operator to abate the public nuisance, or may issue any other order pursuant to the Solid Waste Act or 20.9.2 - 20.9.10 NMAC, or any combination thereof. The owner or operator or other affected person may appeal the secretary's order by filing a request for hearing within 30 days of the date of the secretary's order. The appeal shall be conducted in accordance with the procedures in 20.1.5 NMAC, Adjudicatory Procedures- Environment Department.

I. The owner or operator of every recycling facility and composting facility shall have a certified operator or representative present at all times while the facility is being operated.

J. The owner or operator of a recycling facility or composting facility that accepts only source separated recyclable or compostable material shall submit an annual report to the department within 45 days from the end of each calendar year, describing the operations of the past year. The reports must be certified as true and accurate by the owner or operator and shall include:

(1) the type and weight or volume of recyclable material received during the year;

(2) the type and weight or volume of recyclable material sold or otherwise disposed off site during the year;

(3) final disposition of material sold or otherwise disposed off-site; and

(4) any other information requested by the secretary.

K. The owner or operator of a recycling facility, composting facility or collection center that conducts a tire recycling operation shall comply with the applicable operating procedures required by 20.9.20 NMAC.

[20.9.3.27 NMAC - Rp, 20 NMAC 9.1.II.213, 08/02/07]

20.9.3.28 ADDITIONAL REGISTRATION REQUIREMENTS FOR COMPOSTING FACILITIES THAT ACCEPT GREATER THAN 25 TONS PER DAY COMPOSTABLE MATERIAL OR GREATER THAN 5 TONS PER DAY OF MATERIAL THAT WOULD OTHERWISE BECOME SPECIAL WASTE.

A. Any person operating or proposing to operate a composting facility that accepts greater than 25 tons per day annual average compostable material or greater than 5 tons per day annual average of material that would otherwise become special waste (e.g. sludge, offal, petroleum contaminated soils), shall submit the following information in addition to that con-

tained in 20.9.3.27 NMAC:

(1) site plans and cross-sections of the proposed facility, drawn to scale, indicating the location of buildings, access roads, entrances and exits, drainage, material storage and treatment areas, utilities, fences and other site improvements;

(2) the composition of the waste to be received at the facility;

(3) the method to be used to convert the waste into a feedstock for the composting process, including material separation and recovery systems;

(4) a characterization of the feedstock used as the design basis of the facility which describes:

(a) composition by material type;

(b) physical and chemical properties including:

(i) moisture content;

and

(ii) percent organic and inorganic matter; and

(iii) process efficiency as measured by conversion of volatile solids;

(5) a description of the composting process to be used, including:

(a) the method of measuring, shredding, and mixing materials;

(b) temperature monitoring equipment and the location of all temperature and any other type of monitoring points, and the frequency of monitoring;

(c) the method of moisture control, including moisture quantity, source, monitoring and frequency of monitoring;

(d) a description of any proposed additive material, including its quantity, quality, and frequency of use;

(e) special precautions or procedures for operation during high wind, heavy rain, snow and freezing conditions;

(f) estimated composting time duration;

(g) for windrow systems, the windrow construction, including width, length, and height;

(h) the method and frequency of aeration; and

(i) for in-vessel composting systems, a process flow diagram of the entire process, including all major equipment and flow streams;

(6) a general description of the ultimate use for the finished compost and method for removal from the site;

(7) for composting facilities accepting sewage sludge, a plan for compliance with 40 CFR Part 503, including, but not limited to, reporting, composting methods and times, and testing methods and frequencies; and

(8) a demonstration that the ground water will be protected and will comply with all applicable ground water protection standards, including those speci-

fied in 20.6.2 NMAC.

B. The owner operator of a composting facility that is designed to or does accept more than 5 tons per day annual average of material that would otherwise be special waste or more than 25 tons annual average of total compostable material per day shall submit a nuisance abatement plan detailing how it will comply with 20.9.3.30 NMAC if so ordered.

C. The owner operator of a composting facility that is designed to or does accept more than 5 tons per day annual average of material that would otherwise be special waste or more than 25 tons annual average of total compostable material per day shall submit a financial assurance mechanism in compliance with 20.9.10.1-20.9.10.13 NMAC, in order to assure sufficient funds in the event that the secretary requires abatement of a nuisance at the facility. The financial assurance mechanism must be approved by the secretary prior to the operation of the facility.

D. The owner or operator of a composting facility that is designed to or does accept more than 5 tons per day annual average of sludge or more than 25 tons of total compostable material per day annual average shall keep records sufficient to demonstrate that its inventory of compostable material or end product does not exceed the inventory used for purposes of estimating the cost of abatement of a nuisance pursuant to Paragraph (2) of Subsection A of 20.9.10.9 NMAC. If the records are insufficient to make this demonstration, or the records are not produced at the request of the department, storage of the materials are hereby deemed illegal disposal of solid waste and the facility is hereby deemed to be an unpermitted solid waste facility and the owner or operator may be subject to penalties, permitting requirements and nuisance abatement orders.

[20.9.3.28 NMAC - N, 08/02/07]

20.9.3.29 ADDITIONAL REQUIREMENTS FOR RECYCLING FACILITIES THAT DO NOT ACCEPT SOLID WASTE.

A. A recycling facility that does not accept solid waste shall include, in its registration application filed pursuant to 20.9.3.27 NMAC, a plan for disposal of solid wastes that are unavoidably collected.

B. A recycling facility that does not accept solid waste shall keep records sufficient to demonstrate the following:

(1) that it takes reasonable measures to assure that it accepts only source separated recyclable materials and solid wastes are not accepted;

(2) that after an initial accumulation period, the quantity of recyclable materials that were recycled during each succes-

sive calendar year was at least 75 percent of the quantity of recyclable materials in inventory; the accumulation period is to be based on a three year rolling average of the facility's stock of the recyclable material at the end of the previous calendar year; and

(3) that the inventory of recyclable materials or end product does not exceed the inventory used for purposes of estimating the cost of abatement of a nuisance pursuant to Paragraph (2) of Subsection A of 20.9.10.9 NMAC.

C. If the operating procedures and records are insufficient to make the demonstrations in Subsection B of this section, or the records are not produced at the request of the department, storage of the materials are hereby deemed illegal disposal of solid waste and the facility is hereby deemed an unpermitted solid waste facility and the owner or operator may be subject to penalties, permitting requirements and nuisance abatement orders.

D. The owner operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average per calendar year of recyclable material shall submit a nuisance abatement plan detailing how it will comply with 20.9.3.30 NMAC if so ordered.

E. The owner operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average per calendar year of recyclable material shall submit a financial assurance mechanism in compliance with 20.9.10.9-13 NMAC, in order to assure sufficient funds in the event that the secretary requires abatement of a nuisance at the facility. The financial assurance mechanism must be approved by the secretary prior to the operation of the facility.

F. The owner or operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average of recyclable material shall have a certified operator or representative present at all times while the facility is operational.

[20.9.3.29 NMAC - N, 08/02/07]

20.9.3.30 REQUIREMENTS FOR FACILITIES REQUIRED TO SUBMIT NUISANCE ABATEMENT PLANS.

Owners or operators of composting facilities that accept greater than 25 tons per day annual average of compostable material or greater than 5 tons per day of what would otherwise be special waste, and recycling facilities that accept greater than 25 tons per day annual average of recyclable materials shall comply with the following requirements when ordered by the secretary for the purpose of abating a nuisance:

A. cleanup and disposal of all recyclable or compostable material;

B. cleanup and disposal of all end product from the composting or

recycling facility; and

C. cleanup and disposal of all fugitive trash, solid waste, or other materials creating a nuisance at the facility.

[20.9.3.30 NMAC - N, 08/02/07]

20.9.3.31 REGISTRATION OF COMMERCIAL HAULERS AND HAULERS OF SPECIAL WASTE.

A. Commercial haulers of solid waste and any haulers that transport special waste shall register with the department 30 days prior to beginning operations and every five years thereafter, and shall submit the following information:

(1) the name, address, and telephone number of the operation for which registration is sought, and the name, address, telephone number, date of birth, driver's license number, and social security number of the owner and operator, unless the owner and operator are public entities or are a publicly held corporation that has on file and in effect with the federal securities and exchange commission a registration statement required under 15 U.S.C. Section 77e (c);

(2) the anticipated start up date, hours of operation, and days of collection;

(3) a list of types of storage containers required for residences, commercial, institutional and industrial establishments to be served;

(4) location of vehicle maintenance yard;

(5) certification that drivers, trailers and vehicles are, and will continue to be, properly licensed or registered;

(6) means of controlling and mitigating odors;

(7) the transport distance from the nearest and farthest points of collection to the solid waste facility where the waste will be disposed;

(8) any transfer requirements;

(9) location of transfer station(s) to be used, if any;

(10) the name and location of any storage or collection or solid waste disposal facility to be used, and including:

(a) the size and type of all storage and collection facilities to be used; and

(b) methods use to mitigate odor and litter from any storage and collection facilities to be used;

(11) an outline of proposed training for drivers and crew to be able to differentiate between hazardous waste, special waste and other solid waste;

(12) certification that the waste identification training program will be implemented;

(13) a statement whether any of the owners or operators have been fined for violation of any environmental laws of any state or the United States (for owners or operators that are public entities or publicly

held corporations, this statement may be limited to fines for violations within the last 5 years and within the state of New Mexico);

(14) a statement whether any of the owners or operators have had any permit or registration revoked or permanently suspended for cause under the environmental laws of any state or the United States (for owners or operators that are public entities or publicly held corporations, this statement may be limited to revocations or suspensions within the last 5 years and within the state of New Mexico); and

(15) if applicable, proof that a current valid warrant has been issued by the New Mexico public regulation commission, or in the case of a public entity hauling special waste, proof of financial responsibility.

B. All haulers that transport special waste, in addition to the requirements of Subsection A of this section, shall:

(1) register with the department on a form provided by the department;

(2) submit the exact locations and permit number(s) of solid waste facilities to be used;

(3) submit a contingency plan to address potential emergency situations to the department for approval; and

(4) submit a list of contents of clean-up kits to be carried in each vehicle used for hauling.

C. Commercial waste haulers registered prior to the effective date of these regulations shall register pursuant to this section within two years after the effective date of these regulations.

[20.9.3.31 NMAC - Rp, 20 NMAC 9.1.II.214, 08/02/07]

20.9.3.32 COMMERCIAL HAULER REGISTRATION PROCEDURES.

A. The registration procedures in 20.9.3.31-36 NMAC apply to commercial haulers of solid waste.

B. Upon receipt of an application for registration, the department shall review the application to determine if additional information is necessary or shall deem the application complete. If the department determines that additional information is necessary, it shall notify the applicant in writing;

C. Within 60 days of receipt of a request for additional information regarding any commercial hauler registration application, the owner or operator shall submit the information requested by the department, or the secretary may deny the registration application without prejudice.

[20.9.3.32 NMAC - N, 08/02/07]

20.9.3.33 COMMERCIAL

HAULER REGISTRATION ISSUANCE.

A. Within 30 days after an application for a commercial hauler registration is deemed complete, the secretary shall issue the registration, issue the registration with terms and conditions, or deny the registration.

B. The secretary shall issue a registration if the owner or operator demonstrates that the requirements of 20.9.2 - 20.9.10 NMAC and the Solid Waste Act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

C. The terms and conditions of a registration shall be specifically identified by the secretary.

[20.9.3.33 NMAC - N, 08/02/07]

20.9.3.34 REGISTRATION DENIAL, REVOCATION, OR SUSPENSION.

A. The secretary may deny, revoke, or suspend a commercial hauler registration on the basis of information in the application or evidence in the administrative record, or both, after taking into consideration the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

B. Causes for denying, revoking, or suspending a registration include a finding that the applicant or owner or operator has:

(1) knowingly misrepresented a material fact in the application, or at any time after issuance of the registration;

(2) refused to disclose or failed to disclose the information required under the provisions of 20.9.2 - 20.9.10 NMAC or the Solid Waste Act;

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

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

(5) violated a term or condition of the registration, any requirement of 20.9.2 - 20.9.10 NMAC, or any requirement of the Solid Waste Act.

C. If the department recommends denial of a commercial hauler registration, notice shall be provided to the applicant by registered mail. The applicant may request a hearing on the registration denial by filing a written request for hearing with the hearing clerk within 30 days of receipt of the notice. A request for hearing shall be treated as a hearing determination and the hearing conducted pursuant to 20.1.4 NMAC. If no request for hearing is filed within 30 days of receipt of the notice, the recommended denial shall become a

final action of the secretary.

D. A commercial hauler registration may be revoked or suspended in accordance with the procedures set forth in 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. Construction, modification and interim operation, if any, shall cease upon the effective date of the revocation or suspension.

[20.9.3.34 NMAC - N, 08/02/07]

20.9.3.35 EFFECT OF REGISTRATION.

A. Any terms or conditions of the registration shall be enforceable to the same extent as a regulation of the board.

B. The existence of a registration issued under 20.9.2 - 20.9.10 NMAC shall not constitute a defense to a violation of 20.9.2 - 20.9.10 NMAC or the Solid Waste Act.

[20.9.3.35 NMAC - N, 08/02/07]

20.9.3.36 REGISTRATION RENEWAL.

A. A commercial hauler shall renew its registration every five years. To renew a registration, the commercial hauler shall file a complete renewal application no later than 30 days prior to the expiration date of the registration. A registration renewal application shall include the same information required in 20.9.3.31 NMAC, and in addition provide a complete description of its compliance history and any other information requested by the secretary.

B. A registered commercial hauler may continue to operate under the terms and conditions of the existing registration until the registration renewal is issued or denied provided that:

(1) the owner and operator are in compliance with the existing registration, 20.9.2 - 20.9.10 NMAC, and any applicable federal regulations;

(2) a complete renewal application was submitted in a timely fashion in accordance with this section; and

(3) the owner or operator adequately submits any requested additional information by the deadline specified by the secretary.

[20.9.3.36 NMAC - N, 08/02/07]

20.9.3.37 REGISTRATION EXPIRATION.

A. A commercial hauler registration shall expire five years from the date of issuance of the registration.

B. A commercial hauler registration shall terminate upon any change of owners or operators of the registered commercial hauler, and the new owner or operator shall obtain a new registration prior to operation.

[20.9.3.37 NMAC - N, 08/02/07]

20.9.3.38 CONFIDENTIALITY OF INFORMATION.

A. Permit applicants, owners or operators, or commercial haulers who submit information to the department may claim such information as confidential. Any claim of confidentiality must be asserted at the time of submittal.

B. To claim confidentiality of information in a submittal, the submitter must clearly mark each page in the document on which the submitter claims there is confidential information, and submit to the department a written description of the basis for the claim of confidentiality at the time of submission. The department shall review the claim of confidentiality based on the written submittal and determine whether the information may be maintained as confidential pursuant to the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1, et seq. If the department determines that information in a submittal is confidential, the department may require submission of redacted copies of the submittal for the public record.

C. If no claim of confidentiality is made at the time of submission, any such claims are deemed waived and the department may make the information available to the public without further notice.

D. Information that is determined by the department to be confidential may be disclosed to officers, employees, or authorized representatives of the United States concerned with implementing RCRA, or when relevant in any proceedings under the Solid Waste Act or this chapter.

[20.9.3.38 NMAC - N, 08/02/07]

20.9.3.39 FEE SCHEDULE.

A. Fees are required from applicants for all permit applications, modifications, and applications for permit renewals. Fees shall be paid by the applicant at the time of application and are non-refundable. Fees for individual facility types shall be cumulative if more than one type is included in the permit application.

B. For a municipal or special waste landfill which receives, based on the projected operational rate:

(1) 20 tons or less of waste per day, annual average, the permit application fee shall be \$6,000;

(2) more than 20 tons of waste per day, annual average, the permit application fee shall be \$10,000;

(3) special waste, in addition to the facility permit application fee, an additional \$1000 per type of special waste, up to \$10,000 shall be paid.

C. For a construction and demolition landfill, the permit application fee shall be \$5,000.

D. For a processing facility, the permit application fee shall be \$5,000.

E. For a transformation facility, the permit application fee shall be \$10,000.

F. For a transfer station, the permit application fee shall be \$5,000.

G. For a recycling facility or composting facility that accepts solid waste, the permit application fee shall be \$2,000.

H. For a commercial hauler registration, the registration fee shall be \$100 if the hauler registers two trucks or fewer and hauls no special waste, and shall be \$300 if the hauler registers three trucks or more or hauls any special waste.

I. Fees for permit modifications shall be half of the stated permit application fee for that type facility.

J. Fees for permit renewals shall be the same as for new facilities.

K. The fee for resubmittal of an application that has been denied without prejudice shall be half of the stated permit application fee for that type of facility.

L. Fees shall be paid by check or money order, payable to "New Mexico Environment Department."

[20.9.3.39 NMAC - Rp, 20 NMAC 9.1.XI.1108, 08/02/07]

HISTORY OF 20.9.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center.

EIB 74-1, Solid Waste Management Regulations, filed 5/3/74.

EIB/SWMR-2, Solid Waste Management Regulations, filed 4/14/89.

EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/91.

EIB/SWMR-4, Solid Waste Management Regulations, filed 7/18/94.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/95) repealed 08/02/07.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 7/18/94) was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 9.1, Solid Waste Management Regulations, effective 11/30/95.

That pertinent portion of 20 NMAC 9.1, Subpart II, Solid Waste Management Regulations, Solid Waste Facility Permits, (filed 10/27/95), was **renumbered, reformatted and replaced** by 20.9.3 NMAC, Solid Waste Facility Permits and Registrations, effective 08/02/07.

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 9 SOLID WASTE
PART 4 SOLID WASTE AND
REGISTERED FACILITY MAXIMUM
SIZE, SITING CRITERIA, AND
DESIGN CRITERIA**

20.9.4.1 ISSUING AGENCY.
New Mexico Environmental Improvement Board.

[20.9.4.1 NMAC - Rp, 20 NMAC 9.1.I.001, 08/02/07]

20.9.4.2 SCOPE. This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.4.2 NMAC - Rp, 20 NMAC 9.1.I.002, 08/02/07]

20.9.4.3 STATUTORY AUTHORITY. NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.4.3 NMAC - Rp, 20 NMAC 9.1.I.003, 08/02/07]

20.9.4.4 DURATION. Permanent.

[20.9.4.4 NMAC - Rp, 20 NMAC 9.1.I.004, 08/02/07]

20.9.4.5 EFFECTIVE DATE. August 2, 2007, unless a later date is cited at the end of a section.

[20.9.4.5 NMAC - Rp, 20 NMAC 9.1.I.005, 08/02/07]

20.9.4.6 OBJECTIVE. The objective of Part 4 of Chapter 9 is to establish regulations governing solid waste and registered facility size, siting criteria and design criteria.

[20.9.4.6 NMAC - Rp, 20 NMAC 9.1.I.006, 08/02/07]

20.9.4.7 DEFINITIONS. [RESERVED]

[See 20.9.2.7 NMAC for Definitions.]

20.9.4.8 MAXIMUM SIZE. The secretary shall not issue a permit for any solid waste facility larger than 500 acres.

[20.9.4.8 NMAC - Rp, 20 NMAC 9.1.III.301, 08/02/07]

20.9.4.9 SITING CRITERIA FOR MUNICIPAL, OR SPECIAL

WASTE, CONSTRUCTION AND DEMOLITION LANDFILLS, AND MONOFILLS.

A. No municipal, construction and demolition, or special waste landfill or monofill shall be located where, on the date of the first public notice as required in 20.9.3 NMAC, any portion of the proposed disposal area is:

(1) in a floodplain, within 500 feet of a wetlands, or within 200 feet of a watercourse unless the watercourse has been altered pursuant to an approval from the army corps of engineers or other appropriate authority;

(2) where the top of the uppermost aquifer will be closer than 100 feet to the bottom of the fill, or for construction and demolition landfills that do not accept more than 25 tons per day annual average, where the top of the uppermost aquifer will be closer than 50 feet to the bottom of the fill;

(3) where new, abandoned, or exploration subsurface mines registered with the New Mexico department of energy, minerals and natural resources a may pose a risk of subsidence or instability;

(4) within 200 feet of a fault that has had a displacement within Holocene time (i.e., the past 11,000 years), unless the owner or operator demonstrates to the secretary that an alternative setback of less than 200 feet will prevent damage to the structural integrity of the facility and will be protective of public health, welfare and the environment;

(5) within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8;

(6) within 1,000 feet of a public water supply well or a private drinking water supply well with a sustainable yield of 100 gallons per minute or more, unless, in the case of registered unpermitted landfills, the well was constructed after the landfill began operations;

(7) within 350 feet of a public water supply well or private well with a maximum sustainable yield of less than 100 gallons per minute, unless the well was constructed after the landfill began operations or the well was installed by the landfill owner or operator for operational use;

(8) within the distance to airports set by the federal aviation administration unless the landfill owner or operator demonstrates that the federal aviation administration does not object to construction and operation of the landfill at the proposed site;

(9) within 50 feet of the facility property boundaries nor within 500 feet of a

permanent residence, school, hospital, institution or church, or unless, in the case of registered unpermitted landfills, the permanent residence, school, hospital, institution or place of worship was constructed after the landfill began operations;

(10) in an active alluvial fan (i.e., areas being currently aggraded by either permanent or intermittent streams;

(11) within areas that will result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in either 50 CFR Part 17 or by the New Mexico department of game and fish in its most recent biennial review;

(12) within seismic impact zones, unless the owner or operator demonstrates that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site; or

(13) within an unstable area, unless the owner or operator demonstrates that engineering measures have been incorporated into the landfill design to ensure that the integrity of the structural components of the landfill will not be disrupted.

B. Category 3 landfills that cannot make the demonstration specified in Paragraph (1) of Subsection A of this section pertaining to floodplains or Paragraph (8) of Subsection A of this section pertaining to airports, or Paragraph (13) of Subsection A of this section, pertaining to unstable areas, shall close in accordance with the closure and post-closure provisions in 20.9.6 NMAC.

[20.9.4.9 NMAC - Rp, 20 NMAC 9.1.III.302, 08/02/07]

20.9.4.10 SITING CRITERIA FOR COMPOSTING FACILITIES THAT ACCEPT SOLID WASTE. No composting facility that accepts solid waste shall be located:

A. in a floodplain, within 500 feet of a wetland, or within 200 feet of a watercourse, unless the watercourse has been altered pursuant to an approval from the army corps of engineers or other appropriate authority; or

B. within 500 feet of any permanent residence, school, hospital, institution or place of worship in existence at the time the permit application for the facility is filed.

[20.9.4.10 NMAC - Rp, 20 NMAC 9.1.III.304, 08/02/07]

20.9.4.11 SITING CRITERIA FOR TRANSFORMATION FACILITIES.

A. No transformation facility shall be located:

(1) in a floodplain, within 500

feet of a wetland, or within 200 feet of a watercourse unless the watercourse has been altered pursuant to an approval from the army corps of engineers or other appropriate authority;

(2) where new, abandoned or exploration subsurface mines may pose a risk of subsidence, instability, or ground water contamination;

(3) within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8;

(4) within 150 feet of the facility property boundaries; nor

(5) within an unstable area, unless the owner or operator demonstrates that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted.

B. No transformation facility having a throughput capacity of less than 1,000 pounds per hour shall be located within one mile of any residence, institution, school, place of worship, hospital or other transformation facility in existence on the date the initial permit application is filed with the department.

C. No transformation facility having a throughput capacity of 1,000 pounds per hour or greater shall be located within three miles of any residence, institution, school, place of worship, hospital or other transformation facility in existence on the date the initial permit application is filed with the department.

[20.9.4.11 NMAC - Rp, 20 NMAC 9.1.III.305, 08/02/07]

20.9.4.12 SITING CRITERIA FOR TRANSFER STATIONS AND PROCESSING FACILITIES. No transfer station or processing facility initially permitted after the effective date of these regulations shall be located in the following areas:

A. a floodplain, a watercourse, or a wetland, except:

(1) a transfer station property boundary may extend into or cross a floodplain, watercourse, or wetland if those areas will not be impacted by structures or activities of the facility; and

(2) engineering structures designed to prevent impacts to or from a floodplain, watercourse, or wetland may be constructed subject to prior approval of the secretary;

B. within 250 feet of a permanent residence, institution, school, place of worship, or hospital, that existed at the time the transfer station permit application was submitted, unless the applicant demon-

strates that a shorter distance of no less than 50 feet has been affirmatively approved by the local government;

C. within an unstable area, except where the owner or operator demonstrates that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted or unless otherwise approved by the secretary; or

D. within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8.

[20.9.4.12 NMAC - N, 08/02/07]

20.9.4.13 DESIGN CRITERIA FOR MUNICIPAL LANDFILLS, SPECIAL WASTE LANDFILLS AND MONOFILLS.

A. Except as specified in 20.9.2.14 NMAC and Subsection C of this section, all new municipal and special waste landfills and lateral expansions to existing municipal and special waste landfills shall provide a containment layer beneath the solid waste which is constructed:

(1) with a composite liner consisting of two components;

(a) the upper component shall consist of a minimum 30-mil flexible or a 60-mil high density polyethylene (HDPE) geomembrane liner or equivalent material; the geomembrane component shall be installed in direct and uniform contact with the lower component; and

(b) the lower component shall consist of a geosynthetic clay liner (GCL) or a minimum 24-inch thick layer of compacted soil having a saturated hydraulic conductivity of no more than 1×10^{-7} centimeters per second (cm/sec) throughout its thickness; the soil must be free of particles greater than one inch in any dimension; or

(2) with an alternative liner in accordance with a design, which provides protection equivalent to the composite liner defined in Paragraph (1) of this subsection.

B. When approving an alternative liner design under this section, the secretary shall consider at least the following factors:

(1) the climatic factors of the area; and

(2) the volume and physical and chemical characteristics of the leachate.

C. Asbestos waste monofills and scrap tire monofills may be exempted from the design criteria in this section if the owner or operator demonstrates to the secretary in the permit application that the waste will not generate leachate which poses a threat to ground

water quality, but shall still comply with Subparagraph (h) of Paragraph (1) of Subsection A of 20.9.6.9 NMAC.

D. Scrap tire monofills shall be designed with trenches not to exceed a maximum depth of 15 feet, a maximum width of 50 feet, and a maximum length of 100 feet. A distance of 40 feet shall be maintained between trenches. Trenches shall be filled to original grade.

E. The design and construction of all liners shall conform to the following criteria:

(1) general requirements:

(a) all liners must be able to withstand the projected loading stresses and disturbances from overlying waste, waste cover materials, and equipment operation;

(b) all liners shall incorporate a leachate collection system that meets the requirements of 20.9.4.15 NMAC; and

(c) all liners must be constructed with a minimum two percent slope to promote positive drainage and facilitate leachate collection;

(2) requirements for geosynthetic components:

(a) geosynthetic components of a liner system must be compatible with the waste to be contained; they must be able to resist chemical attack from the waste or leachate; this shall be demonstrated by means of manufacturer's test reports, or laboratory analyses;

(b) any geosynthetic materials installed on slopes greater than 25 percent, or on any slope where waste is projected to be more than 100 feet deep, must be designed to withstand the calculated tensile forces acting upon the geosynthetic materials; the design must consider the maximum friction angle of the geosynthetic with regard to any soil-geosynthetic or geosynthetic-geosynthetic interface and must ensure that overall slope stability is maintained; and

(c) field seams in geosynthetic material shall be oriented parallel to the line of maximum slope (i.e., oriented along, not across the slope); the number of field seams in corners and irregular shaped areas shall be minimized; there shall be no horizontal seam within five feet of the toe of the slope;

(3) requirements for the soil component of all liners:

(a) the bottom geosynthetic layer, shall be placed on a prepared subgrade consisting of, at a minimum, of a 6-inch layer of in-situ soil or select fill compacted to 90 percent standard Proctor density;

(b) the surface of the soil upon which a geosynthetic liner will be installed must be free of stones greater than 1/2-inch in any dimension, organic matter, local irregularities, protrusions, loose soil, and any abrupt changes in grade that could damage the geosynthetic liner; and

(c) the soil component of the composite liner defined in Subparagraph (b) of Paragraph (1) of Subsection A of this section shall be compacted to a minimum of 90 percent standard Proctor density and shall have the following physical characteristics unless otherwise specifically approved by the department:

(i) plasticity index greater than 10 percent;

(ii) liquid limit between 25 percent and 50 percent;

(iii) portion of material passing the No. 200 sieve (0.074 mm and less fraction) greater than 40 percent (by weight); and

(iv) clay content greater than 18 percent (by weight);

(4) all liners shall have a top protective cover of at least two feet of granular soil or other material specifically approved by the department; the protective cover shall, in addition to providing physical protection for the liner, facilitate the collection of leachate in the leachate collection system; materials used to construct the protective cover must ensure the hydraulic leachate head on the liner does not exceed one foot; the soil material shall be free of any organic matter and have the following physical characteristics unless otherwise specifically approved by the secretary:

(a) portion of material passing the No. 200 sieve (0.074 mm and less fraction) no greater than 5 percent by weight; and

(b) uniformity coefficient (Cu) less than 6 where Cu is defined as D_{60}/D_{10} . [20.9.4.13 NMAC - Rp, 20 NMAC 9.1.III.306, 08/02/07]

20.9.4.14 TESTING AND QUALITY CONTROL FOR LINERS AND FINAL COVERS.

A. All testing of geosynthetic and soil materials shall be performed in accordance with applicable American society of testing materials (ASTM) standards.

B. The construction and installation of all liners and final covers shall be done in accordance with a quality control plan approved in the permit. All testing and evaluation of liners shall be certified by a professional engineer licensed in New Mexico and experienced in liner installation, and shall be completed prior to the placement of the protective cover. All field testing of liners and final covers shall be the responsibility of an individual experienced in liner or cover installation and soils or geotextile engineering, as appropriate. The quality control plan shall:

(1) define the procedures required for obtaining samples and testing and reporting the test results for the installation of the liner and final cover;

(2) describe and illustrate to oper-

ating personnel all necessary procedures for maintaining the integrity of the liner, leachate collection systems, and final cover;

(3) for the soil component, prescribe the following minimum frequency of testing for the soil component of all liners and final covers, unless otherwise specifically approved by the department:

(a) soil from the borrow source shall be tested as follows:

(i) grain size shall be tested once every 1,000 cubic yards;

(ii) Atterberg limits shall be tested once every 5,000 cubic yards;

(iii) Proctor compaction moisture-density curve conformance shall be tested once every 5,000 cubic yards; and

(iv) laboratory permeability shall be tested once every 5,000 cubic yards; and

(b) during construction of the liner or cover, the soil shall be tested as follows:

(i) density and moisture content tested by nuclear desimeter shall be tested four times per acre per lift;

(ii) laboratory or in-situ permeability shall be tested once per 2 acres and laboratory samples shall be undisturbed or recompacted to the site-specific field conditions; and

(iii) total thickness (by survey) shall be tested once per acre (on grid);

(4) for the protective cover component of liners, when used to facilitate leachate drainage, prescribe the following minimum frequency of testing of the granular drainage layer, unless specifically approved by the department:

(a) grain size of the soil shall be tested once every 1,500 cubic yards; and

(b) total thickness of the drainage layer shall be tested five times per acre; and

(5) for the geomembrane component of all liners and final covers as defined in Subsection A of 20.9.4.13 NMAC and Subsection A of 20.9.6.9 NMAC, all testing, both shop and field, shall be as recommended by the manufacturer unless otherwise specifically approved by the department; the minimum frequency of taking seam samples for destructive testing shall be one per 500 feet of seam length, with a portion of each test sample tested in the field and another in the laboratory; seam samples shall be tested for peel adhesion and bonded seam strength; non-destructive testing shall be performed for all seams, seam repairs, and liner repairs.

[20.9.4.14 NMAC - Rp, 20 NMAC 9.1.III.307, 08/02/07]

20.9.4.15 LEACHATE COLLECTION SYSTEMS FOR LANDFILLS.

A. Except as specified in 20.9.2.14 NMAC and Subsection C of 20.9.4.13 NMAC, all new municipal and special waste landfills and lateral expansions shall include a leachate collection system, which shall be designed by a professional engineer licensed to practice in New Mexico, and which shall incorporate a piping collection network comprised of perforated pipe having a minimum diameter of 6 inches and a minimum wall thickness of schedule 80 PVC or equivalent and shall be designed and constructed to:

(1) maintain less than a one-foot depth of leachate on the liner;

(2) maintain a minimum of two percent slope throughout the system, within the lined landfill cell; an alternate slope may be specifically approved by the secretary for leachate conveyance piping outside the disposal cell footprint;

(3) withstand chemical attack from waste and leachate; and

(4) withstand the loads, stresses, and disturbances from overlying waste, waste cover materials, and equipment operation.

B. Any geosynthetic materials such as geonets and geotextiles, if used as components of the leachate collection system, must have a hydraulic conductivity, transmissivity and chemical and physical qualities that will not be adversely affected by waste placement, equipment, operation, or leachate generation. These geosynthetics, if used and operating in conjunction with the soil protective cover for the liner as described in Paragraph (4) of Subsection E of 20.9.4.13 NMAC, must have a hydraulic conductivity and transmissivity designed to ensure the hydraulic head on the liner never exceeds one foot.

C. A written leachate management plan shall be submitted for approval by the secretary. The plan shall describe anticipated amounts of leachate, duration of generation and final disposal options for the leachate and shall include:

(1) a description of the means of analysis; and

(2) a description of the type of treatment and proposed disposal method.

D. Leachate storage and collection ponds shall be designed to meet the requirements of 20.9.4.13 NMAC. A pond may be designed to maintain greater than one foot of leachate, provided it is equipped with a double, composite liner as specified in 20.9.4.13 NMAC, or an alternative design providing equivalent protection and approved in the permit.

[20.9.4.15 NMAC - Rp, 20 NMAC 9.1.III.308, 08/02/07]

20.9.4.16 LANDFILL GAS CONTROL SYSTEMS.

A. Owners and operators

of landfills who install a landfill gas control system in order to conform with the requirements of Subsection B of 20.9.5.9 NMAC shall submit a description of the physical and chemical characteristics of expected condensates or residues that are generated and a plan for their disposal. The disposal plan shall be submitted with a permit application or as a request for a specific approval. In addition, if the gas control system is not subject to the Air Quality Control Act, NMSA Sections 74-2-1, et seq., the owner or operator shall include the following information in its submission:

(1) the design of the system, indicating the location and design of vents, barriers, collection piping and manifolds and other control measures that will be installed; and

(2) if gas recovery is proposed, the design of the proposed gas recovery system and the major on-site components of the system including storage, transportation, processing, treatment or disposal measures required in the management of the generated gases, condensates or other residues.

B. If a gas processing system is proposed, it shall be designed:

(1) so that it will not interfere with activities on the site or required control measures; and

(2) so that it will not create a nuisance, endanger or cause harm to persons or property.

C. If a gas disposal system is proposed, it shall be designed:

(1) so that it will not interfere with activities on the site or required control measures;

(2) so that it will not create a nuisance, endanger or cause harm to persons or property; and

(3) with active forced ventilation, using vents located at least one foot above the landfill surface at the location of each gas vent.

[20.9.4.16 NMAC - Rp, 20 NMAC 9.1.III.309, 08/02/07]

20.9.4.17 RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS.

A. The secretary may issue a research, development, and demonstration permit in conjunction with a new solid waste facility permit for a municipal or special waste landfill, or as a permit modification for an already permitted municipal or special waste landfill, under the following conditions:

(1) the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria:

(a) the run-on control systems required by Subsection E of 20.9.5.9

NMAC; and

(b) if sludge is used, the liquids restrictions in Paragraph (9) of Subsection A of 20.9.2.10 NMAC and 20.9.8.16 NMAC;

(2) the landfill has a leachate collection system designed and constructed to maintain less than a one foot depth of leachate on the liner; and

(3) the landfill is not operating under an exemption set forth in 20.9.2.14 NMAC.

B. The following requirements shall apply to any landfill that is issued a research, development, and demonstration permit under Subsection A of this section:

(1) the liquids to be used at the landfill shall be pre-approved by the department in accordance with Paragraph (9) of Subsection A of 20.9.2.10 NMAC and 20.9.8.16 NMAC;

(2) the landfill shall install a landfill gas collection and control system in accordance with emission control requirements as specified in 40 CFR Part 60; and

(3) the fluids to be used at the landfill shall be pre-approved by the department.

C. The secretary may issue a research, development, and demonstration permit for a permitted landfill for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of Subparagraphs (b) and (c) of Paragraph (1) of Subsection A of 20.9.6.9 NMAC or Subparagraph (a) of Paragraph (2) of Subsection A of 20.9.6.9 NMAC provided the landfill owner or operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of ground water or surface water, or cause leachate depth on the liner to exceed one foot.

D. Any permit issued under Subsection C of this section shall include terms and conditions at least as protective as the criteria for municipal solid waste landfills to assure protection of human health and the environment. Such permits shall:

(1) provide for the construction and operation of such facilities as necessary, for not longer than two and one-half years, unless renewed as provided in Subsection F of this section;

(2) provide that the landfill must receive only those types and quantities of municipal solid waste and non-hazardous wastes which the secretary deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing infor-

mation to the secretary with respect to the operation of the facility;

(4) require the owner or operator of a landfill permitted under this section to submit an annual report to the secretary showing whether and to what extent the site is progressing in attaining project goals; the report shall also include a summary of all monitoring and testing results, as well as any other operating information specified by the secretary in the permit; and

(5) require compliance with all criteria in 20.9.2 - 20.9.10 NMAC, except as permitted under this section.

E. The secretary may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the secretary determines that imminent danger exists to human health or the environment. The owner or operator may appeal the secretary's order by filing a request for hearing within 30 days of the date of the secretary's order. The appeal shall be conducted in accordance with the procedures in 20.1.5 NMAC, Adjudicatory Procedures - Environment Department.

F. Any permit issued under this section shall not exceed two and one-half years and each renewal of a permit shall not exceed two and one-half years.

(1) The total term for a permit for a project including renewals shall not exceed twelve years.

(2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other information requested by the secretary.

[20.9.4.17 NMAC - N, 08/02/07]

HISTORY OF 20.9.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center.

EIB 74-1, Solid Waste Management Regulations, filed 5/3/74.

EIB/SWMR-2, Solid Waste Management Regulations, filed 4/14/89.

EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/91.

EIB/SWMR-4, Solid Waste Management Regulations, filed 7/18/94.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/95) repealed 08/02/07.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 7/18/94) was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 9.1, Solid Waste Management Regulations,

effective 11/30/95.

That pertinent portion of 20 NMAC 9.1, Subpart III, Solid Waste Management Regulations, Maximum Size, Siting Criteria; Design Criteria, (filed 10/27/95), was **renumbered, reformatted and replaced** by 20.9.4 NMAC, Solid Waste and Registered Facility Maximum Size, Siting Criteria, and Design Criteria, effective 08/02/07.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 9 SOLID WASTE PART 5 SOLID WASTE FACILITY AND COMMERCIAL HAULERS OPERATING REQUIREMENTS

20.9.5.1 ISSUING AGENCY.
New Mexico Environmental Improvement Board.
[20.9.5.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

20.9.5.2 SCOPE. This part applies to the transportation, storage, transfer, processing, transformation, and disposal of solid waste.
[20.9.5.2 NMAC - Rp, 20 NMAC 9.1.I.002, 8/2/2007]

20.9.5.3 STATUTORY AUTHORITY. NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.
[20.9.5.3 NMAC - Rp, 20 NMAC 9.1.I.003, 8/2/2007]

20.9.5.4 DURATION. Permanent.
[20.9.5.4 NMAC - Rp, 20 NMAC 9.1.I.004, 8/2/2007]

20.9.5.5 EFFECTIVE DATE. August 2, 2007, unless a later date is cited at the end of a section.
[20.9.5.5 NMAC - Rp, 20 NMAC 9.1.I.005, 8/2/2007]

20.9.5.6 OBJECTIVE. The objective of Part 5 of Chapter 9 is to establish regulations governing operating requirements for solid waste facilities and commercial haulers.
[20.9.5.6 NMAC - Rp, 20 NMAC 9.1.I.006, 8/2/2007]

20.9.5.7 DEFINITIONS.
[RESERVED]
[See 20.9.2.7 NMAC for Definitions.]

20.9.5.8 GENERAL OPERATING REQUIREMENTS FOR ALL SOLID WASTE FACILITIES.

A. Owners and operators of each solid waste facility shall:

(1) operate the facility in a manner that does not cause a public nuisance or create a potential hazard to public health, welfare or the environment;

(2) control and mitigate odor and litter; and

(3) post signs to indicate the location of the site, the hours of operation, emergency telephone numbers, disposal instructions, and that fires and scavenging are prohibited.

B. Owners and operators of a solid waste facility shall:

(1) have a certified operator or representative present at all times while the facility is operational;

(2) implement a plan approved by the secretary to inspect loads to detect and prevent the disposal of unauthorized waste, including:

- (a) inspection frequency;
- (b) inspection personnel;
- (c) method of inspection; and

(d) a training program for the facility employees in the identification of unauthorized waste, including hazardous waste, hot waste, and PCB's;

(3) maintain a written operating record in compliance with 20.9.5.16 NMAC;

(4) notify the department both orally and in writing within 24 hours of an occurrence of a spill, fire, flood, explosion, mass movement of waste, or similar event;

(5) upon discovery of the receipt of unauthorized waste:

(a) notify the department, the hauler, and the generator in writing within 48 hours;

(b) restrict the area from public access and from facility personnel; and

(c) assure proper cleanup, transport and disposal of the waste;

(6) ensure that copies of contingency plans are readily accessible to employees on duty; and

(7) train employees when hired and at least annually thereafter on when and how to implement contingency plans and document in the operating record that such training has been conducted.

C. The secretary may order temporary changes in operation or facility design in emergency situations when the secretary determines there is an imminent danger to public health, welfare or the environment.

D. If recyclable materials such as used oil, antifreeze, paint, or similar materials are diverted from the waste stream at a solid waste facility, the materials shall be stored for no longer than twelve months

and shall be maintained in a covered area, not exposed to the weather, with secondary containment.

[20.9.5.8 NMAC - Rp, 20 NMAC 9.1.IV.401, 8/2/2007]

20.9.5.9 ADDITIONAL MUNICIPAL, SPECIAL WASTE, AND MONOFILL LANDFILL OPERATING REQUIREMENTS.

All municipal and special waste landfill owners and operators shall:

A. utilize the principles of sanitary engineering to:

(1) confine the working face to the smallest practical area;

(2) compact the solid waste to the smallest practical volume; and

(3) minimize exposure of landfill employees and the public to animal carcasses and offal, and immediately cover such wastes when they are received;

B. prevent the generation and lateral migration of methane such that:

(1) the concentration of methane generated by the facility does not exceed 25 percent of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(2) the concentration of methane does not exceed the LEL at the facility property boundary;

C. implement a routine methane monitoring program to ensure that the requirements of Paragraphs (1) and (2) of Subsection B of this section are met;

(1) the type and frequency of monitoring shall be determined based on the following conditions:

(a) soil conditions;

(b) the hydrogeologic conditions surrounding the facility;

(c) the hydraulic conditions surrounding the facility; and

(d) the location of facility structures and property lines;

(2) the minimum frequency of monitoring shall be quarterly, except that landfills that receive less than 20 tons per day annual average, or closed prior to October 9, 1993, or monofills may be permitted for less frequent monitoring, provided on-site measurements indicate methane levels are consistently less than 25 percent of the LEL for methane; and

(3) if methane gas levels exceed the limits specified in Paragraphs (1) and (2) of Subsection B of this section, the owner or operator shall:

(a) immediately take all necessary steps to ensure protection of public health, welfare and the environment and notify the secretary;

(b) within seven days of detection, record the methane levels detected and a description of the steps taken to protect

public health, welfare and the environment; and

(c) within 60 days of detection, implement a remediation plan approved by the secretary for the methane releases, and notify the secretary that the plan has been implemented; the plan shall describe the nature and extent of the problem and proposed remedy;

D. prevent unauthorized access by the public and entry by large animals to the active portion of the landfill through the use of fences, gates, locks, or other means;

E. control run-on water onto the site and run-off water from the site, such that:

(1) the run-on control system shall prevent flow onto the active portion of the landfill during the peak discharge from a 24-hour, 25-year storm;

(2) the run-off control system from the active portion of the landfill collects and controls at least the water volume resulting from a 24-hour, 25-year storm; and

(3) run-off from the active portion of the landfill shall not be allowed to discharge any pollutant to the waters of the state or United States that violates any requirements of the New Mexico Water Quality Act, commission regulations and standards or the federal Clean Water Act;

F. prohibit scavenging;

G. provide adequate means to prevent and extinguish fires;

H. direct the deposit of hot waste at a specific location at the facility which is remote from the operating area; the hot waste shall be immediately spread out for cooling and extinguished if on fire; the hot waste shall not be mixed with the regular solid waste stream until it reaches a temperature that will not support combustion;

I. provide and maintain access roads at the facility site, such that traffic can enter and exit the site safely, will flow smoothly, and will not be interrupted by inclement weather;

J. provide sufficient unloading areas to meet demands of peak periods;

K. measure leachate head on the liner and sump pump as necessary, and except as otherwise allowed in Paragraph (9) of Subsection A of 20.9.2.10 NMAC, 20.9.2.14 NMAC and Subsection C of 20.9.4.13 NMAC, collect and treat leachate by a method approved by the secretary and maintain records on a quarterly basis of leachate generation and treatment;

L. control litter, disease vectors, dust and odors;

M. notify the department prior to installing exploratory borings for the purpose of waste characterization or mapping or removing waste for routine

maintenance on gas collection and control or venting systems, unless the event involves less than 120 cubic yards of solid waste;

N. cover the active face with a six-inch layer of earth or specifically approved alternate daily cover at the conclusion of each day's operation or more often as conditions may dictate, except that for landfills that receive less than 20 tons of waste per day annual average or monofills, the permit may allow alternate frequencies to the daily cover requirements; when permitting a reduced frequency, the secretary shall:

(1) consider the unique characteristics of small communities;

(2) consider climatic and hydrogeologic conditions;

(3) consider measures to prevent vector harborage and animal intrusion; and

(4) determine that the approved frequency will be protective of human health and the environment;

O. provide intermediate cover which shall be:

(1) at least one foot thick, or other specifically approved thickness;

(2) placed on all areas of a landfill that have not received waste for 60 days or longer, or have not reached final elevation;

(3) stabilized with vegetation or other specifically approved method on any areas that have been inactive for more than two years; and

(4) constructed and maintained to prevent erosion and infiltration; and

P. if diversion of recyclable materials is conducted:

(1) perform the diversion in a sanitary manner, with storage confined to an area remote from the operating area of the landfill, and in a manner which does not interfere with or delay the operation of the landfill or create a nuisance, litter problem, vector harborage, or public health hazard;

(2) remove all recyclable materials from the facility in a timely manner such that the area does not become a permanent storage area; and

(3) store recyclables in such a manner that the area is clean, materials are separated by type, and the potential for contamination is minimized;

Q. owners or operators of municipal or special waste landfills permitted after the effective date of these regulations to accept 25,000 tons per year or more, shall, prior to commencing operations, install scales at the landfill and weigh incoming waste;

R. owners or operators of municipal or special waste landfills permitted or registered before the effective date of these regulations to accept 25,000 tons per year or more, shall no later than five years after the effective date of these regulations,

install scales at the landfill and weigh incoming waste;

S. owners and operators of scrap tire monofills shall accept no solid waste for disposal other than baled scrap tires;

T. a landfill permitted as a special waste landfill may accept municipal waste and construction and demolition waste if approved in its permit.

[20.9.5.9 NMAC - Rp, 20.9.1.IV.402 NMAC, 8/2/2007]

20.9.5.10 ADDITIONAL CONSTRUCTION AND DEMOLITION LANDFILL OPERATING REQUIREMENTS. All construction and demolition landfill owners and operators shall:

A. minimize the on-site population of disease vectors through the periodic application of cover material or other techniques as appropriate so as to protect public health, welfare and the environment;

B. apply and compact soil or apply other suitable material over disposed construction and demolition debris at the end of each operating day or at such frequencies and in such a manner as to reduce the risk of fire and impede vectors' access to the waste;

C. prevent the generation and lateral migration of methane such that:

(1) the concentration of methane generated by the facility does not exceed 25 percent of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(2) the concentration of methane does not exceed the LEL at the property boundary; and

D. limit public access so as to not expose the public to potential health and safety hazards at the facility.

[20.9.5.10 NMAC - Rp, 20 NMAC 9.1.IV.403, 8/2/2007]

20.9.5.11 ADDITIONAL TRANSFER STATION OPERATING REQUIREMENTS. Owners and operators of transfer stations shall:

A. accept special wastes only when specifically authorized to do so by a permit;

B. use containers for storage of solid waste that are leak-proof and manufactured of non-biodegradable material;

C. provide adequate means to control litter and prevent and extinguish fires;

D. conduct any recycling operations in a safe and sanitary manner, confined to an area remote from the tipping area, and in a manner that does not interfere with transfer operations;

E. store recyclable materials in a manner that does not create a nuisance, harbor vectors, or create a public health hazard, and remove recyclable materials in a timely manner;

F. provide sufficient unloading areas to meet demands of peak periods;

G. provide adequate off-street parking facilities for transfer vehicles;

H. not park collection or transfer vehicles containing putrescible materials on public streets or roads except under emergency conditions;

I. remove solid waste from the station at the end of the operating day unless otherwise approved in the permit; and

J. provide separate storage areas for bulky wastes, such as brush, white goods, appliances, and scrap tires, and remove the bulky wastes at a frequency approved in the permit.

[20.9.5.11 NMAC - Rp, 20 NMAC 9.1.IV.404, 8/2/2007]

20.9.5.12 ADDITIONAL TRANSFORMATION FACILITY OPERATION OPERATING REQUIREMENTS. Owners and operators of transformation facilities shall:

A. control dust in the unloading and charging areas in such a manner as to prevent explosions and fugitive dust emissions;

B. maintain appropriate fire-fighting equipment in the charging and storage areas and elsewhere as needed;

C. conduct any recycling operations in a sanitary manner, which does not interfere with transformation operations and remove all recyclable materials, in a timely manner or store them so as not to create a nuisance, vector harborage, or public health hazard;

D. provide sufficient unloading areas to meet demands of peak periods;

E. provide sufficient training for all new employees so that equipment may be operated according to design specifications, and conduct review training annually;

F. prominently post key operational procedures;

G. store any special wastes generated by the transformation facility in covered buildings, in covered leak-proof containers, or in tanks, which shall be labeled with a description of the contents and the date the wastes were placed in storage;

H. provide audible signals to alert operating personnel of critical operating unit malfunctions;

I. provide sampling points of each process stream that do not

interfere with normal facility operation;

J. if a facility is permitted to handle special wastes, provide separate areas for storage while the special wastes await processing or transport;

K. store special wastes in a manner to assure that they are protected from weather elements and fire and to assure that incompatible wastes are kept separate; and

L. establish an ash testing program prior to start-up of the transformation facility; representative samples of both fly ash and bottom ash shall be tested in accordance with 20.9.8.11 NMAC; test methods, the number of tests, detection limits, and parameters to be tested shall be approved in the permit or registration; frequency of testing shall be one sample per month taken within 5 days of the beginning of the month, unless an alternate test frequency is specifically approved by the department based on a demonstration that the ash is homogenous.

[20.9.5.12 NMAC - Rp, 20 NMAC 9.1.IV.405, 8/2/2007]

20.9.5.13 ADDITIONAL OPERATING REQUIREMENTS FOR RECYCLING FACILITIES THAT ACCEPT SOLID WASTE AND PROCESSING FACILITIES. Owners and operators of recycling facilities that accept solid waste and processing facilities shall:

A. prominently post key operational procedures;

B. store any special wastes:

- (1) in separate, clearly marked areas;
- (2) in covered buildings; and
- (3) in covered leak-proof containers, or in tanks labeled with a description of the contents and the date the wastes were placed in storage;

C. provide audible signals to alert operating personnel of critical operating unit malfunctions;

D. provide sampling points of each process stream that do not interfere with normal facility operation;

E. provide for periodic wash-down or other cleanup of the facility and dispose of any waste waters in accordance with all applicable state and federal regulations;

F. store waste residues by means that prevent the material and containers from falling, leaking, blowing, and exposure to the weather;

G. store all materials that are physically or chemically incompatible in separate areas;

H. provide storage capacity for any special waste by-products generated during the initial start-up characterization period;

I. store any material containers that have the potential of discharging any oils, polychlorinated biphenyls (PCB's), battery acid, battery alkalines, or other liquids in a restricted area identified by signs on a covered, substance-compatible, bermed containment pad; and

J. include a schedule and contacts for removal of stored wastes in the operations and maintenance manual.

[20.9.5.13 NMAC - Rp, 20 NMAC 9.1.IV.406, 8/2/2007]

20.9.5.14 COMMERCIAL HAULER OPERATING REQUIREMENTS.

A. Commercial haulers shall:

(1) collect and transport waste so as to prevent environmental, safety, and public health or welfare hazards and nuisances;

(2) utilize equipment that is designed, constructed and operated so as to be leak-proof and protective of human health and safety and the environment;

(3) cover or enclose the waste to prevent littering during transportation;

(4) keep collection and transportation equipment in a clean condition through the use of sufficient washings and cleanouts;

(5) only transport waste to a facility that is permitted or registered under 20.9.2 - 20.9.10 NMAC or that is authorized by another government; provided that this is not to be construed to limit initial sorting of solid waste on site;

(6) immediately clean up any solid waste spilled during collection or hauling operations;

(7) conspicuously label all solid waste collection vehicles with the company, municipality, or county department name;

(8) conspicuously label all solid waste collection vehicles with the environment department registration number;

(9) take reasonable measures to assure that unauthorized wastes are not accepted; and

(10) if hauling special waste, carry a contingency plan and clean-up kit as approved pursuant to Paragraphs (3) and (4) of Subsection B of 20.9.3.31 NMAC.

B. Commercial haulers shall provide prior notification to the department, in writing, of any major changes in collection operations or disposal facility being used. A major change includes an addition of a type of waste, a change in ownership, a change in location and a change in the disposal facility being used. In the case of emergency, where prior notice cannot be given, written notice shall be given within 48 hours after the change.

C. All infectious waste commercial haulers shall comply with the

following transportation requirements:

(1) infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle compartment, unless all of the waste has been treated as infectious waste in accordance with 20.9.8.13 NMAC;

(2) employers of persons loading or unloading containers of infectious waste shall assure that employees wear appropriate personal protective equipment and shall conform with 29 CFR 1910.132 and shall have available for inspection a certification that the required workplace hazard assessment has been performed;

(3) surfaces of transport vehicles contaminated by infectious waste shall be decontaminated;

(4) vehicles transporting infectious waste shall be identified on each side of the vehicle with the name or trademark of the commercial hauler, the environment department registration number, and a bio-hazard symbol;

(5) each vehicle or container used for shipping infectious waste shall be so designed and constructed, and its contents limited so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment;

(6) any vehicle or container used for shipping infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation;

(7) no person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by 20.9.8.13 NMAC;

(8) all generator storage containers shall be labeled with the generator's name, the city of origin, and date of collection;

(9) periods of storage and transportation of infectious waste by commercial haulers shall be limited to seven days prior to disposal or treatment unless the waste is refrigerated at or below 45 degrees Fahrenheit; the total period of storage and transportation shall not exceed 45 days unless specifically approved by the secretary; and

(10) all accidents, spills, releases, or other similar incidents with the potential to adversely impact public health or welfare or the environment shall be immediately reported to the New Mexico emergency response center.

D. Commercial haulers shall maintain an operating record documenting activities for at least the preceding three year period. The operating record shall include:

(1) type and weight or volume of

solid waste hauled;

(2) state, county, and municipality in which the solid waste originated; and

(3) solid waste facilities utilized.
[20.9.5.14 NMAC - Rp, 20 NMAC 9.1.IV.408, 8/2/2007]

20.9.5.15 CONTINGENCY PLAN FOR EMERGENCIES.

A. 20.9.5.15 NMAC applies to owners and operators of all solid waste facilities except as otherwise provided.

B. The owner or operator shall maintain a current contingency plan at each solid waste facility. The contingency plan shall be designed to minimize hazards to public health, welfare or the environment from fires, explosions, or any release of contaminants or hazardous constituents to air, soil, surface water or ground water.

C. A copy of the contingency plan shall be kept at the facility and copies shall be provided to the emergency response authority of the local emergency management center.

D. The provisions of the contingency plan shall be carried out immediately whenever there is a fire, explosion, or release of contaminants or hazardous constituents which could pose an immediate or imminent threat to public health, welfare or the environment.

E. The contingency plan shall be amended immediately, if necessary, whenever:

(1) the facility permit is renewed or modified;

(2) the plan fails in an emergency;

(3) the facility's design, operations, maintenance, or other circumstances change in a way that increases the potential for fires, explosions, or releases of hazardous constituents, or necessitate changes to the planned emergency response;

(4) the list of emergency coordinators changes; or

(5) the list of emergency equipment changes.

F. The contingency plan for emergencies shall, if applicable:

(1) describe the actions facility personnel should take in response to fires, explosions, or releases of contaminants or hazardous constituents to air, soil, surface water, or ground water;

(2) describe arrangements with local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services;

(3) list the name(s) and telephone numbers of the emergency coordinator(s); if more than one person is listed, one must be named as the primary emergency coordinator;

(4) include a list of all emergency

equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment), along with the location, physical description, and a summary of the capabilities of each item;

(5) include an evacuation plan for facility personnel which describes signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked by fire or releases of wastes;

(6) include an evaluation of potential contaminants, potential media contaminated, and procedures for investigation, containment, and correction or remediation;

(7) indicate when the contingency plan must be amended;

(8) instruct the emergency coordinator or his designee, in case of an imminent or actual emergency situation, to immediately:

(a) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(b) notify appropriate state and local agencies with designated response roles if their assistance is needed;

(9) instruct the emergency coordinator, whenever there is a release, fire, or explosion, to as quickly as possible identify the nature, source, amount, and extent of any release by means of observation, review of facility records or manifests, or if necessary, by chemical analysis;

(10) instruct the emergency coordinator to assess possible hazards to public health, welfare or the environment that may result from the release, fire, or explosion;

(11) instruct the emergency coordinator to provide for monitoring for leaks, pressure buildup, gas generation or rupture in valves, pipes, or equipment, if appropriate;

(12) instruct the emergency coordinator to provide for appropriate treatment, storage, or disposal of recovered waste, or any other material that results from a release, fire, or explosion at a facility, after the emergency situation is under control; and

(13) instruct the emergency coordinator to ensure that waste which may be incompatible with the released material is not treated, stored, or disposed until cleanup procedures are complete.

[20.9.5.15 NMAC - Rp, 20 NMAC 9.1.VIII.811, 8/2/2007]

20.9.5.16 RECORD KEEPING AND ANNUAL REPORTS.

A. Owners and operators of solid waste facilities shall make and maintain an operating record during the active life of the facility, for each day that

operations, monitoring, or closure occurs, including:

(1) the type (including special waste) and weight or volume of each load of solid waste received;

(2) the country (if other than the United States), state, county, and municipality in which the solid waste originated (i.e. the origin);

(3) the business name of any commercial hauler of solid waste for each load of the solid waste if it can be reasonably obtained;

(4) type and weight or volume of non-solid waste materials, as referenced in Paragraph (9) of Subsection S of 20.9.2.7 NMAC, received;

(5) a record of load inspections, including:

(a) date and time of inspection;

(b) business name of the commercial hauler and driver name;

(c) vehicle license number and description;

(d) origin of the waste; and

(e) any pertinent observations made during the inspection;

(6) a description of solid waste or special waste handling problems or emergency disposal activities;

(7) a record of deviations from the approved design or operational plans;

(8) for a transfer station, the origin of and destination of the solid waste if transported out of state;

(9) all monitoring and testing results;

(10) plans for operations, contingencies, detection and identification of unauthorized waste, and any other plans required by 20.9.2 - 20.9.10 NMAC;

(11) documentation of the implementation of required plans;

(12) copies of special waste manifests required under 20.9.8.19 NMAC;

(13) copies of certificates of processing, transformation, or disposal of special wastes required under 20.9.8.13 NMAC;

(14) financial assurance information, including a copy of the current standby trust document, current estimates for closure, post-closure care, phase I and phase II assessments and a copy of the financial assurance mechanism being utilized;

(15) a complete and current copy of the facility permit, final order issuing the permit, and any approvals granted by the secretary under 20.9.2 - 20.9.10 NMAC;

(16) a daily log of construction activities; and

(17) for landfills, any demonstration made to the secretary under Paragraphs (12) and (13) of Subsection A of 20.9.4.9 NMAC regarding seismic impact areas and unstable areas.

B. A copy of the operating record for the current month and the previous twelve months, at a minimum, shall be kept on site, unless the facility no longer accepts solid waste, after which time it shall be kept in a place where it can be made available to the department.

C. Owners and operators of solid waste facilities shall make and maintain an operating record during the post-closure period of the facility for each day that monitoring, corrective action, or other post-closure activity occurs, including:

(1) a record of any deviations from the approved post-closure care plan;

(2) all monitoring and testing results;

(3) documentation of the implementation of required plans and any exceptions to those plans;

(4) financial assurance information, including current estimates for closure, post-closure care, phase I and phase II assessments and a copy of the financial assurance mechanism being utilized;

(5) a complete and current copy of the facility permit, final order issuing the permit, and any approvals granted by the secretary under 20.9.2 - 20.9.10 NMAC; and

(6) any other information specifically required by the secretary.

D. Owners or operators of solid waste facilities shall submit an annual report to the department for each facility or operation, within 45 days from the end of each calendar year, describing the operations of the past year. The reports must be certified as true and accurate by the owner or operator and shall include:

(1) the type and weight or volume of waste materials received each month and the country (if other than the U.S.), state, county, and municipality in which the waste originated;

(2) the type and weight or volume of solid waste received from each commercial hauler that delivered waste to the facility;

(3) for a landfill, a description of the capacity used in the previous year and the remaining capacity;

(4) for a landfill, a description of the acreage used for disposal, the acreage seeded, the acreage where vegetation is permanently established and a description of the progress in implementing the closure plan;

(5) the weight or volume of each type of special waste received at the solid waste facility in the previous year;

(6) a summary of all monitoring results (not including the results required under 20.9.9.10 NMAC);

(7) written notice to the secretary

if any change in operation has occurred that will reduce the active life of the facility by 25 percent or more;

(8) type and weight or volume of materials recycled during the year;

(9) final disposition of materials not stored or recycled;

(10) amount of leachate generated and treated or recirculated;

(11) an annual financial assurance certification on forms supplied by the department;

(12) the latitude and longitude of the geographical center of the existing or proposed facility (as approved by the department) in NAD-83 or equivalent; and

(13) any other information requested by the secretary.

E. All records and plans required by 20.9.2 - 20.9.10 NMAC shall be furnished upon request and made available at all reasonable times for inspection by the secretary.

F. Operating records and copies of annual reports for solid waste facilities shall be retained by the owner or operator through the post-closure period.

[20.9.5.16 NMAC - Rp, 20 NMAC 9.1.1.109, 8/2/2007]

HISTORY OF 20.9.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center.

EIB 74-1, Solid Waste Management Regulations, filed 5/3/74.

EIB/SWMR-2, Solid Waste Management Regulations, filed 4/14/89.

EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/91.

EIB/SWMR-4, Solid Waste Management Regulations, filed 7/18/94.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/95) repealed 8/2/2007.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 7/18/94) was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 9.1, Solid Waste Management Regulations, effective 11/30/95.

Those applicable portions of 20 NMAC 9.1, Subpart I, General Provisions; Subpart IV, Solid Waste Facility Operation Requirements; and Subpart VIII, Ground Water Monitoring - Corrective Action - Contingency Plan, all (filed 10/27/95), were **renumbered, reformatted and replaced** by 20.9.5 NMAC, Solid Waste Facility and Commercial Haulers Operating Requirements, effective 8/2/2007.

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 9 SOLID WASTE
PART 6 SOLID WASTE
FACILITY AND COMPOSTING
FACILITY CLOSURE AND POST-
CLOSURE REQUIREMENTS**

20.9.6.1 ISSUING AGENCY.

New Mexico Environmental Improvement Board.

[20.9.6.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

20.9.6.2 SCOPE. This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.6.2 NMAC - Rp, 20 NMAC 9.1.I.002, 8/2/2007]

20.9.6.3 STATUTORY AUTHORITY. NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.6.3 NMAC - Rp, 20 NMAC 9.1.I.003, 8/2/2007]

20.9.6.4 DURATION . Permanent.

[20.9.6.4 NMAC - Rp, 20 NMAC 9.1.I.004, 8/2/2007]

20.9.6.5 EFFECTIVE DATE. August 2, 2007, unless a later date is cited at the end of a section.

[20.9.6.5 NMAC - Rp, 20 NMAC 9.1.I.005, 8/2/2007]

20.9.6.6 OBJECTIVE. The objective of Part 6 of Chapter 9 is to establish regulations governing closure and post-closure care of solid waste facilities.

[20.9.6.6 NMAC - Rp, 20 NMAC 9.1.I.006, 8/2/2007]

20.9.6.7 DEFINITIONS .

[RESERVED]

[See 20.9.2.7 NMAC for Definitions.]

20.9.6.8 GENERAL REQUIREMENTS FOR CLOSURE AND POST CLOSURE CARE.

A. Closure and post-closure care plans are required of all solid waste facilities that operated on or after May 14, 1989. The owner or operator of a solid waste facility that has closed but not submitted a closure and post-closure care plan shall submit such a plan within 180

days of the effective date of these regulations. The submitted plan shall meet the requirements of 20.9.6 NMAC.

B. The owner or operator of the solid waste facility shall prepare a written closure and post-closure care plan that describes the steps necessary for closure and post-closure care of the solid waste facility and any anticipated future uses of the property following closure.

C. Closure and post-closure care plans are required in the application for a permit or permit modification. One initial copy of the plan and two copies of the completed plan shall be submitted to the department.

D. The owner or operator of the solid waste facility shall notify the secretary in writing of the intent to close at least 90 days before closure occurs and shall notify the secretary in writing within 14 days after becoming a locked facility.

E. Closure and post-closure care plans for new solid waste facilities and modifications to existing facilities shall be approved as part of the facility permit.

F. All closure and post-closure care plans shall be approved by the secretary and may be subject to conditions.

G. Closure and post-closure care plans for existing non-permitted landfills that seek to close rather than continue to operate, shall be submitted for approval by the secretary within one year after the effective date of this part. The closure and post-closure care plan shall meet the requirements of 20.9.6 NMAC. After determining that the plan is complete, the secretary shall provide public notice of the plan in a newspaper of general circulation in the county where the facility is located. A non-adjudicatory hearing will be held if significant public interest warrants it. Approved closure and post-closure plans for unpermitted category 2 and 3 landfills shall be enforceable as a permit or regulation for purposes of 20.9.2 - 20.9.10 NMAC and the Solid Waste Act. Any landfill that operates after the effective date of these regulations shall have a closure and post-closure care plan approved as part of the permit, or shall seek approval of a closure and post-closure care plan.

H. Responses to the secretary's requests for additional information concerning a proposed closure and post-closure care plan shall be made within 90 days of receipt of such a request. The secretary may extend the response time for good cause.

I. Post-closure inspection and maintenance shall not be required of the facility if the owner or operator demonstrates to the secretary that all solid waste has been removed, requirements of the closure plan have been met, and following the removal of such wastes, a demonstration is

made that the soil and ground water have not been contaminated.

J. All landfills, regardless of category, except construction and demolition debris landfills, which close after October 9, 1991, shall comply with the final cover requirements contained in 20.9.6.9 NMAC in addition to other closure requirements in effect at the time of closure.

K. The length of the post-closure care period may be decreased by the secretary if the owner or operator demonstrates that the reduced period is sufficient to protect public health, welfare, and the environment, or it may be increased by the secretary if the secretary determines that a longer period is necessary to protect health, welfare, and the environment. The time period for application of the provisions for financial assurance as defined in 20.9.10 NMAC shall be coincident with the time period of the post-closure care period. Any reduction or extension of the post-closure care period as described in this section shall be accompanied by an identical reduction or extension of the financial assurance provisions.

L. The owner or operator shall submit a closure report to the department within 60 days after closure completion. The report shall include:

(1) a summary of closure activities; and

(2) a certification by a New Mexico registered professional engineer that the closure of the solid waste facility has been completed and all conditions of the approved closure plan have been satisfied.

M. The active life of the facility terminates, and post-closure care begins, upon written verification by the department that the facility has been closed in accordance with the closure plan approved by the secretary.

N. The owner or operator shall submit a post-closure report to the department within 60 days after the post-closure period expires. The report shall include:

(1) a summary of post-closure activities; and

(2) a certification by a New Mexico registered professional engineer that the post-closure requirements, and if applicable, any corrective action requirements have been completed and all conditions of the approved post-closure care plan have been satisfied.

O. The post-closure care period for the facility terminates upon written verification by the secretary that the requirements of the approved post-closure care plan have been satisfied. If the secretary does not issue a verification, the secretary shall notify the owner or operator in writing that the activities required under 20.9.6 NMAC and 20.9.9 NMAC have not

been conducted satisfactorily, and specify the reasons for such determination.

P. The secretary may require the owner or operator to amend the post-closure care plan if the secretary believes that the present or future implementation of the plan may cause a threat to human health or the environment.

[20.9.6.8 NMAC - Rp, 20 NMAC 9.1.V.501, 8/2/2007]

20.9.6.9 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR MUNICIPAL AND SPECIAL WASTE LANDFILLS, AND MONOFILLS.

A. Owners and operators of municipal landfills and special waste landfills shall begin closure within 30 days after the landfill receives the final receipt of waste or within 30 days after approval of the closure and post-closure care plan, whichever is later.

(1) Owners and operators shall install a final cover system which consists of the following:

(a) for municipal and special waste landfills (except monofills) that are not lined and which never received more than 7,300 tons of waste (i.e., an average of 20 tons or less per day annual average) during any calendar year, an infiltration layer comprised of a minimum of 18 inches of earthen material having a saturated hydraulic conductivity no greater than 1×10^{-5} cm/sec;

(b) for municipal landfills which exceed the tonnage requirements of Subparagraph (a) of this paragraph and for all special waste landfills (other than monofills), an infiltration layer comprised of a minimum of 18 inches of earthen material having a saturated hydraulic conductivity less than or equal to the saturated hydraulic conductivity of any bottom liner system or natural subsoils present, or a saturated hydraulic conductivity no greater than 1×10^{-5} cm/sec., whichever provides for less infiltration;

(c) a layer for minimizing erosion consisting of a minimum of six inches of earthen material that is capable of sustaining native plant growth;

(d) any necessary gas vents provided they are sealed to assure no water infiltration;

(e) finished grades over filled areas which shall not exceed 25 percent (four feet horizontal to one foot vertical), or be less than five percent for new landfills and lateral expansions permitted for construction, operation, and closure after the effective date of these regulations or two percent for all other landfills;

(f) run-off controls designed for a peak discharge of a 24-hour, 25-year storm;

(g) cover material compacted to no less than 75 percent and no more than 85 percent standard proctor density unless otherwise approved in the permit, closure plan or by specific approval; and

(h) for closure of a cell containing only regulated asbestos waste or scrap tires, the owner or operator shall cover with 30 inches of compacted native soils and 6 inches topsoil on top of the 30-inch cover, to provide a 36-inch final cover to the original grade and implement measures where necessary to control erosion and rodent intrusion.

(2) The secretary may permit an alternative final cover design that includes:

(a) an infiltration layer that achieves an equivalent reduction in infiltration as specified in Subparagraph (a) or (b) of Paragraph (1) of this subsection, as applicable; and

(b) an erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in Subparagraph (c) of Paragraph (1) of this subsection;

(c) for landfills that stopped accepting waste prior to the effective date of this part, finished grades different from those specified in Subparagraph (e) of Paragraph (1) of this subsection, provided a demonstration is made that the alternate grades will prevent erosion and will provide equivalent reduction in infiltration; and

(d) for landfills accepting waste after the effective date of this part and lateral expansions permitted after the effective date of this part, finished grades different than those specified in Subparagraph (e) of Paragraph (1) of this subsection, provided no grade is greater than 33 percent and a demonstration is made in the closure plan or permit or modification application that the alternate grades will prevent erosion and will provide equivalent reduction in infiltration.

(3) The written closure plan, at a minimum, shall include the following information:

(a) a schedule for completion of all activities necessary to meet the closure criteria specified in this part;

(b) a report that includes:

(i) a description of the local geology;

(ii) a description of the hydrogeology of the landfill site, including maps and cross-sections illustrating subsurface features;

(iii) well locations, depths to ground water, and, if available, ground water quality, flow direction and gradient shown on a topographic map; and

(iv) a description of the landfill, including: a) the date operations commenced and the date of final receipt of waste; b) the types of waste accepted at the

landfill; c) the total volume of waste disposed; d) a topographic map that shows the size and dimensions of fill areas; e) a topographic map that shows structures, drainages, and water wells in the area of the landfill; and f) a topographic map that shows methane monitoring points and methane concentrations along the landfill property boundary and within structures located on landfill property;

(c) a description of the final cover and its placement, including:

(i) thickness and saturated hydraulic conductivity;

(ii) source of the cover material;

(iii) a construction quality assurance/construction quality control plan for placement of the final cover that meets the requirements of 20.9.4.14 NMAC;

(iv) equipment that will be utilized to apply the final cover and ensure it is adequately compacted to obtain the appropriate proctor density; and

(v) a map that shows final contours that meet the requirements of Subparagraph (e) of Paragraph (1) of this subsection;

(d) a vegetation plan, including:

(i) the seeding method to obtain proper growth density; and

(ii) species of vegetation to be planted, including grasses or local seed mix as recommended for the area by the natural resources conservation service for permanent soil stabilization and to minimize wind and water erosion;

(e) a plan to prevent unauthorized access by the public and entry by large animals to the landfill through the use of fences, gates, locks, or other means;

(f) a plan to remove structures, unless otherwise approved by the secretary;

(g) a description of the signs indicating that the site is a closed landfill and no dumping is permitted; all signs shall include the name and telephone number of the landfill owner; and

(h) a post-closure care plan, including:

(i) a monitoring and repair plan that describes methods to be used to ensure cover integrity, including but not limited to settlement, ponding, water erosion, wind erosion, and inadequate drainage, to ensure the final cover meets the slope requirements of 20.9.6.9 NMAC, and to maintain adequate vegetation during the post-closure period;

(ii) a methane monitoring plan in compliance with Subsections B and C of 20.9.5.9 NMAC;

(iii) a ground water monitoring plan; and

(iv) a leachate collection system plan, if applicable;

(4) prior to beginning closure of a landfill, the owner or operator shall notify the secretary that a notice of the intent to close the landfill has been placed in the operating record;

(5) the owner or operator shall complete closure activities in accordance with the closure plan within 180 days following the beginning of closure, unless otherwise approved in the closure plan; extensions of the closure period may be granted by the secretary if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and has taken and will continue to take all steps necessary to prevent threats to public health, welfare and the environment;

(6) upon completion of closure, a detailed description of the location of areas of waste disposal at the facility, including a plat signed by a registered surveyor, shall be filed with the appropriate county land recording agent; the description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the secretary; the description shall perpetually notify any potential purchaser of the property that:

(a) the land has been used as a landfill facility;

(b) its use is restricted as described in the post-closure care plan; and

(7) the owner or operator may request permission from the secretary to file a revised description if all wastes are removed from the facility.

B. Landfill owners or operators shall submit reports of monitoring performance and data to the secretary within 45 days after the end of each calendar year.

C. The post-closure care period for a landfill shall be 30 years.

D. The owner or operator may amend the post-closure care plan, provided the amendment is not a permit modification, by submitting a request to the secretary at least 30 days prior to the proposed change. No proposed amendment shall be effective unless first approved in writing by the secretary.

E. The secretary may require the owner or operator to modify or amend the post-closure care plan if the secretary determines that the present or future implementation of the plan may cause a threat to public health, welfare and or the environment.

[20.9.6.9 NMAC - Rp, 20 NMAC 9.1.V.502, 8/2/2007]

20.9.6.10 CONSTRUCTION AND DEMOLITION LANDFILL CLOSURE AND POST-CLOSURE REQUIREMENTS.

A. Owners and operators of construction and demolition landfills

shall comply with the following closure requirements.

(1) A final cover of not less than 24 inches of approved material shall be placed over the entire surface of each portion of the final lift starting no later than 30 days and completed within 60 days after the known final receipt of waste. The final cover shall consist of a compacted layer of not less than 18 inches of approved material and a layer for minimizing erosion of not less than 6 inches of approved material that is capable of sustaining native plant growth.

(2) The finished grades over filled areas shall not exceed 25 percent (four feet horizontal to one foot vertical), or be less than five percent for landfills permitted after the effective date of these regulations or two percent for all other landfills. The slope shall be sufficient to prevent the ponding of water and the erosion of the cover material. For existing landfills, the secretary may approve slopes which exceed 25 percent grade provided the owner demonstrates there is no practicable alternative and the steeper slopes can be permanently stabilized to prevent erosion.

(3) The owner or operator shall provide a plan showing the final contours and vegetation in relationship to the surrounding land, the description of final use of the land with drawings as appropriate, and a description of vegetation to provide permanent soil stabilization.

(4) Upon completion of closure, a detailed description of the location of areas of waste disposal at the site, including a plat signed by a registered surveyor, shall be filed with the appropriate county land recording agency. The description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the secretary. The description shall perpetually notify any potential purchaser of the property that:

(a) the land has been used as a landfill; and

(b) its use is restricted as described in the post-closure care plan.

(5) The owner or operator may request permission from the secretary to file a revised description if all wastes are removed from the facility.

B. Post-closure care for construction and demolition landfills shall be for a period of 30 years and includes control of erosion, maintenance of cover, top slopes, side slopes, drainage, and vegetation. The owner or operator of a construction and demolition landfill shall conduct post-closure care inspections:

(1) at least once a year for the first three years; and

(2) at least once every three years, thereafter.

[20.9.6.10 NMAC - Rp, 20 NMAC 9.1.V.503, 8/2/2007]

20.9.6.11 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR COMPOSTING FACILITIES THAT ACCEPT SOLID WASTE.

A. Within 30 days of closure, composting facility owners or operators shall:

(1) remove all windrows and invessel compost material on the compost facility's real property;

(2) remove or vegetate compacted compost material that may be left on the land;

(3) drain ponds or leachate collection systems, back fill, and assure removed contents are properly disposed;

(4) provide cover if necessary; and

(5) if required in the approved closure plan, remove buildings, fences, roads, and equipment, clean up the site, and conduct tests on the soils for contamination.

B. Composting facility owners or operators shall:

(1) maintain ground water monitoring, if required to detect possible migration of contaminants; and

(2) inspect and maintain any cover material.

C. Post-closure inspection and maintenance shall not be required if the facility owner or operator demonstrates that all requirements of closure have been met and there is no evidence of contamination.

[20.9.6.11 NMAC - Rp, 20 NMAC 9.1.V.504, 8/2/2007]

20.9.6.12 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR OTHER SOLID WASTE FACILITIES.

A. Owners or operators of solid waste facilities other than landfills shall comply with the following requirements:

(1) cleanup of the area;

(2) dismantling and removal of any improvements related to solid waste handling or disposal, if required in the approved closure plan, such as;

(a) removal of buildings;

(b) removal of fences;

(c) removal of roads; and

(d) removal of equipment;

(3) testing of soils and ground water for contamination, if required in the approved closure plan; and

(4) all other conditions of the permit.

B. Post-closure inspection and maintenance may be waived upon written approval of the secretary, if the facility owner or operator demonstrates to the department that all requirements of closure have been met and there is no evidence of contamination.

[20.9.6.12 NMAC - Rp, 20 NMAC 9.1.V.505, 8/2/2007]

HISTORY OF 20.9.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center.

EIB 74-1, Solid Waste Management Regulations, filed 5/3/74.

EIB/SWMR-2, Solid Waste Management Regulations, filed 4/14/89.

EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/91.

EIB/SWMR-4, Solid Waste Management Regulations, filed 7/18/94.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/95) repealed 8/2/2007.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 7/18/94) was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 9.1, Solid Waste Management Regulations, effective 11/30/95.

That applicable portion of 20 NMAC 9.1, Subpart V, Closure and Post-Closure Requirements, (filed 10/27/95), was **renumbered, reformatted and replaced** by 20.9.6 NMAC, Solid Waste Facility and Composting Facility Closure and Post-Closure Requirements, effective 8/2/2007.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 9 SOLID WASTE PART 7 SOLID WASTE FACILITY AND REGISTERED FACILITY OPERATOR CERTIFICATION

20.9.7.1 ISSUING AGENCY.
New Mexico Environmental Improvement Board.
[20.9.7.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

20.9.7.2 SCOPE. This part applies to all certified operators of solid waste facilities, composting facilities and recycling facilities.
[20.9.7.2 NMAC - Rp, 20 NMAC 9.1.I.002, 8/2/2007]

20.9.7.3 STATUTORY AUTHORITY. NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.
[20.9.7.3 NMAC - Rp, 20 NMAC 9.1.I.003,

8/2/2007]

20.9.7.4 DURATION.
Permanent.

[20.9.7.4 NMAC - Rp, 20 NMAC 9.1.I.004, 8/2/2007]

20.9.7.5 EFFECTIVE DATE.
August 2, 2007, unless a later date is cited at the end of a section.

[20.9.7.5 NMAC - Rp, 20 NMAC 9.1.I.005, 8/2/2007]

20.9.7.6 OBJECTIVE. The objective of Part 7 of Chapter 9 is to establish a rule governing operator certification requirements for operators of solid waste facilities, composting facilities and recycling facilities.

[20.9.7.6 NMAC - Rp, 20 NMAC 9.1.I.006, 8/2/2007]

20.9.7.7 DEFINITIONS.
[RESERVED]
[See 20.9.2.7 NMAC for Definitions.]

20.9.7.8 GENERAL PROVISIONS.

A. Owners and operators of landfills and transformation facilities shall require the managers of those facilities to attend, at least once every three years, a training program offered by the department or department certified training program on the subject of environmental justice.

B. To become a certified operator an individual shall:

(1) complete a certification training course offered by the department or its designated agent, or equivalent training approved by the department;

(2) pass an examination approved by the department;

(3) have at least one year of experience in the operation of a facility of the same type as that for which certification is sought;

(4) file an application with the department on a form provided by the department;

(5) meet the requirements of the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13 (1998 Cum. Supp.);

(6) for operators of municipal waste incinerators, also meet the training requirements of New Mexico Municipal Waste Combustion rule, 20.2.62 NMAC; and

(7) for operators of biomedical waste incinerators, also meet the training requirements of New Mexico Biomedical Waste Combustion rule, 20.2.63 NMAC.

C. Operator certification is valid for three years from date of issuance.

D. The department may certify an operator with alternate training.

Alternate training shall be equivalent to or more extensive than the department's course work, and shall be approved by the department. It shall be the applicant's responsibility to submit any documentation the department may require to evaluate the equivalency of alternate training.

E. A person holding certification in a particular facility type may operate any facility of that type.

[20.9.7.8 NMAC - Rp, 20 NMAC 9.1.VI.601, 8/2/2007]

20.9.7.9 OPERATOR CERTIFICATION TRAINING COURSES.

A. All operator certification training courses, with the exception of the transformation facility operator training course, will be offered by the department or other approved authority at least once every twelve months.

B. All operator certification training courses shall, at a minimum, address:

- (1) composition of wastes;
- (2) facility design;
- (3) facility staffing and operations;

(4) transportation requirements;

(5) traffic flow control;

(6) environmental monitoring;

(7) handling of special wastes;

(8) identification of unauthorized wastes, including hot waste, hazardous wastes and materials, and PCB's;

(9) environmental health and safety;

- (10) waste diversion;
- (11) applicable laws and rules;
- (12) the permitting process;
- (13) documentation, including manifests, operating records, and reports;
- (14) pollution prevention; and
- (15) environmental justice.

C. In addition to the requirements of Subsection B of this section, the landfill operator training course shall address:

- (1) interpretation and use of engineering plans;
- (2) surveying techniques;
- (3) waste decomposition;
- (4) basic geology and hydrology;
- (5) landfill gas generation and control;
- (6) leachate generation and control;
- (7) landfill cover systems;
- (8) closure and post-closure care;
- (9) vector control; and
- (10) odor control.

D. In addition to the requirements of Subsection B of this section, the recycling facility operator training course shall address:

- (1) equipment operation and technology;

- (2) materials flow;
- (3) quality control; and
- (4) distribution and marketing.

E. In addition to the requirements of Subsection B of this section, the transformation facility operator training course shall address:

- (1) theory of combustion;
- (2) basic chemistry;
- (3) basic thermodynamics;
- (4) equipment operation and technology;
- (5) air pollution control technology;
- (6) ash handling and disposal;
- (7) control room operation;
- (8) continuous emissions monitors and their calibration;
- (9) efficacy testing;
- (10) waste decomposition; and
- (11) waste flow.

F. In addition to the requirements of Subsection B of this section, the composting facility operator training course shall address:

- (1) basic microbiology;
- (2) basic chemistry;
- (3) waste decomposition;
- (4) compost end use, distribution and marketing;
- (5) composting equipment operations, care and maintenance;
- (6) composting processing methods and techniques;
- (7) quality control;
- (8) yard waste and food waste collection systems;
- (9) sludge handling;
- (10) odor control; and
- (11) vector control.

G. In addition to the requirements of Subsection B of this section, the transfer station operator training course shall address:

- (1) controls and operations;
- (2) equipment operation and technology;
- (3) waste flow;
- (4) vehicle operations and safety;
- (5) large waste item handling;
- (6) odor control; and
- (7) vector control.

[20.9.7.9 NMAC - Rp, 20 NMAC 9.1.VI.602 - 20 NMAC 9.1.VI.607, 8/2/2007]

20.9.7.10 EXAMINATION.

A. A written examination shall be administered at the conclusion of each training course. Certification requires a score of at least 70 percent on the examination.

B. Results of the examination shall be forwarded to the trainee within 60 days after the date of the examination. A certificate shall be forwarded to the trainee within 60 days after the trainee provides

documentation that he has met all the applicable requirements of Subsection B of 20.9.7.8 NMAC.

[20.9.7.10 NMAC - Rp, 20 NMAC 9.1.VI.608, 8/2/2007]

20.9.7.11 RECIPROCITY. The department may issue certificates without examination to applicants who hold valid certificates or licenses issued by any state, territory, or foreign jurisdiction, provided, the department determines the requirements for such certification are equivalent to those set forth in 20.9.7.8 - 20.9.7.10 NMAC.

[20.9.7.11 NMAC - Rp, 20 NMAC 9.1.VI.609, 8/2/2007]

20.9.7.12 RECERTIFICATION.

A. To maintain certification, certified operators shall apply for recertification at least 30 days prior to the expiration date of their certification.

B. Recertification shall be obtained by making application to the department and successfully completing:

(1) an operator certification training course offered by the department or its designated agent;

(2) an alternate training course which has been approved by the department; or

(3) 24 hours of course work which has been approved by the department.

[20.9.7.12 NMAC - Rp, 20 NMAC 9.1.VI.610, 8/2/2007]

20.9.7.13 SUSPENSION OR REVOCATION OF CERTIFICATION.

A. An operator's certification may be suspended or revoked by the secretary for:

(1) failure to comply with the terms or conditions of a solid waste facility permit or a facility registration;

(2) fraud, deceit or submission of inaccurate qualification information;

(3) violation of the Solid Waste Act or 20.9.2 - 20.9.10 NMAC by the certified operator; or

(4) failure to comply with the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13 (1998 Cum. Supp.).

B. Suspension and revocation proceedings shall be conducted in accordance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to 61-1-33; 20.1.5 NMAC and if applicable, 20.1.7 NMAC.

[20.9.7.13 NMAC - Rp, 20 NMAC 9.1.VI.611, 8/2/2007]

HISTORY OF 20.9.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed

with the commission of public records - state records center.

EIB 74-1, Solid Waste Management Regulations, filed 5/3/74.

EIB/SWMR-2, Solid Waste Management Regulations, filed 4/14/89.

EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/91.

EIB/SWMR-4, Solid Waste Management Regulations, filed 7/18/94.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/95) repealed 8/2/2007.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 7/18/94) was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 9.1, Solid Waste Management Regulations, effective 11/30/95.

That applicable portion of 20 NMAC 9.1, Subpart VI, Operator Certification, (filed 10/27/95), was **renumbered, reformatted and replaced** by 20.9.7 NMAC, Solid Waste Facility and Registered Facility Operator Certification, effective 8/2/2007.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 9 SOLID WASTE
PART 8 SPECIAL WASTE
REQUIREMENTS**

20.9.8.1 ISSUING AGENCY. New Mexico Environmental Improvement Board.

[20.9.8.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

20.9.8.2 SCOPE. This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.8.2 NMAC - Rp, 20 NMAC 9.1.I.002, 8/2/2007]

20.9.8.3 STATUTORY AUTHORITY. NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.8.3 NMAC - Rp, 20 NMAC 9.1.I.003, 8/2/2007]

20.9.8.4 DURATION. Permanent.

[20.9.8.4 NMAC - Rp, 20 NMAC 9.1.I.004, 8/2/2007]

20.9.8.5 EFFECTIVE DATE. August 2, 2007, unless a later date is cited at the end of a section.
[20.9.8.5 NMAC - Rp, 20 NMAC 9.1.I.005, 8/2/2007]

20.9.8.6 OBJECTIVE. The objective of Part 8 of Chapter 9 is to establish regulations governing the management of special waste, including manifest requirements for the transportation of special waste.
[20.9.8.6 NMAC - Rp, 20 NMAC 9.1.I.006, 8/2/2007]

20.9.8.7 DEFINITIONS.
[RESERVED]
[See 20.9.2.7 NMAC for Definitions.]

20.9.8.8 GENERAL. The generator of a special waste shall assure that the special waste is disposed of in a solid waste facility permitted to accept the special waste or treated at a permitted facility, prior to disposal, to render it a non-special waste.
[20.9.8.8 NMAC - Rp, 20 NMAC 9.1.VII.701, 8/2/2007]

20.9.8.9 RESTRICTIONS.
A. No solid waste facility shall accept special waste unless the facility owner or operator has been issued a permit to accept that type of special waste for disposal, transfer, processing, or transformation.

B. No person may incinerate infectious waste except in an infectious waste incinerator permitted under 20.9.2 - 20.9.10 NMAC.

C. A hauler of special waste shall not deliver special waste to any place or person except to a facility that has been issued a permit to accept that type of special waste for disposal, transfer, processing or transformation.
[20.9.8.9 NMAC - Rp, 20 NMAC 9.1.VII.702, 8/2/2007]

20.9.8.10 GENERAL REQUIREMENTS FOR SPECIAL WASTE.

A. Any person who stores a special waste shall assure that the special waste is stored at designated special waste storage areas meeting the requirements of 20.9.8 NMAC.

B. No person who stores special waste shall store the waste for longer than 90 days from the date the waste is placed in storage awaiting transportation, processing, or final disposal, unless otherwise approved by the department, except no person other than the generator shall store infectious waste for over seven days without refrigeration at or below 45 degrees fahrenheit.

C. A generator of special

waste shall assure that all containers of special waste when deemed full and placed in storage are clearly labeled or marked, indicating the name and address of the generator, contents, date placed in storage and potential health, safety, and environmental hazards associated with the waste.

D. A generator of special waste shall assure that all containers of special waste that are prepared for transportation are clearly labeled or marked, indicating the name and address of the generator, contents, and potential health, safety, and environmental hazards associated with the waste.

E. A hauler of special waste shall assure that all containers of special waste are clearly labeled or marked prior to transportation, indicating the name and address of the generator, contents, date transported, and potential health, safety, and environmental hazards associated with the waste.

F. Any generator or hauler of special waste shall assure that a manifest in accordance with 20.9.8.19 NMAC accompanies each load of special waste originating in or to be disposed in New Mexico;

G. A hauler of special waste shall carry an appropriate clean-up kit in each vehicle used for hauling.

[20.9.8.10 NMAC - Rp, 20 NMAC 9.1.VII.703, 8/2/2007]

20.9.8.11 REQUIRED ANALYSIS.

A. The generator of a special waste shall document the physical and chemical characteristics of all special wastes for storage, transportation or disposal, by means of:

(1) records of the results of analyses performed in accordance with this section as applicable; or

(2) detailed descriptions of the generator's knowledge of specific wastes, including process, source and chemical and physical properties;

(3) or both.

B. All laboratory analyses shall be performed by a laboratory that follows U.S. EPA quality assurance and quality control procedures in accordance with U.S. EPA approved analytical methods or such other methods acceptable to the department.

C. Representative sample(s) shall be analyzed in conformance with the following parameters as appropriate:

(1) ignitability characteristic as defined in 40 CFR Part 261;

(2) corrosivity characteristic as defined in 40 CFR Part 261;

(3) reactivity characteristic as defined in 40 CFR Part 261;

(4) toxicity characteristic as defined by U.S. EPA test method 1311: toxicity characteristic leaching procedure (TCLP);

(5) paint filter liquids test as defined by U.S. EPA Test Method 9095;

(6) additional parameters as identified by the department;

(7) RCRA Subtitle C listed wastes as defined in 40 CFR Part 261; and

(8) Toxic Substance Control Act (TSCA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), or other applicable statutes.

[20.9.8.11 NMAC - Rp, 20 NMAC 9.1.VII.704, 8/2/2007]

20.9.8.12 ASBESTOS WASTE.

A. The generator of asbestos waste shall prevent public access to asbestos wastes at the point of generation. Haulers of asbestos waste shall prevent public access to asbestos waste during transportation.

B. Generators of asbestos waste shall determine whether the asbestos waste is regulated asbestos waste. If it is not regulated asbestos waste, and it is to be disposed as non-regulated asbestos waste, the generator shall assure that the asbestos waste is handled in a manner to prevent the asbestos waste from becoming regulated asbestos waste. The handling of non-regulated asbestos waste shall include measures to assure that any category I non-friable asbestos containing material is not subjected to sanding, grinding, cutting or abrading and that any category II non-friable asbestos containing material is not subjected to forces expected to break, crumble, pulverize or reduce the material to powder during the course of excavation, renovation, demolition, or storage, and that it is disposed at a permitted landfill. If the waste is regulated asbestos waste it shall be disposed at a landfill permitted to accept regulated asbestos waste and shall be handled accordingly.

C. If non-regulated asbestos waste is to be disposed as non-regulated asbestos waste, the hauler of non-regulated asbestos waste shall handle the waste in a manner to prevent the asbestos waste from becoming regulated asbestos waste. The handling of non-regulated asbestos waste by a hauler shall include measures to assure that any category I non-friable asbestos containing material is not subjected to abrading and that any category II non-friable asbestos containing material is not subjected to forces expected to break, crumble, pulverize or reduce the material to powder during the course of storage, transportation, or while exposed during disposal operations. The hauler shall notify the landfill operator that the load contains non-regulated asbestos waste that must be disposed of in a manner to prevent breakage

and release of fibers while exposed during disposal operations.

D. A landfill that accepts non-regulated asbestos waste shall assure that the asbestos containing material is not broken, abraded, crumbled, pulverized or reduced to powder while exposed during disposal operations. The non-regulated asbestos waste shall be covered with at least six inches of non-waste containing material prior to compaction.

E. The generator of regulated asbestos waste shall properly wet and containerize the waste. No hauler shall accept or transport regulated asbestos waste unless the waste has been properly wetted and containerized.

(1) Regulated asbestos waste is properly wetted when its moisture content prevents fiber release.

(2) Regulated asbestos waste is properly containerized when it is placed in a plastic bag of 6-mil or thicker, sealed in such a way to be leak-proof, and the amount of void space or air in the bag is minimized. Asbestos waste slurries shall be packaged in leak-proof drums if they are too heavy for the plastic bag containers. Regulated asbestos waste may also be containerized by double bagging, using plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(a) Pipes or other facility components that are removed as sections without first removing the asbestos shall be wrapped in a minimum of 6-mil plastic sufficient to prevent asbestos fibers from escaping.

(b) The hauler shall ensure that regulated asbestos waste is properly contained in a manner to prevent asbestos fibers from escaping and with appropriate labels, and that the outsides of the containers are not contaminated with asbestos debris adhering to the containers. The transporter shall not accept nor transport regulated asbestos waste if there is a reason to believe that the condition of the asbestos waste may allow fiber release.

(3) The hauler shall ensure that the regulated asbestos waste containers are loaded into the transport vehicle in a manner which prevents the breaking of the containers. The hauler shall ensure that the asbestos waste containers are transferred at the disposal site in such a manner to prevent fiber release.

(a) If the hauler discovers that the regulated asbestos waste is not properly containerized in conformance with Paragraph (2) of this subsection, the hauler shall immediately clean up the contaminated area and repair or reseal the container by appropriate methods. The department shall be notified of any release within 24 hours. The transporter shall ensure that all containers in his possession are of adequate design

and condition to prevent the release of fibers during transport.

(b) Vehicles used for transport of containerized regulated asbestos waste shall have an enclosed carrying compartment or utilize a canvas or plastic lined covering sufficient to contain the transported waste, prevent damage to containers, and prevent fiber release. All surfaces of vehicles and other asbestos handling equipment and facilities shall be maintained free from the accumulation of dusts and waste containing asbestos and shall have a smooth, non-absorbent finish. No vehicle which uses compactors to reduce waste volume may be used to transport asbestos waste. Vacuum trucks used to transport waste slurry shall be inspected to ensure that liquid is not leaking from the truck.

(c) The hauler of the regulated asbestos waste shall notify the landfill operator that the load contains regulated asbestos waste.

F. All regulated asbestos containers, to include individually wrapped facility components or pipes, shall have a warning label specified by the U.S. EPA or the occupational safety and health administration (OSHA). Labels shall be printed in both English and Spanish.

G. The operator of a landfill permitted to accept regulated asbestos waste shall:

(1) inspect the loads at the time of disposal at the landfill to verify that the regulated asbestos waste is properly contained and labeled;

(2) if the wastes are not properly containerized and the landfill operator accepts the load, thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste containing material to prevent fiber release, prior to compacting the waste in the landfill;

(3) prepare a separate excavation to receive only regulated asbestos wastes; the excavation shall be as narrow as possible while complying with all occupational safety and health administration (OSHA) regulations and standards;

(4) align the excavation perpendicular to the prevailing winds;

(5) off-load asbestos containers within the excavation with sufficient care to avoid breaking the containers;

(6) completely cover the containerized waste within 18 hours with a minimum of six inches of non-waste containing material;

(7) completely cover improperly containerized regulated asbestos waste with six inches of non-waste containing material immediately; and

(8) not compact the regulated asbestos waste until it is completely covered with six inches of non-waste containing

material.

H. If, at any time during the generation or transportation of non-regulated asbestos waste the waste material is subjected to handling that renders it to be regulated asbestos waste, the generator or hauler shall immediately begin handling the regulated asbestos waste according to the requirements of this part, and shall dispose of the regulated asbestos waste in a landfill or monofill permitted to accept such waste.

I. When closing a cell containing regulated asbestos waste, the landfill operator shall:

(1) cover with an additional 30 inches of compacted non-waste containing material to provide a 36-inch final cover to the original grade; and

(2) implement measures as necessary to control erosion and rodent intrusion.

J. The operator of a landfill that accepts regulated asbestos shall provide barriers adequate to control public access. At a minimum, the owner or operator shall:

(1) limit access to the regulated asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to deter access by the general public; and

(2) place warning signs at the entrance and at intervals no greater than 100 feet along the perimeter of the sections where regulated asbestos waste is deposited. The sign shall read as follows in English and other languages as approved by the department:

ASBESTOS WASTE DISPOSAL SITE
DO NOT CREATE DUST
BREATHING ASBESTOS IS
HAZARDOUS
TO YOUR HEALTH

the signs shall be posted in such a manner and location that a person can easily read the legend and conform to the requirements of 20 inches by 14 inches upright format signs specified in 29 CFR 1910.145(d)(4) (or equivalent regulation adopted by the board under the Occupational Health and Safety Act); spacing between any two lines shall be at least equal to the height of the upper of the two lines; and

(3) have at least one employee who has received at least 32 hours of course work in a U.S. EPA certified training course which deals with the identification, hazards and management of asbestos wastes. An employee with this training shall be present at all times when asbestos wastes are being disposed.

[20.9.8.12 NMAC - Rp, 20 NMAC 9.1.VII.705, 8/2/2007]

20.9.8.13 INFECTIOUS WASTE.

A. This section applies:

(1) without regard to the quantity of infectious waste generated, to any generator of infectious waste including, but not limited to:

- (a) general acute care hospitals;
- (b) skilled nursing facility or convalescent hospitals;
- (c) intermediate care facilities;
- (d) in-patient care facilities for the developmentally disabled;
- (e) dialysis clinics;
- (f) free clinics;
- (g) community clinics;
- (h) employee clinics;
- (i) health maintenance organizations;
- (j) home health agencies;
- (k) surgical clinics;
- (l) urgent care clinics;
- (m) acute psychiatric hospitals;
- (n) blood/plasma centers;
- (o) laboratories;
- (p) medical buildings;
- (q) physicians offices;
- (r) veterinarians;
- (s) dental offices;
- (t) acupuncturists;
- (u) funeral homes;
- (v) eye clinics; and
- (w) tattoo parlors and body-piercing establishments; and

(2) to all infectious waste storage areas, processing, transformation, transfer and disposal facilities, other than sewage treatment systems that provide secondary treatment of waste.

B. All material that has been rendered non-infectious is not subject to the handling requirements of this section, provided:

(1) if it is an otherwise regulated, hazardous, special, or radioactive waste, it shall be handled according to regulations applicable to that type of waste;

(2) any person that processes or transforms infectious waste shall certify in writing on at least an annual basis, or upon any change that could affect the efficacy of the treatment that the waste has been rendered non-infectious by sterilization, incineration or another method approved by the secretary; a certification that the waste has been rendered non-infectious shall be provided to the generator, transporter, and disposal facility; the generator, processing or transformation facility, and disposal facility shall maintain copies of certifications for a period of three years and the records shall be made available to the department upon request; and

(3) the operator of the disposal facility applies daily cover as required in 20.9.5.9 NMAC prior to any compaction of the sharps.

C. The following storage and containment requirements apply to all infectious waste.

(1) Containment shall be in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects and rodents, and minimizes exposure to the public.

(2) Infectious waste shall be segregated by separate containment from other waste at the point of origin.

(3) Except for sharps, infectious waste shall be contained in plastic bags inside rigid containers. The bags shall meet the testing requirements specified by 40 CFR 173.197. All bags used for containment purposes shall be red or orange and clearly identified as specified in 29 CFR 1910.145(f). The bags shall be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage, handling or transport.

(4) Sharps shall be contained for storage, transportation, transfer, processing, transformation, and disposal in leak-proof, rigid, puncture-resistant containers which are manufactured for the purpose of sharps containment and are taped closed or tightly lidded to preclude loss of contents.

(5) Rigid containers shall be labeled "biomedical waste", or otherwise conspicuously labeled as holding infectious waste, or placed in disposable bags used for other infectious waste. Rigid containers shall meet or exceed the requirements of 49 CFR 173.197 including that the containers be:

- (a) rigid;
- (b) leak resistant;
- (c) impervious to moisture;
- (d) of sufficient strength to prevent tearing or bursting under normal conditions of use;
- (e) sealed to prevent leakage during transport; and
- (f) puncture resistant for sharps and sharps with residual fluids.

(6) If other waste is placed in the same container as regulated infectious waste, then the generator shall package, label and mark the container and its entire contents as infectious waste.

(7) Rigid infectious waste containers may be reused for infectious or non-infectious waste if they are thoroughly washed and decontaminated each time they are emptied or the surfaces of the containers have been completely protected from contamination by disposable, unpunctured or undamaged liners, bags, or other devices that are removed with the infectious waste, and the surface of the containers have not been damaged or punctured.

(8) Storage and containment areas shall protect infectious waste from the elements, be ventilated to the outdoors (unless refrigerated), provide refrigeration as necessary, be only accessible to authorized persons, and be marked with prominent warn-

ing signs on, or adjacent to, the exterior doors or gates. The warning signs shall be easily read during daylight from a distance of 25 feet.

(9) Generators of infectious waste, shall place sufficient absorbent material inside the rigid container or liner of the rigid container sufficient to absorb the entire amount of liquid present in the event of an unintentional release of contents, as specified in 49 CFR 173.197.

(10) Compactors, grinders or similar devices shall not be used to reduce the volume of infectious waste before the waste has been rendered non-infectious unless prior approval has been obtained from the department.

D. All generators of infectious waste shall dispose of the infectious waste at a facility permitted to process, store or dispose of infectious waste.

E. All infectious waste generation, processing, transformation, transfer, storage and disposal facilities subject to this section shall comply with the following operational requirements.

(1) Every person who generates, transports, stores, processes, or disposes of infectious waste shall prepare and maintain on file a management plan for the waste that identifies the type of waste the person generates or handles, the segregation, packaging, labeling, collection, storage, method of storage, and transportation procedures to be implemented, the processing, transformation or disposal methods that will be used, the transporter and disposal facility that will be used, and the person responsible for the management of the infectious waste.

(2) All infectious waste management facilities may only accept infectious waste that is accompanied by a manifest that contains the information required by 20.9.8.19 NMAC.

(3) Report to the secretary any delivery of unauthorized waste, contamination of any person, or other emergencies immediately upon recognition.

(4) Human fetal remains, as defined by the state medical investigator, when measured to be 500 grams or greater, shall be disposed by incineration or interment.

(5) Infectious waste consisting of recognizable human anatomical remains shall be disposed by incineration or interment, unless such remains are subject to different treatment or disposal standards due to contamination by a hazardous or radioactive substance. Recognizable human anatomical remains may be released to the patient, proper governmental authority, or designated family member for interment or incineration, as long as all forensic needs of the facility have been met and the release is not in violation of any other law.

F. Processing, transforma-

tion and disposal of infectious waste shall be by one of the following methods:

(1) incineration in a controlled air multi-chambered incinerator which provides complete combustion of the waste to carbonized or mineralized ash:

(a) ash from the incinerator shall be sampled in accordance with Subsection B of 20.9.8.11 NMAC;

(b) the sample shall be analyzed by the U.S. EPA test method 1311: toxic characteristics leaching procedure (TCLP) to determine if it is a hazardous waste; if hazardous, it shall be managed by applicable state regulations;

(c) the retention times and temperatures for each chamber shall be continuously measured and recorded, or other equivalent tests approved by the department to determine if it is still infectious shall be performed; if infectious, it shall be reincinerated in accordance with this section; and

(d) charge rates shall be maintained and recorded;

(2) sterilization by heating in a steam sterilizer so as to render the waste non-infectious:

(a) the operator shall have available and shall certify in writing that she or he understands written operating procedures for each steam sterilizer including time, temperature, pressure, type of waste, type of container(s), closure on container(s), pattern of loading, water content, and maximum load quantity;

(b) infectious waste shall be subjected to sufficient temperature, pressure and time to kill *Geobacillus stearothermophilus* spores or induce a complete color change in an approved steam sterilization integrator when either indicator is located in the center of the waste load being decontaminated;

(c) unless a steam sterilizer is equipped to continuously monitor and generate a printed paper record of time, temperature and pressure during the entire length of each sterilization cycle, a chemical indicator shall be attached to each package of infectious waste that will visually demonstrate at the end of the autoclave cycle that each package was exposed to a temperature of at least 250 degrees fahrenheit or 121 degrees celsius in the presence of steam under pressure was reached during the process; the original printed record generated by the autoclave must be maintained for three years;

(d) each sterilization unit shall be evaluated for effectiveness with spores of *Geobacillus stearothermophilus* or approved steam sterilization integrator at least once each 40 hours of operation; and

(e) a written log shall be maintained for each sterilization unit which contains:

(i) date, time and load

number for each load;

(ii) amount per load;

(iii) duration of the cycle; and

(iv) the operator's

name;

(3) discharge to a sewage treatment system that provides secondary treatment of waste, if the waste is liquid or semi-solid and approved in writing by the operator of the sewage treatment system; or

(4) other products or methods may be approved by order of the secretary which provide:

(a) a 6Log10 reduction in *mycobacteria* of *Mycobacterium phlei* or *Mycobacterium bovis* (BCG) or if specifically approved, other *Mycobacterium* species;

(b) a 4Log10 reduction in bacterial spores of *Geobacillus stearothermophilus*, *Bacillus atrophaeus* or if specifically approved, other species of spore-forming bacterium; and

(c) verification that the species used in Subparagraphs (a) and (b) of Paragraph (4) of this subsection are the species indicated and that the strain used is appropriate for the proposed method.

G. The following requirements and condition shall apply to any person seeking approval from the secretary for a treatment method under Paragraph (4) of Subsection F of this section:

(1) the person shall provide any information requested by the secretary within the time period specified by the secretary;

(2) the request for approval shall be approved, approved with terms and conditions, or denied by the secretary;

(3) within 45 days from the end of each calendar year, manufacturers of on-site treatment or processing products approved by the secretary shall submit an annual report to the department that includes:

(i) current manufacturer's company name, contact names, addresses, and telephone numbers;

(ii) a current list of product consumers or clients in New Mexico identified as generators of infectious waste under Subsection A of 20.9.8.13 NMAC, with contact names, addresses, and telephone numbers;

(iii) proof of current registration with the U.S. EPA, if required under the Federal Insecticide, Fungicide, and Rodenticide Act;

(iv) a current material safety data sheet for any materials used in the treatment method;

(v) a current copy of the manufacturer's instructions as printed on the product and a copy of the most recent operator's manual, if not previously submitted; and

(vi) proof of current registration with the New Mexico department of agriculture, if required under the New Mexico Pesticide Control Act;

(4) the secretary may withdraw the approval of an on-site processing product if the product fails to properly treat infectious waste as claimed, or if the on-site processing product or method is altered in any manner; to withdraw the approval, the secretary shall issue an order withdrawing the approval; the interested person may appeal the secretary's order by filing a request for hearing within 30 days of the date of the secretary's order; the procedures set forth in Adjudicatory Procedures - Environment Department, 20.1.5 NMAC shall apply to the appeal.

[20.9.8.13 NMAC - Rp, 20 NMAC 9.1.VII.706, 8/2/2007]

20.9.8.14 ASH.

A. Transporters of ash shall:

(1) not accept or transport ash unless it has been treated or is securely covered or containerized to prevent release of fugitive dust;

(2) cover vehicles to prevent fugitive dust loss during transport; and

(3) line or seal vehicles in a manner to prevent any leakage of liquids or fugitive dust during transport.

B. The landfill owner or operator that accepts ash shall:

(1) prepare an excavation to receive non-hazardous ash;

(2) provide a ground water monitoring system and a leachate collection system unless an adequate demonstration is made to the secretary that such systems are not necessary;

(3) keep the ash wetted to prevent fugitive emissions prior to covering;

(4) unload transport vehicles at the bottom of the excavations; and

(5) completely cover the ash within 24 hours with a minimum of six inches of clean non-waste containing material, or other material approved by the secretary; if the ash is containerized, an alternate frequency may be specifically approved.

C. The landfill owner or operator that accepts ash shall provide barriers adequate to control public access and shall:

(1) limit access to the ash site to no more than two entrances, by:

(a) gates that can be locked when left unattended; and

(b) fencing adequate to deter access by the general public; or

(2) when excavations are used at a landfill, isolate such excavations from the rest of the facility in a manner to deter access by the general public.

D. Ash that is temporarily stored at a generation site awaiting transportation shall be stored in a manner so as to prevent fugitive dust emissions. [20.9.8.14 NMAC - Rp, 20 NMAC 9.1.VII.707, 8/2/2007]

20.9.8.15 PETROLEUM CONTAMINATED SOILS.

A. The generator of petroleum contaminated soil shall assure that all petroleum contaminated soils to be disposed, processed, composted, or transported at a solid waste facility shall be tested under the requirements of 20.9.8.11 NMAC.

(1) All soils that are suspected to be contaminated with petroleum products shall be tested for total petroleum hydrocarbons (TPH) and other contaminants as required by the disposal management plan to determine the contaminants of the soil.

(2) The frequency of sampling shall be one representative sample per 100 cubic yards of contaminated soil, unless an alternate frequency is permitted or specifically approved by the secretary upon a demonstration that the contaminated soil is homogeneous.

(3) Copies of the results from the laboratory analyses shall be placed in the operating record.

B. Petroleum contaminated soils containing free liquid shall not be accepted at a solid waste facility. When the soil can pass the paint filter liquids test, the test results shall be placed in the daily operating record and made available to the secretary upon request.

C. Petroleum contaminated soil may be stored temporarily or remediated at a solid waste facility in a bermed area on an impermeable liner or in a manner that does not contaminate ground water, surface water, or uncontaminated soil above regulatory limits. The method of storage, remediation, and testing shall be described in the disposal management plan. Remediation shall be complete when the following conditions are met in a soil sample:

(1) the sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations is less than 500 mg/Kg, with benzene individually less than 10 mg/Kg; and

(2) the TPH concentration is less than 1,000 mg/Kg.

D. Remediated petroleum contaminated soil may be disposed at a landfill authorized to accept petroleum contaminated soils. Petroleum contaminated soils that have been remediated at the landfill may be removed only if the soil complies with applicable environmental laws. Remediated petroleum contaminated soil may not be removed from the facility for beneficial use as clean fill, as the soil does

not constitute clean fill as defined in Paragraph (4) of Subsection C of 20.9.2.7 NMAC.

E. Uncontaminated or remediated soils shall not be mixed with contaminated soils.

F. The owner or operator shall provide a written report to the department documenting remediation.

G. Permitted facilities not otherwise authorized to accept petroleum contaminated soil for remediation may remediate petroleum contaminated soil generated at the facility, provided the volume of contaminated soil does not exceed 50 cubic yards and the area where the petroleum contaminated soil is remediated is restricted from public access. Remediation shall be complete when the soil meets the standards in 20.5.12.1202 NMAC or other applicable standards.

[20.9.8.15 NMAC - Rp, 20 NMAC 9.1.VII.708, 8/2/2007]

20.9.8.16 SLUDGE.

A. The owner or operator of a landfill may dispose or use sludge as an amendment to intermediate or final cover material provided:

(1) the landfill owner or operator has been issued a permit to dispose of sludge or has received specific approval from the secretary to use sludge as an amendment to intermediate or final cover material, respectively;

(2) the sludge does not exceed the test parameters specified in Subsection D of this section; and

(3) the sludge contains no free liquids as determined by the paint filter liquids Test (U.S. EPA test method 9095), unless permitted to do otherwise under 20.9.4.17 NMAC.

B. The owner or operator of a solid waste facility that is authorized to accept sludge shall have an approved disposal management plan that shall, at a minimum:

(1) describe the methods used to:

(a) obtain representative samples of sludge for analysis; and

(b) analyze the sludge for the parameters specified in Subsection D of this section to demonstrate the sludge is non-hazardous and passes the paint filter liquids test, unless otherwise permitted under 20.9.4.17 NMAC;

(2) identify the laboratory used to analyze the sludge and include a certification that, to the best of the preparer's knowledge and belief, the laboratory follows quality assurance and quality control procedures in accordance with U.S. EPA approved methods;

(3) describe the transport method, indicate transportation routes that will be used by the transport vehicles, and demon-

strate that the transport method will prevent leaks and litter;

(4) describe the anticipated volumes to be transported and total time period for disposal of any sludges;

(5) describe any plans for continuation of landfill disposal of the sludge, including how often sludge will be tested and transported to the landfill and how long the sludge will be stored at the landfill prior to disposal;

(6) provide a site map indicating the solid waste facility boundaries, the location of the sludge disposal area, and the routes of the disposal vehicles once they enter the facility; and

(7) include the portion of the facility's contingency plan a section describing methods for clean-up if an accident should occur during transport or disposal;

C. In addition to the requirements of Subsection A of this section, all owners or operators that dispose of sewage sludge or use sewage sludge as an amendment to cover material at a landfill shall meet the following requirements prior to disposal or use as a cover material amendment:

(1) obtain at least one representative sample per 100 cubic yards of sludge for analysis of the parameters listed in Subsection D of this section, but an alternate frequency may be permitted or specifically approved by the secretary if a demonstration is made that the sludge is homogeneous;

(2) cover the sludge with six inches of clean earthen material or other suitable material at the end of the day in order to be excluded from the 40 CFR Part 503 pathogen reduction criteria;

(3) restrict the treatment area from public access until the sludge is either placed in a disposal cell and covered or until it meets the requirements of 40 CFR Part 503; and

(4) ensure that all sewage sludge complies with 40 CFR Part 503, Subpart B before it is used as an amendment to intermediate or final cover.

D. Prior to delivery of sludge to a solid waste facility for disposal, the generator shall test a representative sample for the following parameters to determine if it exceeds the specified limits below:

(1) no free liquids as determined by paint filter liquids test (U.S. EPA test method 9095), unless exempt in accordance with 20.9.4.17 NMAC;

(2) percent solids (no specified limits);

(3) pH, within the range of 2.0 to 12.5;

(4) polychlorinated biphenyls (PCB's), less than 50 mg/Kg; and

(5) toxicity characteristic leaching procedure (TCLP) (U.S. EPA test method 1311), for the following parameters and maximum allowable concentrations:

- (a) arsenic, 5.0 mg/L;
- (b) benzene, 0.5 mg/L;
- (c) cadmium, 1.0 mg/L;
- (d) chlordane, 0.03 mg/L;
- (e) chromium, 5.0 mg/L;
- (f) 2,4-Dichlorophenoxy-acetic acid, 10.0 mg/L;
- (g) lead, 5.0 mg/L;
- (h) lindane, 0.4 mg/L;
- (i) mercury, 0.2 mg/L;
- (j) methyl ethyl ketone, 200.0 mg/L; and
- (k) toxaphene, 0.5 mg/L.

[20.9.8.16 NMAC - Rp, 20 NMAC 9.1.VII.709, 8/2/2007]

20.9.8.17 PACKING HOUSE AND KILLING PLANT OFFAL.

The owner or operator of a solid waste facility that is authorized to accept offal shall have an approved disposal management plans for packing house and killing plant offal ensuring that, prior to disposal at the working face of a landfill, the wastes shall:

- A. pass the paint filter liquids test (U.S. EPA test method 9095);
- B. be mixed with soil, in a separate area of the facility, to a consistency that will support compaction and cover material; and
- C. be covered immediately after disposal.

[20.9.8.17 NMAC - Rp, 20 NMAC 9.1.VII.710, 8/2/2007]

20.9.8.18 DISPOSAL OF SPECIAL WASTE NOT OTHERWISE SPECIFIED.

Any solid waste facility owner or operator who wishes to be permitted to receive special wastes that do not have specified disposal requirements shall submit a disposal management plan, as specified in Subsection C of 20.9.3.9 NMAC, to the department for approval.

[20.9.8.18 NMAC - Rp, 20 NMAC 9.1.VII.711, 8/2/2007]

20.9.8.19 M A N I F E S T REQUIREMENTS.

A. Each generator or his authorized agent shall prepare a manifest to accompany each load of special waste, including:

- (1) the name, address and telephone number of the generator and origin of the special waste;
- (2) the name, address and telephone number of all haulers in the order each will be transporting the waste;
- (3) the name, site address, telephone number and identification number of the solid waste facility to which the waste is to be delivered;

(4) the type and proper name of waste being shipped;

(5) the total weight or volume of waste prior to shipment from the generator;

(6) the type and number of containers in the shipment; and

(7) any special handling instructions.

B. The generator or his authorized agent shall sign the manifest and obtain the signature of the initial transporter and date of acceptance on the manifest, and shall retain a copy of the manifest. Each hauler shall obtain the signature of the individual who accepts the special waste for storage, further transportation or disposal, retain a copy of the manifest, and provide the original manifest to the next hauler or solid waste facility operator who receives the special waste.

C. The manifest shall accurately reflect the required information and shall be signed and dated by the generator and each hauler of the special waste, and by the solid waste facility owner or operator, acknowledging delivery, weight or volume, and receipt of the special waste. All signatories shall be duly authorized agents of their organizations. The generator shall keep a copy of the originating manifest for three years.

D. Upon discovery of any significant discrepancy including, but not limited to, factual misrepresentation on the manifest, irregularities in transportation, discharges, or any unauthorized action in regard to the shipment, delivery, or disposal of the solid waste, the person discovering the discrepancy shall notify the department, the generator, hauler, and the solid waste facility operator in writing within 24 hours.

E. Within 30 days of receipt of a special waste shipment at the solid waste facility, the owner or operator shall send the original signed copy of the manifest to the generator, acknowledging receipt of the shipment. The facility owner or operator shall list any discrepancies on the manifest. Other methods of return of the manifest may be allowed upon specific approval from the secretary.

F. A copy of the manifest shall be retained by each hauler, and solid waste facility operator for their operating records. The generator shall retain for a period of three years both the originating copy and the returned original manifest signed by the solid waste facility owner or operator and all haulers transporting the waste. Haulers shall retain a copy of the manifest for a period of three years.

G. Copies of the manifest shall be retained by the facility owner or operator throughout any post-closure period.

[20.9.8.19 NMAC - Rp, 20 NMAC 9.1.VII.712, 8/2/2007]

HISTORY OF 20.9.8 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center.

EIB 74-1, Solid Waste Management Regulations, filed 5/3/74.

EIB/SWMR-2, Solid Waste Management Regulations, filed 4/14/89.

EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/91.

EIB/SWMR-4, Solid Waste Management Regulations, filed 7/18/94.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/95) repealed 8/2/2007.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 7/18/94) was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 9.1, Solid Waste Management Regulations, effective 11/30/95.

That applicable portion of 20 NMAC 9.1, Subpart VII, Special Waste Requirements, (filed 10/27/95), was **renumbered, reformatted and replaced** by 20.9.8 NMAC, Special Waste Requirements, effective 8/2/2007.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 9 SOLID WASTE PART 9 SOLID WASTE FACILITY GROUND WATER MONI- TORING SYSTEM PLAN AND GROUND WATER MONITORING PLAN; CORRECTIVE ACTION

20.9.9.1 ISSUING AGENCY.
New Mexico Environmental Improvement Board.

[20.9.9.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

20.9.9.2 SCOPE. This part applies to all solid waste facilities.
[20.9.9.2 NMAC - Rp, 20 NMAC 9.1.I.002, 8/2/2007]

20.9.9.3 STATUTORY AUTHORITY. NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.9.3 NMAC - Rp, 20 NMAC 9.1.I.003, 8/2/2007]

20.9.9.4 D U R A T I O N .
Permanent.

[20.9.9.4 NMAC - Rp, 20 NMAC 9.1.I.004, 8/2/2007]

20.9.9.5 EFFECTIVE DATE.

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.9.5 NMAC - Rp, 20 NMAC 9.1.I.005, 8/2/2007]

20.9.9.6 OBJECTIVE.

The objective of Part 9 of Chapter 9 is to establish a rule governing solid waste facility ground water monitoring and corrective action requirements.

[20.9.9.6 NMAC - Rp, 20 NMAC 9.1.I.006, 8/2/2007]

20.9.9.7 DEFINITIONS.

[RESERVED]

[See 20.9.1 NMAC for Definitions.]

20.9.9.8 GROUND WATER MONITORING APPLICABILITY.

A. The owner or operator of a municipal or special waste landfill, unless it is a category 1 landfill, is waived under 20.9.2.14 NMAC, or is suspended under Subsection C of this section, shall submit, obtain approval of, and implement a ground water monitoring system plan and a ground water monitoring plan in accordance with the following:

(1) owners or operators of category 4 landfills and landfills seeking approval of lateral expansions shall obtain approval of a ground water monitoring system plan and ground water monitoring plan in compliance with 20.9.9 NMAC prior to placement of waste in the landfill or lateral expansion, as part of their permit or permit modification; owners or operators of category 4 landfills and landfills making lateral expansions shall implement and comply with their ground water monitoring system plan and ground water monitoring plan as approved;

(2) owners or operators of category 3 landfills or landfills that closed on or after October 9, 1993 shall submit and obtain approval of a ground water monitoring system plan and ground water monitoring plan in compliance with 20.9.9 NMAC as part of their permit or closure or post closure care plan, and shall implement and comply with the approved ground water monitoring system plan and ground water monitoring plan; and

(3) owners or operators of category 2 landfills shall comply with 20.9.9 NMAC, with the exception that the ground water sampling parameters may be limited to those approved in the closure and post-closure care plan;

(4) the secretary may require monitoring for additional parameters as necessary to protect the public health, welfare and the environment.

B. Construction and demolition landfills, scrap tire monofills, and asbestos monofills are not required to comply with the ground water monitoring requirements of 20.9.9 NMAC unless required in the permit, or if the secretary orders groundwater monitoring, based on a finding that there is a potential for constituents to migrate from the facility to the uppermost aquifer. If contamination is detected at a construction and demolition landfill, scrap tire monofill or asbestos monofill, the requirements of 20.9.9 NMAC shall thereafter apply.

C. The secretary may suspend part or all of the ground water monitoring requirements of 20.9.9.9 - 20.9.9.13 NMAC if the owner or operator demonstrates that there is no potential for migration of constituents referenced in 20.9.9.20 NMAC from the landfill to the uppermost aquifer during the active life or post-closure care period of the landfill. This demonstration shall be certified by a qualified ground water scientist and presented in the permit application or a permit modification or petition (from non-permitted landfills) for approval by the secretary. For category 2 landfills that closed prior to receiving a solid waste facility permit, the demonstration shall be presented in an application for a closure and post closure care plan or an application to modify the approved closure and post closure care plan. The demonstration shall include:

(1) site-specific field measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport;

(2) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on public health, welfare and environment; and

(3) a plan for periodic leak detection or vadose zone monitoring or ground water monitoring in compliance with Subsection N of 20.9.9.9 NMAC may be implemented as a secondary monitoring approach to support approval of a monitoring suspension.

D. If a suspension is granted, the secretary may require the owner or operator to conduct periodic ground water or vadose zone monitoring and leak detection at any landfill during the active life or post-closure care period as necessary to protect the public health, welfare or environment.

E. If ground water contamination is detected after a suspension has been granted pursuant to Subsection C of this section, the suspension is revoked and the requirements of 20.9.9 NMAC shall apply, unless the owner or operator can demonstrate that ground water cannot be adversely affected and there is no risk to human health or the environment. If con-

taminants are detected in vadose zone monitoring instruments or a leak is detected after a suspension has been granted pursuant to Subsection C of this section, actions specified in the vadose zone monitoring or leak detection plan must be undertaken to respond.

F. The secretary may require the owner or operator to conduct periodic ground water or vadose zone monitoring at any landfill for which ground water monitoring has been waived under 20.9.2.14 NMAC during the active life or post-closure care period to demonstrate the landfill is not contaminating ground water.

[20.9.9.8 NMAC - Rp, 20 NMAC 9.1.VIII.801, 8/2/2007]

20.9.9.9 GROUND WATER MONITORING SYSTEMS AND GROUND WATER MONITORING SYSTEM PLANS.

A. A ground water monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(1) represent the background quality of ground water that has not been affected by a release from the landfill as determined under 20.9.9.10 NMAC; and

(2) represent the quality of ground water passing the detection monitoring point which shall be at the waste management unit boundaries on land owned by the owner of the landfill:

(a) the downgradient monitoring system shall be installed at the detection monitoring point;

(b) when physical obstacles preclude installation of ground water monitoring wells immediately downgradient from an existing landfills, the secretary may approve a monitoring system plan that provides for an alternative detection monitoring point at the closest practicable distances hydraulically downgradient from the landfill that ensure detection of ground water contamination in the uppermost aquifer.

B. The ground water monitoring system plan shall comply with this section and shall include a detailed plan for all wells, piezometers or other measurement and sampling devices and an explanation of the purpose and placement of each (with maps). The ground water monitoring system plan shall be certified that it is in compliance with this section by a qualified ground water scientist on a form provided by the department.

C. The ground water monitoring plan shall include a description of the hydrogeologic characteristics of the site, a geologic cross-section of the site, a description of ground water sampling and analysis procedures, and a detection monitoring plan, and shall comply with 20.9.9

NMAC. The ground water monitoring plan shall be certified that it is in compliance with 20.9.9 NMAC by a qualified ground water scientist on a form provided by the department.

D. The owner or operator shall comply with the ground water monitoring system plan and ground water monitoring plan approved by the department throughout the active life and post-closure care period of each landfill subject to the requirements of 20.9.9 NMAC. The secretary may require monitoring for additional constituents, parameters and frequency as necessary to protect the public health, welfare and the environment. No change shall be made to the approved ground water monitoring system plan or ground water monitoring plan without a specific approval by the department.

E. Owners or operators shall not install or decommission any monitoring well, piezometer, or other ground water measurement, sampling, or analytical device unless it is in accordance with an approved ground water monitoring system plan. The owner or operator shall submit a written notice of intent to the department at least 14 days prior to the installation or decommissioning of any monitoring wells or piezometers. The notice shall include a statement, on a form provided by the department, that the installation or decommission of any monitoring well complies with this section and the approved ground water monitoring system plan.

F. The owner or operator shall submit an installation report to the department within 90 days after the installation of a monitoring well or piezometer. The report shall include the following documentation.

(1) A certification by a qualified ground water scientist that the monitoring device has been installed in compliance with the approved ground water monitoring system plan and 20.9.9 NMAC.

(2) A construction and lithologic log for each monitoring well or piezometer. The lithologic log shall be drawn to a scale of one inch equals ten feet, except if the boring is greater than 200 feet, then a scale of one-half inch equals ten feet may be used, graphically depicting the initial depth at which ground water was encountered and the soil or rock strata penetrated and describing each layer.

(a) If soil was encountered, the log should indicate the color, degree of compaction, moisture content plus any additional information necessary for an adequate visual description and classification of each stratum based on the unified soils classification system.

(b) If rock was encountered, the log should include a detailed lithologic description, including rock type, degree of

induration, presence of fractures, fissility, and porosity (including vugs) plus any other information necessary for an adequate description. All field notes made by the qualified ground water scientist shall be made available on request of the department.

G. A copy of all construction and lithologic logs, and all sampling data from groundwater monitoring shall be placed in the operating record.

H. The secretary may approve an alternate detection monitoring point in the monitoring system plan if it is located 150 meters or less from the waste management unit boundary and it is located on land owned by the owner of the landfill. When approving an alternate detection monitoring point under this section, the secretary shall consider at least the following factors:

(1) the hydrogeologic characteristics of the facility and surrounding land;

(2) the volume and physical and chemical characteristics of the leachate;

(3) the quantity, quality, and direction of flow of the ground water;

(4) the proximity and withdrawal rate of the ground water users;

(5) the availability of alternative drinking water supplies;

(6) the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;

(7) public health, safety, and welfare effects; and

(8) the practicable capability of the owner or operator.

I. The secretary may approve, in the ground water monitoring system plan or closure and post-closure care plan, a multiunit ground water monitoring system instead of separate systems for each landfill where the facility has several landfills, provided the multiunit system meets the appropriate requirements of this part and will be as protective of public health, welfare and the environment as individual monitoring systems for each landfill, based on the following factors:

(1) number, spacing, and orientation of the landfills;

(2) hydrogeologic setting;

(3) site history;

(4) engineering design of the landfills; and

(5) types of waste accepted at the landfills.

J. Unless otherwise approved by the department in the ground water monitoring system plan or by specific approval, monitoring wells shall be constructed in such a manner that the integrity of the bore-hole and well is maintained and

is in accordance with American society of testing materials method D-5092 or the following requirements:

(1) the bore-hole shall be drilled a minimum of 4 inches larger than the casing diameter to allow for the emplacement of sand and sealant;

(2) care shall be taken not to introduce contamination to the well;

(3) the well shall be developed so that ground water flows freely through the screen and to decrease turbidity, and that all sediment is removed from the well;

(4) the casing shall, unless otherwise approved by the secretary, consist of schedule 40 or heavier threaded PVC pipe of not less than 2 inches diameter;

(a) the casing shall extend from the top of the screen to at least one foot above ground surface;

(b) the casing top shall be protected by a cap and a locking shroud shall protect the exposed casing; and

(c) the shroud shall be large enough to allow easy access for removal of the plastic cap;

(5) the screen shall be at least a 20-foot section of machine slotted or other manufactured screen; a slot size of 0.01-inch generally is adequate for most installations; no on-site or hack-saw slotting is permitted;

(6) if the uppermost aquifer is unconfined; the top of the screen shall be 5 feet above the water table to allow for seasonal fluctuations;

(7) if the uppermost aquifer is confined, the top of the screen shall be at the location of the geologic boundary between the top of the aquifer and the bottom of the confining unit;

(8) centralizers shall be placed at the top and the bottom of the screen;

(9) an annular space from 2 feet below to 2 feet above the screen shall be packed with sand;

(a) the sand shall be clean and medium to coarse grained;

(b) the sand shall be properly sized to prevent fines from entering the well; and

(c) a tremmie pipe shall be used for sand placement in deeper wells when appropriate;

(10) the annular space for at least 2 feet above the sand pack shall be grouted or sealed;

(a) pressure grouting with bentonite or cement using a tremmie pipe is preferred; or

(b) alternatively, a bentonite seal may be installed using bentonite pellets, 1/4 or 1/2 inch in size;

(11) the annular space above the seal shall be fully sealed using grout or bentonite to within 3 feet of the ground surface;

(12) the annular space above the

cuttings shall be filled with bentonite-cement grout to within 3 feet of the ground surface;

(13) the remaining 3 feet shall be filled with concrete (expanding cement); and

(14) a concrete slab with a minimum 2-foot radius and a 4-inch thickness shall be poured around the shroud; the pad shall be sloped so that rainfall and run-off flows away from the shroud.

K. The casing of each well or wells that will be used to monitor ground water shall be surveyed, referenced to a standard grid, and subsequently mapped by a licensed surveyor. The location of the well shall be determined within one-tenth of a foot, and the height above sea level at the top of the casing shall be determined within one-hundredth of a foot. This information shall be submitted to the department with the installation report required in Subsection F of 20.9.9.9 NMAC.

L. The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring plan.

M. The number, spacing, and depths of monitoring systems shall be based upon site-specific technical information that includes thorough characterization of:

(1) aquifer thickness, ground water flow rate, and flow direction, including seasonal and temporal fluctuations in ground water flow; and

(2) saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer; and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.

N. Vadose zone monitoring or leak detection systems, if required by the secretary pursuant to Subsections C or F of 20.9.9.8 NMAC, shall include:

(1) direct and indirect monitoring techniques such as:

(a) permanent monitoring stations such as those which utilize access tubes for neutron moderation instrumentation, time domain reflectometry (TDR) probes, capacitance probes or other permanently installed devices;

(b) nested piezometers when used for monitoring perched water or locally saturated portions of the vadose zone;

(c) soil gas measurements;

(d) lysimeters;

(e) electronic leak detectors; and

(f) other devices or methods as approved in the permit ;

(2) an adequate frequency of testing and a sufficient number of sampling points at appropriate locations and depths to determine a change in soil characteristics; and

(3) an action plan that addresses potential vadose zone contamination and the sources of the contamination.

O. Amendments to an approved groundwater monitoring system plan shall be by specific approval.

[20.9.9.9 NMAC - Rp, 20 NMAC 9.1.VIII.802, 8/2/2007]

20.9.9.10 GROUND WATER MONITORING PLAN; SAMPLING AND ANALYSIS; ESTABLISHING BACKGROUND CONCENTRATION LEVELS AND ASSESSMENT MONITORING LEVELS.

A. Ground water monitoring plans shall describe in detail all aspects of the landfill's proposed ground water monitoring program. It shall include descriptions of sampling and analysis procedures to be used, proposed sampling frequencies, test methodologies, procedures that will be used to establish background concentrations of all constituents and parameters listed in 20.9.9.20 NMAC, assessment monitoring levels (AMLs), and practical quantitation limits (PQL) for each constituent listed in 20.9.9.20 NMAC, and any other information describing the program as required by this section.

B. The ground water monitoring plan shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground water quality at the upgradient and downgradient wells. The plan shall include procedures and techniques for:

(1) sample collection;

(2) sample preservation and shipment;

(3) analytical procedures;

(4) chain of custody control; and

(5) quality assurance and quality control.

C. The ground water monitoring plan shall describe sampling and analytical methods that are appropriate for ground water sampling and that accurately measure constituents and other monitoring parameters in ground water samples. A PQL for each constituent listed in 20.9.9.20 NMAC shall be proposed in the plan based on the proposed sampling and analytical method. A PQL will not be approved unless the level is the lowest concentration that can be reliably determined by an analytic methodology acceptable to the department. Ground water samples shall not be field-filtered prior to laboratory analysis unless otherwise allowed under 40 CFR Part 258 and the approved ground water monitoring plan.

The owner or operator shall conduct ground water sampling in accordance with the "EPA solid waste disposal facility criteria technical manual" (1998, EPA 530-R-93-017, revised April 13, 1998) unless otherwise approved in the ground water monitoring plan.

D. Ground water elevations shall be measured within one-hundredth of a foot in each well immediately prior to purging, each time ground water is sampled. The owner or operator shall determine the rate and direction of ground water flow each time ground water is sampled. Ground water elevations in wells which monitor the same waste management area shall be measured within a period of time short enough to avoid temporal variations in ground water flow which could preclude accurate determination of ground water flow rate and direction.

E. The owner or operator of a landfill seeking a background determination shall apply for specific approval of background ground water quality concentrations for each constituent and parameter referenced in Subsections A and C of 20.9.9.20 NMAC, and as required in the landfill's approved ground water monitoring plan within 14 months after any waste disposal at the landfill or lateral expansion. The application shall propose background concentrations based upon the following:

(1) the sampling results from at least four independent samples taken during the first semiannual sampling event and at least one additional sample during the subsequent semiannual sampling event for each individual monitoring well;

(2) the first sampling event shall occur prior to any waste disposal at a new landfill or lateral expansion; and

(3) if a constituent is not detected in the sampling used to establish background concentrations, the owner or operator shall propose the PQL approved in the ground water quality monitoring plan as the background concentration.

F. The background ground water quality concentrations and values must be approved by the department in writing. Once background ground water quality concentrations and values for the constituents and the parameters referenced in Subsections A and C of 20.9.9.20 NMAC are approved for a landfill, an individual well comparison procedure shall be used to compare constituent concentrations and parameter values with background constituent concentrations, ground water protection standards and parameter values for purposes of detection and assessment monitoring. Alternatively, if it is in accordance with the approved ground water quality monitoring plan, the background levels established from hydraulically upgradient wells may be used for comparison purposes.

G. For category 4 and 5 landfills, a background determination shall be made at each monitoring well as specified in Subsection E of this section unless the owner operator demonstrates that hydrogeological conditions are such that sampling at upgradient wells will provide an indication of background ground water quality that is as representative or more representative than that provided by making a determination at each monitoring well.

H. For category 2 and 3 landfills, a background determination shall be made at each individual monitoring well as specified in Subsection E of this section, except when the concentration of a hazardous constituent at an upgradient well is lower than the concentration at a downgradient well, in which case the concentration of that constituent at the upgradient well shall be used as the background concentration, unless the owner or operator demonstrates that use of the downgradient well to determine the background concentration of that constituent will provide an indication of background ground water quality that is as representative or more representative than that provided by the upgradient well.

I. The owner or operator shall identify ground water protection standards for which a numeric standard has been established and shall apply for specific approval of proposed assessment monitoring levels (AMLs) in compliance with 20.9.9.12 NMAC for constituents listed or referenced in Subsection A of 20.9.9.20 NMAC, and for the parameter of pH, within 90 days following approval of background ground water quality concentrations by the department. The ground water protection standard for a constituent and for pH shall be the more stringent of the maximum contaminant level (MCL) promulgated at 40 CFR 141, or the ground water protection standard established by the commission at 20.6.2.3103 NMAC.

J. The number of samples collected to establish ground water quality data shall be consistent with the appropriate statistical procedures determined pursuant to this section.

K. The owner or operator of a landfill using an individual well comparison procedure shall use one of the following statistical methods to compare an individual compliance well constituent concentration and parameter value with background constituent concentration and parameter value or the relevant ground water protection standard:

(1) a comparison using a t-interval or t-test with a type I error level of no less than 0.01 shall be made between the approved background concentration or value and any subsequent sample analysis results for each parameter or constituent from each individual well;

(a) background values and concentrations shall be established for each parameter or constituent for each individual well from at least four independent samples during the first semiannual sampling event and at least one additional sample during the subsequent semi-annual sampling event; and

(b) if the background concentration is below the practical quantitation limit (PQL), the PQL shall be used to establish background. A statistical method is not necessary for a comparison between the analytical results and the PQL; or

(2) another method that meets the performance standards of 40 CFR 258.53(h). The alternative must be approved in the ground water monitoring plan, and the owner or operator must demonstrate the method meets the performance standards of 40 CFR 258.53(h).

L. The owner or operator of a landfill using an upgradient well to establish background concentrations shall specify in the ground water monitoring plan one of the statistical methods described in 40 CFR 258.53(g). The statistical method to be used in evaluating ground water monitoring data must be demonstrated to meet the performance criteria of 40 CFR 254.53(h).

(1) If the background concentration at the upgradient well is below the practical quantitation limit (PQL), the PQL shall be used to establish background; a statistical method is not necessary for a comparison between the analytical results and the PQL.

(2) The number of samples collected to establish ground water quality data must be consistent with the appropriate statistical procedure that meets the performance standards of 40 CFR 258.53(h).

M. Ground water samples for the constituents and values referenced in Subsections A and C of 20.9.9.20 NMAC shall be collected from each monitoring well at least semi-annually during the active life of the facility.

(1) At a new landfill, or at a lateral expansion, the first sampling event shall be prior to the receipt of any waste.

(2) Once background concentrations and values have been established and approved, the owner or operator shall conduct detection monitoring for all constituents and parameters listed in or referenced in Subsections A and C of 20.9.9.20 NMAC and determine whether or not the AML has been exceeded for any constituent referenced in Subsection A of 20.9.9.20 NMAC and for the parameter of pH, or as required in the particular ground water monitoring plan that applies to the landfill.

(3) In determining whether the AML has been exceeded, the owner or operator shall compare the ground water quality

for each constituent at each monitoring well to the background value for that constituent, according to the statistical procedures and performance standards specified in the ground water monitoring plan and this section.

N. Ground water documentation shall be submitted to the department within 90 days of completing sampling, in a form acceptable to the department, for each sample, and a copy of all monitoring results shall be kept in the operating record. The documentation shall include:

(1) the constituents and parameter tested;

(2) the test method (U.S. EPA or equivalent) for each constituent and parameter;

(3) the ground water protection standard for each constituent detected (if a numeric standard has been established);

(4) the method detection limit (MDL) for each constituent;

(5) the practical quantitation limit (PQL) for each constituent and parameter;

(6) the well number and location for each sample;

(7) the laboratory ID sample number;

(8) chain of custody documentation;

(9) the date sampled;

(10) the date received at the laboratory;

(11) the date analysis commenced;

(12) results, with constituent or parameter, chemical abstract system number, concentration with units, approved AML, ground water protection standard, PQL, qualifier code (e.g., J, B, U, etc.), well number, and sample date;

(13) sample preservation (field data);

(14) field blank results, and trip blank results;

(15) quality assurance/quality control summary report (laboratory blanks, spike recoveries, etc.);

(16) anomaly report (non-conformance with quality assurance/quality control plan, corrective actions, etc.);

(17) laboratory review (signature and date);

(18) an updated ground water elevation contour map for the facility or, if ground water elevation data is insufficient to contour, then the ground water elevation for each monitoring well, prior to purging, reported on a well location map;

(19) the approved background concentration levels as determined in accordance with Subsection E of this section; and

(20) a certification by a qualified ground water scientist that AMLs have or have not been exceeded.

O. Amendments to an approved ground water monitoring plan shall be by specific approval. [20.9.9.10 NMAC - Rp, 20 NMAC 9.1.VIII.803, 8/2/2007]

20.9.9.11 DETECTION MONITORING PLAN.

A. The owner or operator shall conduct detection monitoring at all ground water detection monitoring wells unless such monitoring has been suspended in accordance with Subsection C of 20.9.9.8 NMAC. The detection monitoring program shall include the monitoring for constituents and parameters listed and referenced in Subsection A of 20.9.9.20 NMAC, and shall be conducted at least semiannually during the active life and post-closure care period of the facility. After background concentrations have been approved as required in Subsection E of 20.9.9.10 NMAC for all constituents in Subsection A of 20.9.9.20 NMAC, the owner or operator may request a specific approval that the ground water detection monitoring program description be amended to:

(1) not require testing for particular constituents in Subsection A of 20.9.9.20 NMAC for a municipal landfill if it can be shown that the particular constituents are not reasonably expected to be in or derived from the waste contained in the landfill; and

(2) establish an alternate list of inorganic indicator parameters constituents for a landfill in lieu of some or all of the heavy metals listed or referenced in Subsection A of 20.9.9.20 NMAC if the alternative constituents provide a reliable indication of inorganic releases from the landfill to the ground water; in determining alternative constituents, the department shall consider the following factors:

(a) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(b) the mobility, stability, and persistence of constituents or their reaction products in the unsaturated earth zone beneath the landfill;

(c) the detectability of the constituents, and reaction products in the ground water; and

(d) the concentrations or values and coefficients of variation of levels of the constituents in the ground water;

(3) allow annual sampling of the approved alternate list after the first year based on the following factors:

(a) lithology of the aquifer and unsaturated zone;

(b) hydraulic conductivity of the aquifer and unsaturated zone;

(c) ground water flow rates;

(d) minimum distance between upgradient edge of the landfill and downgradient monitoring well screen (minimum

distance of travel); and

(e) resource value of the aquifer.

B. Regardless of approval by the department of an alternate constituent list under Subsection A of this section, the minimum frequency for testing for all the constituents in Subsection A of 20.9.9.20 NMAC shall be at least once every five years in addition to the required frequencies for the alternate list.

C. If the owner or operator determines, as evidenced in the ground water monitoring data, that the AML has been exceeded for one or more of the constituents or parameters referenced in Subsection A of 20.9.9.20 NMAC or approved alternate constituent list at any monitoring well, the owner or operator:

(1) shall, within 14 days of this finding, notify the department of the exceedance and place a notice in the operating record indicating which constituents or values have exceeded approved AMLs; and

(2) shall submit, within 60 days of the finding, an assessment monitoring plan that meets the requirements of 20.9.9.13 NMAC;

(3) in addition, the owner or operator may submit, within 60 days after the finding, a demonstration that a source other than a landfill caused the contamination or that the AML exceedance resulted from an error in sampling, analysis, statistical evaluation, or natural variation in ground water quality; a report documenting this demonstration shall be certified by a qualified ground water scientist, shall be placed in the operating record, and shall be submitted to the department for specific approval; the department shall issue a specific approval or denial within 90 days approving or denying the demonstration; if the demonstration is denied, the assessment monitoring shall proceed according to the submitted plan within 90 days after the denial. [20.9.9.11 NMAC - Rp, 20 NMAC 9.1.VIII.804, 8/2/2007]

20.9.9.12 ASSESSMENT MONITORING LEVELS.

A. Approved background ground water quality determinations shall be used as the baseline for determination of AMLs.

B. For all hazardous constituents, AMLs shall be 50 percent of the ground water protection standard.

C. If the background concentrations of any hazardous constituents is above 50 percent of the ground water protection standards, then the background concentration shall be the AML. Any statistically significant increase above the AML shall be an exceedance of the AML for that constituent.

D. If a ground water protection standard has not been established for

a hazardous constituent, the AML shall be the background concentration or a 95 percent increase over the PQL of the constituent, whichever is greater.

E. For constituents identified in Subsections B and C of 20.6.2.3103 NMAC, the AMLs shall be 75 percent of the ground water protection standard, except pH, which shall be within the range of values shown in Subsection B of 20.6.2.3103 NMAC

F. If the background concentration of any constituent identified in Subsections B and C of 20.6.2.3103 NMAC is above 75 percent of the ground water protection standard, then the background concentration shall be the AML. Any statistically significant increase above the AML shall be an exceedance of the AML for that constituent.

G. If more than one toxic pollutant identified in 20.6.2.7 NMAC is detected, the toxic pollutant criteria of the commission rules for the combination of constituents shall be used to determine a ground water standard, using the methods described in Subsection I of 20.9.9.13 NMAC. The AML shall be 50 percent of the ground water standard, or the background concentration, whichever is greater. If the background concentration is greater than the ground water standard, then any statistically significant increase above the background concentration shall be an exceedance of the AML. However, this shall apply only in cases where such AMLs are more stringent than the AMLs otherwise determined under this section.

[20.9.9.12 NMAC - Rp, 20 NMAC 9.1.VIII.805, 8/2/2007]

20.9.9.13 ASSESSMENT MONITORING.

A. Owners and operators shall conduct assessment monitoring whenever the AML has been exceeded for one or more constituent of Subsection A of 20.9.9.20 NMAC or an alternate constituent list approved under Subsection A of 20.9.9.11 NMAC unless a demonstration has been approved pursuant to Paragraph (3) of Subsection C of 20.9.9.11 NMAC. Assessment monitoring shall be conducted in accordance with an assessment monitoring plan, approved in accordance with Subsection C of 20.9.9.11 NMAC.

B. Within 90 days of the determination of an exceedance under Subsection M of 20.9.9.10 NMAC, and annually thereafter, the owner or operator shall sample and analyze the ground water for all constituents and parameters referenced and listed in Subsections B and C of 20.9.9.20 NMAC for each downgradient well. For any constituents detected in the downgradient wells as a result of the complete analysis, a minimum of four inde-

pendent samples from each well (upgradient and downgradient) shall be collected and analyzed to establish background for the constituents for which background has not been established. Sampling data and proposed background concentration shall be submitted to the department within 180 days of the determination of an exceedance under Subsection M of 20.9.9.10 NMAC. The upgradient concentrations shall be presumed to be the background unless the owner or operator demonstrates that hydrogeological conditions are such that sampling at other points will provide an indication of background ground water quality that is as representative or more representative than that provided at the upgradient wells. The department shall approve background levels for those detected constituents for which background concentrations have not previously been determined within 60 days, or the upgradient concentrations shall be deemed to be the background concentrations.

C. The department may specifically approve an alternative frequency or subset of wells for repeated sampling for assessment monitoring during the active life and post-closure care period of the facility. In determining an alternative frequency or subset of wells, the department shall consider:

- (1) lithology of the aquifer and unsaturated zone;
- (2) hydraulic conductivity of the aquifer and unsaturated zone;
- (3) ground water flow rate;
- (4) minimum distance between the waste management unit boundary and downgradient monitoring well screen;
- (5) resource value of the aquifer; and
- (6) nature of any constituents detected.

D. After obtaining the results from the sampling required by Subsection B of this section, the owner or operator shall:

- (1) within 14 days, notify the department in writing and document in the operating record any constituents that have been detected;
- (2) within 90 days and at least semiannually, resample all wells and analyze for all constituents in Subsections A and C of 20.9.9.20 NMAC and any constituents in Subsection B of 20.9.9.20 NMAC or an approved alternate list that have been detected; the department may specify an alternate monitoring frequency in accordance with Subsection A of 20.9.9.11 NMAC, but all constituents in Subsection B of 20.9.9.20 NMAC shall be sampled no less frequently than once every five years during the active life and post-closure care period.

E. If the concentration of

each constituent in Subsection A of 20.9.9.20 NMAC, and each detected constituent of Subsection B of 20.9.9.20 NMAC is determined to be at or below the approved AML after two sampling events, the owner or operator shall notify the department in writing and may return to detection monitoring.

F. If the concentration of any constituent in 20.9.9.20 NMAC is above the AML, but below the corrective action level (CAL), the owner or operator shall continue assessment monitoring in accordance with this section.

G. If one or more constituents in 20.9.9.20 NMAC is detected above the CALs in any sampling event, the owner or operator shall:

(1) within 14 days of this finding, notify the department and all appropriate local government officials in writing;

(2) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with this section within six months; the department may approve an extension for this installation and sampling for good cause for up to an additional six months of the finding of the exceedance;

(3) characterize the nature and extent of the release by installing additional monitoring wells as necessary within one year of the finding of the exceedance;

(4) notify area residents and land owners in the same manner as described in Subsection B of 20.6.2.4108 NMAC; and

(5) initiate an assessment of corrective measures as required by 20.9.9.15 NMAC within 90 days; or

(6) the owner or operator may demonstrate that a source other than the facility caused the contamination, or that the increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality; a report documenting this demonstration shall be certified by a qualified ground water scientist and submitted to the department for review and approval; if a demonstration is specifically approved by the department, the owner or operator may return to detection monitoring; until a successful demonstration is made, the owner or operator shall comply with 20.9.9.12 - 20.9.9.20 NMAC, including initiating an assessment of corrective action.

H. Within 90 days after any AML exceedance, the owner or operator shall identify the ground water protection standard for each constituent in 20.9.9.20 NMAC that exceeded the AML in the ground water that was not identified pursuant to Subsection I of 20.9.9.10 NMAC. The owner or operator shall propose for department approval ground water protection standards for any constituent that

exceeded the AML pursuant to Subsection B of this section and Paragraph (2) of Subsection D of this section that does not have an MCL or numeric standard in commission rules. The owner or operator shall make a demonstration that the proposed standard will be protective of the public health and the environment, in accordance with Subsection I of this section.

(1) The ground water protection standards for constituents shall be the more stringent of the MCL promulgated at 40 CFR 141, or the numeric standard established by commission rules.

(2) For hazardous constituents for which the background concentration is higher than the ground water protection standard, the background concentration shall be used as the ground water protection standard.

I. The secretary may establish an alternative ground water protection standard for constituents for which MCLs or commission standards have not been established. These ground water protection standards shall be appropriate health based levels that satisfy the following:

(1) the level is derived in a manner consistent with U.S. EPA guidelines for assessing the health risks of environmental pollutants;

(2) the level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act good laboratory practice standards or equivalent;

(3) for carcinogens, the level represents a concentration associated with an excess lifetime cancer risk of more than one cancer per 100,000 exposed persons; and

(4) for systemic toxicants, the level represents a concentration to which the human population could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime; systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

J. In establishing ground water protection standards under Subsection I of this section, the secretary may consider the following:

(1) multiple contaminants in the ground water;

(2) exposure threats to sensitive environmental receptors; and

(3) other site specific exposure or potential exposure to ground water.

[20.9.9.13 NMAC - Rp, 20 NMAC 9.1.VIII.806, 8/2/2007]

20.9.9.14 CORRECTIVE ACTION LEVELS.

A. Background water quality data approved by the department shall be used as the baseline to determine corrective action levels (CALs).

B. For all constituents,

CALs shall be the ground water protection standard.

C. If the background concentrations of any constituent is above what would otherwise be the ground water protection standards, then the background concentration shall be used as the CAL. Any statistically significant increase above the CAL shall be considered an exceedence of the CAL for that constituent.

D. If more than one potential toxic pollutant, as defined in 20.6.2.7 NMAC, is detected, the potential toxic pollutant criteria of the commission rules for the combination of constituents shall be used to determine the CALs. If the background concentration is greater than the ground water standard, then any statistically significant increase above the background concentration shall be an exceedence of the CAL. However, this shall apply only in cases where such CALs are more stringent than the CALs otherwise determined under this section.

[20.9.9.14 NMAC - Rp, 20 NMAC 9.1.VIII.807, 8/2/2007]

20.9.9.15 ASSESSMENT OF CORRECTIVE MEASURES.

A. Upon finding that any constituent listed in 20.9.9.20 NMAC has exceeded its CAL, the owner or operator shall initiate an assessment of corrective measures. Such an assessment shall be submitted to the department within 180 days of the finding.

B. The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in 20.9.9.13 NMAC.

C. The assessment shall include a demonstration of:

- (1) the extent and nature of contamination;
- (2) the practical capabilities of remedial technologies in achieving compliance with ground water protection standards and other objectives of the remedy;
- (3) the availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (4) the desirability of utilizing technologies that are not currently available, but which may offer significant advantages over available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (5) the potential risks to public health, welfare and the environment from exposure to contamination prior to completion of the remedy;

(6) the resource value of the aquifer including:

- (a) current and future uses;
- (b) proximity and withdrawal rate of users;
- (c) ground water quantity and

quality;

(d) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(e) the hydrogeologic characteristic of the facility and surrounding land;

(f) ground water removal and treatment costs; and

(g) the cost and availability of alternative water supplies;

(7) the practicable capability of the owner or operator;

(8) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts and control of exposure to any residual contamination;

(9) the time required to begin and complete the remedy;

(10) the costs of remedy implementation;

(11) the institutional requirements for local permits or other environmental or public health requirements that may substantially affect implementation of the remedy(s);

(12) the need for interim measures in accordance with provisions of Paragraph (3) of Subsection A of 20.9.9.17 NMAC;

(13) an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives and evaluation factors of the remedy as described in 20.9.9.16 NMAC; and

(14) other relevant factors.

D. The owner or operator shall discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties. Notice of the public meeting shall be provided the same as that specified in the Solid Waste Act for permit applications and Paragraph (4) of Subsection G of 20.9.9.13 NMAC. The public notice shall also contain the following information:

(1) name, address, and telephone number of the owner or operator and contact person;

(2) name and location of the facility;

(3) meeting location, date, and time;

(4) nature and extent of the plume;

(5) brief description of the assessment of corrective measures and the preferred remedy of the owner or operator;

(6) location where the assessment of corrective measures can be reviewed; and

(7) information regarding the opportunity to submit oral or written comments at the public meeting, and until 30 days after the public meeting, regarding the

assessment and proposed remedy for consideration by the department.

E. The owner or operator shall make a record of the public meeting and submit it to the department.

F. The secretary may, based on the initial assessment, order interim measures, in accordance with Paragraph (3) of Subsection A of 20.9.9.17 NMAC.

[20.9.9.15 NMAC - Rp, 20 NMAC 9.1.VIII.808, 8/2/2007]

20.9.9.16 SELECTION OF REMEDY.

A. Based on the results of the corrective measures assessment conducted under 20.9.9.15 NMAC, the owner or operator shall, within 120 days following the submission of the assessment of corrective measures, submit a proposed remedy to the department for review and approval that meets the standards listed in this section. The secretary may issue an order approving, approving with conditions, denying the proposed remedy, may require submission of an alternative proposed remedy, or may impose a remedy whether or not proposed by the owner or operator.

B. Prior to approving or imposing a remedy, the department shall hold a hearing on the remedy proposed by the owner or operator and any draft remedy proposed by the department. The owner or operator shall be required to provide notice of hearing on the proposed remedy or remedies in accordance with Section 74-9-22 NMSA 1978. Hearing procedures shall be in accordance with Permit Procedures – Environment Department, 20.1.4 NMAC.

C. The selected remedy shall:

(1) be protective of public health, welfare and the environment;

(2) attain the CAL;

(3) control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases into the environment that may pose a threat to public health, welfare or the environment;

(4) comply with standards for management of wastes as specified in Subsection C of 20.9.9.17 NMAC.

D. In its submission of a proposed remedy that meets the standards listed above, the owner or operator shall provide evidence demonstrating:

(1) the long and short term effectiveness and protectiveness of the potential remedy, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(a) magnitude of reduction of existing risks;

(b) magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation

of a remedy;

(c) the type and degree of long term management required, including monitoring, operation, and maintenance;

(d) short term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to public health, welfare and the environment associated with excavation, transportation, and redispersion of wastes;

(e) time until full protection is achieved;

(f) potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to public health, welfare and the environment associated with excavation, transportation, redispersion, or containment;

(g) long term reliability of the engineering and institutional controls; and

(h) potential need for replacement of the remedy;

(2) the effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(a) the extent to which containment practices will reduce further releases; and

(b) the extent to which treatment technologies may be used;

(3) the ease or difficulty of implementing a potential remedy based on consideration of the following factors:

(a) degree of difficulty associated with constructing the technology;

(b) expected operational reliability of the technology;

(c) need to coordinate with, and obtain necessary approvals and permits from, other agencies;

(d) availability of necessary equipment and specialists; and

(e) available capacity and location of needed treatment, storage, and disposal services;

(4) practicable capability of the owner or operator, including a consideration of the technical and economic capability; and

(5) the degree to which community concerns are addressed.

E. The owner or operator shall specify as part of the proposed selected remedy a schedule for initiating and completing remedial activities. Such a schedule shall provide for the initiation of remedial activities within a reasonable period of time, taking into consideration the factors listed in Subsection C of 20.9.9.15 NMAC.

F. In its submission of a proposed remedy under this section, the owner or operator may seek a determination that remediation of a contaminant to the CAL is not required as follows:

(1) if an exceedance of a commission standard would occur, the owner or operator shall seek a variance from the commission standard in accordance with Subsection E or F of 20.6.2.4103 NMAC and incorporate the terms and conditions of any such variance into the selected remedy and corrective action program; or

(2) the owner or operator may seek a determination from the secretary that remediation of a contaminant to the CAL (for CALs not based on a commission standard) is not required by submitting a written request to the secretary for a determination that attainment of the CAL is technically infeasible; the request shall include: a demonstration of technical or physical impossibility of attaining the CAL using potential remedies; the effectiveness of potential remedies; whether the proposed determination will allow a present or future hazard to public health or the environment; and any other information required by the secretary; in addition, the request shall propose an alternate CAL for the secretary's approval, based on the effectiveness of potential remedies and a site-specific risk assessment; the secretary may approve, approve with terms and conditions, or deny the requested determination.

G. A determination by the secretary pursuant to Subsection F of this section shall not affect the authority of the secretary to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize releases to the ground water, to prevent exposure of the ground water to concentrations that are technically practicable and significantly reduce threats to public health, welfare or the environment. [20.9.9.16 NMAC - Rp, 20 NMAC 9.1.VIII.809, 8/2/2007]

20.9.9.17 IMPLEMENTATION OF A CORRECTIVE ACTION PROGRAM.

A. Based on the schedule approved by the secretary under Subsection F of 20.9.9.16 NMAC for initiation and completion of remedial activities, the owner or operator shall:

(1) establish and implement a corrective action ground water monitoring program that:

(a) at a minimum, meets the requirements of an assessment monitoring program under 20.9.9.13 NMAC;

(b) will indicate the effectiveness of the corrective action remedy; and

(c) demonstrates compliance with the corrective action levels;

(2) implement the corrective action remedy approved under 20.9.9.16 NMAC; and

(3) take any interim measures necessary to ensure the protection of public

health, welfare and the environment; interim measures should, to the greatest extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy that may be required pursuant to 20.9.9.16 NMAC; the following factors shall be considered in determining whether interim measures are necessary:

(a) time required to develop and implement a final remedy;

(b) actual or potential exposure of nearby populations or environmental receptors to constituents;

(c) actual or potential contamination of drinking water supplies or sensitive ecosystems;

(d) further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(e) weather conditions that may cause constituents to migrate or be released;

(f) risks of fire or explosion, or potential for exposure to constituents as a result of an accident or failure of a container or handling system; and

(g) other situations that may pose threats to public health, welfare and the environment.

B. If the secretary determines, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Subsection C of 20.9.9.16 NMAC are not being achieved through the remedy selected the secretary may issue an order requiring the owner or operator to propose, for consideration by the secretary, other methods or techniques that could practicably achieve compliance with Subsection C of 20.9.9.16 NMAC. An owner or operator proposing an alternative remedy under this subsection shall comply with all factors and criteria of 20.9.9.15-16 NMAC.

C. All solid wastes that are generated pursuant to this section, or an interim measure required under Paragraph (3) of Subsection A of this section, shall be managed in a manner which:

(1) is protective of public health, welfare and the environment; and

(2) complies with applicable RCRA requirements, the Solid Waste Act and 20.9.2 - 20.9.10 NMAC.

D. Remedies selected pursuant to 20.9.9.16 NMAC shall be considered complete when:

(1) the owner or operator complies with the CALs at all points within the plume of contamination for a period of three consecutive years; the secretary may specify an alternative length of time during which the owner or operator shall demonstrate that concentrations of constituents referenced in 20.9.9.20 NMAC have not exceeded CALs provided the time is not less than eight consecutive calendar quar-

ters with one sampling event per quarter, and taking into consideration:

(a) extent and concentration of the release(s);

(b) behavior characteristics of the hazardous constituents in the ground water;

(c) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that affect the accuracy; and

(d) characteristics of the ground water; and

(2) all actions required to complete the remedy have been satisfied.

E. Upon completion of the remedy, the owner or operator shall notify the secretary in writing within 14 days with a certification that the remedy has been completed in compliance with the requirements of Subsection D of this section. The certification shall be signed by a qualified ground water scientist and submitted to the secretary for specific approval.

F. Upon approval of the certification that the corrective action remedy has been completed in accordance with the requirements under Subsection D of this section, the owner or operator shall be released from the requirements for financial assurance for corrective action under 20.9.10.12 NMAC.

G. In the event that new information becomes available which indicates a constituent release may pose a threat to human health or welfare or the environment, the department may require continued compliance with 20.9.9.17 NMAC, or further investigation or selection of a remedy as necessary.

[20.9.9.17 NMAC - Rp, 20 NMAC 9.1.VIII.810, 8/2/2007]

20.9.9.18 APPROVED LABORATORIES. For the purpose of determining compliance with the requirements of 20.9.9 NMAC, within one year of the effective date of this part, analytical results may be considered only if they have been determined by a laboratory acceptable to the department as specified in this section. The department may accept analytical results if they have been determined by:

A. the scientific laboratory division of the New Mexico department of health or other laboratories certified by the U.S. EPA; a laboratory, other than the scientific laboratory division, shall provide the department documentation of its certification by the U.S. EPA;

B. a laboratory certified by an official agency of a state and approved by the department; a laboratory shall provide the department documentation of its certification by an official agency of a state for review and approval; or

C. a laboratory accredited by an approved third party accreditation

organization and approved by the department; a third party accreditation organization shall submit a quality assurance project plan to the department for review and approval.

[20.9.9.18 NMAC - N, 8/2/2007]

20.9.9.19 DEPARTMENT APPROVAL OF BACKGROUND AND TOXIC POLLUTANT STANDARDS.

All background levels proposed by the owner or operator are subject to review and approval by the secretary. All ground water protection standards proposed for toxic pollutants listed in 20.6.2.7 NMAC are subject to review and approval by the secretary.

[20.9.9.19 NMAC - N, 8/2/2007]

20.9.9.20 CONSTITUENTS AND PARAMETERS.

Constituents and parameters to be evaluated under the requirements of 20.9.9.1 - 20.9.9.19 NMAC include:

A. every constituent listed in the following:

- (1) 40 CFR 258 Appendix I;
- (2) 20.6.2.3103 NMAC, including the parameter of pH;

B. all constituents listed in 40 CFR 258 Appendix II, 20.6.2.3103 NMAC, potential toxic pollutants listed in 20.6.2.7 NMAC; and

C. the following constituents and parameters:

- (1) calcium (CAS No. 7440-70-2);
- (2) magnesium (CAS No. 7439-95-4);
- (3) potassium (CAS No. 7440-09-7);
- (4) sodium (CAS No. 7440-23-5);
- (5) ammonia (CAS No. 1331-21-6);
- (6) bicarbonate alkalinity;
- (7) carbonate alkalinity;
- (8) total nitrogen;
- (9) total kjeldahl nitrogen;
- (10) total organic carbon;
- (11) phosphate;
- (12) specific conductance;
- (13) temperature;
- (14) depth to ground water; and
- (15) ground water elevation.

D. When additional constituents are added to ground water monitoring requirements through updates to the rules cited, the new constituents shall be added to the routine sampling frequency for a particular landfill. Background quality for the new constituent shall be determined after a sufficient number of samples are collected during routine sampling, unless a new constituent is detected above the AML, in which case the procedure in Subsection E of 20.9.9.10 NMAC shall be used to determine background concentration.

E. A list of constituents

and parameters to be evaluated under the requirements of 20.9.9 NMAC will be made available to the public and posted on the NMED website.

[20.9.9.20 NMAC - N, 8/2/2007]

HISTORY OF 20.9.9 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB 74-1, Solid Waste Management Regulations, filed 05/03/1974;

EIB/SWMR-2, Solid Waste Management Regulations, filed 04/14/1989;

EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/1991;

EIB/SWMR-4, Solid Waste Management Regulations, filed 07/18/1994.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/1995), repealed 8/2/2007.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 07/18/1994) was renumbered, reformatted, amended and replaced by 20 NMAC 9.1, Solid Waste Management Regulations, effective 11/30/1995.

That applicable portion of 20 NMAC 9.1, Subpart VIII, Ground Water Monitoring; Corrective Action; Contingency Plan, (filed 10/27/1995) was **renumbered, reformatted and replaced** by 20.9.9 NMAC, Solid Waste Facility Ground Water Monitoring System Plan and Ground Water Monitoring Plan; Corrective Action, effective 8/2/2007.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 9 SOLID WASTE
PART 10 FINANCIAL ASSURANCE**

20.9.10.1 ISSUING AGENCY. New Mexico Environmental Improvement Board.

[20.9.10.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

20.9.10.2 SCOPE. This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.10.2 NMAC - Rp, 20 NMAC 9.1.I.002, 8/2/2007]

20.9.10.3 STATUTORY AUTHORITY. NMSA 1978, Sections 74-

1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.10.3 NMAC - Rp, 20 NMAC 9.1.I.003, 8/2/2007]

20.9.10.4 DURATION.

Permanent.

[20.9.10.4 NMAC - Rp, 20 NMAC 9.1.I.004, 8/2/2007]

20.9.10.5 EFFECTIVE DATE.

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.10.5 NMAC - Rp, 20 NMAC 9.1.I.005, 8/2/2007]

20.9.10.6 OBJECTIVE.

The objective of Part 10 of Chapter 9 is to establish a rule governing financial assurance requirements for solid waste facilities, composting facilities and recycling facilities.

[20.9.10.6 NMAC - Rp, 20 NMAC 9.1.I.006, 8/2/2007]

20.9.10.7 DEFINITIONS.

[RESERVED]

[See 20.9.2.7 NMAC for Definitions.]

20.9.10.8 APPLICABILITY AND EFFECTIVE DATE.

A. The requirements of 20.9.10 NMAC apply to owners and operators of all solid waste facilities and composting and recycling facilities required to provide financial assurance pursuant to Subsection C of 20.9.3.28 NMAC and Subsection E of 20.9.3.29 NMAC, except owners and operators who are the United States, the state of New Mexico, or any agency, department, instrumentality, office, or institution of those governments whose debts and liabilities are the debts and liabilities of the United States or the state of New Mexico. Owners or operators of composting and recycling facilities required to provide financial assurance pursuant to Subsection C of 20.9.3.28 NMAC and Subsection E of 20.9.3.29 NMAC are not required to provide financial assurance for post-closure care, phase I and II assessments or corrective action.

B. The owner or operator of a category 5 landfill or any solid waste facility modified after the initial effective date of this section shall submit to the department proof of financial assurance prior to the initial receipt of waste.

C. For municipal landfills operating on or after April 9, 1997, or solid waste facilities permitted after January 30, 1992, the requirements of 20.9.10 NMAC apply. For landfills that have been granted a waiver under 20.9.2.14 NMAC, the requirements of 20.9.10 NMAC apply.

D. Multiple facilities under one permit shall be treated individu-

ally for the purposes of 20.9.10 NMAC. Estimates and assurance must be given for each facility, but multiple facilities may be covered by the same mechanism(s).

[20.9.10.8 NMAC - Rp, 20 NMAC 9.1.IX.901, 8/2/2007]

20.9.10.9 FINANCIAL ASSURANCE FOR CLOSURE AND NUISANCE ABATEMENT.

A. The owner or operator of a solid waste facility shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the facility ever requiring closure under 20.9.6 NMAC at any time during the active life. This estimated cost should include estimated costs for an independent project manager and contract administration. The estimate may contain a subsidiary schedule showing the amount necessary to perform closure of the facility in each year of the permit life of the facility. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record.

(1) For landfills, the cost estimate shall be based upon the cost of closing the largest area of all landfill cells ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. Should the owner or operator submit a subsidiary schedule, the amount guaranteed annually may be in accordance with this schedule upon approval by the secretary. If the owner or operator is found to be utilizing acreage in excess of the amount shown in the subsidiary schedule, final closure on the excess acreage shall be completed within sixty days or the subsidiary schedule and the amount of financial assurance shall be increased to reflect the excess acreage.

(2) For all other solid waste facilities, the cost estimate must be a detailed written estimate of the cost of closure to be performed in accordance with the applicable portions of 20.9.6.12 NMAC and also shall include the cost of hiring a third party to clean up and dispose of the largest inventory of material and end product expected at the facility and to clean up and dispose of all fugitive trash, solid waste, or other materials that could potentially create a nuisance at the facility. The cost estimate shall also include costs of an independent project manager and contract administration. For a recycling or composting facility required to provide financial assurance for nuisance abatement pursuant to Subsection C of 20.9.3.28 NMAC or Subsection E of 20.9.3.29 NMAC, the owner or operator shall develop a detailed written estimate, in current dollars, of the cost of hiring a third

party to clean up and dispose of the largest inventory of compostable or recyclable material and end product expected at the facility and to clean up and dispose of all fugitive trash, solid waste, or other materials that could potentially create a nuisance at the facility. The cost estimate shall also include the costs of an independent project manager and contract administration.

(3) During the active life of the facility, the owner or operator shall annually adjust the closure cost estimate for inflation, installation of final cover material on any areas at final grade, and any other factors affecting closure costs. A copy of the adjusted closure cost estimate shall be placed in the operating record.

(4) The owner or operator shall increase the amount of financial assurance if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life by over three percent of the current financial assurance amount.

(5) The owner or operator may reduce the amount of financial assurance for closure if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the adjusted cost estimate and supporting documentation to the department. If approved, the owner or operator may revise any financial assurance documents to reflect the adjusted closure cost estimate, and shall file a duplicate original of each financial assurance document with the department within 15 days following approval, and shall place a copy of the estimate and approval in the operating record.

B. The owner or operator of each solid waste facility shall establish a financial assurance mechanism for closure of the facility in compliance with 20.9.10.13 - 20.9.10.23 NMAC. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.6.8 NMAC.

[20.9.10.9 NMAC - Rp, 20 NMAC 9.1.IX.902, 8/2/2007]

20.9.10.10 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

A. The owner or operator of a solid waste facility shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the facility in compliance with the post-closure care plan developed under 20.9.6 NMAC. The post-closure care cost estimate shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure care plan over

the entire post-closure care period. This estimated cost should also include estimated costs for an independent project manager and contract administration. The owner or operator may submit a subsidiary schedule showing, for the permit life of the facility, the annual incremental acreage and total acreage needing post-closure care and the corresponding estimate of post-closure costs. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record.

(1) The cost estimate for post-closure care shall be based on the most expensive costs for care during the post-closure period. Should the owner or operator submit a subsidiary schedule as described in Subsection A of this section, the amount guaranteed annually for post-closure care during the permit life of the facility may be in accordance with this schedule upon approval by the secretary. If the owner or operator, upon inspection, is found to have exceeded the acreage shown on the subsidiary schedule, the subsidiary schedule and the amount of financial assurance shall be increased within sixty days.

(2) During the active life of the facility and during the post-closure care period, the owner or operator shall annually adjust the post-closure care estimate for inflation, and any other factors affecting post-closure care costs. The owner or operator shall place a copy of the adjusted estimate in the operating record.

(3) The owner or operator shall increase the amount of financial assurance if changes in the post-closure care plan or facility conditions increase the maximum cost of post-closure care by over three percent of the current financial assurance amount.

(4) The owner or operator may reduce the amount of financial assurance if the adjusted cost estimate exceeds the maximum cost of care remaining over the post-closure period, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the reduced post-closure care cost estimate and any justification for the reduced estimate in a request to the department.

B. The owner or operator of each solid waste facility shall establish financial assurance for the costs of post-closure care in compliance with 20.9.10.13 - 20.9.10.23 NMAC. An originally signed duplicate of each financial assurance document shall be filed with the department. The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.6.8

NMAC.

[20.9.10.10 NMAC - Rp, 20 NMAC 9.1.IX.903, 8/2/2007]

20.9.10.11 FINANCIAL ASSURANCE FOR PHASE I & PHASE II ASSESSMENTS.

A. Unless suspended from the requirements of 20.9.9.9 - 20.9.9.13 NMAC in accordance with Subsection C of 20.9.9.8 NMAC, the owner or operator shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct activities of the phase I (20.9.9.13 NMAC) and phase II (20.9.9.15 - 20.9.9.16 NMAC) assessments. The phase I and phase II assessments cost estimate shall account for the entire cost of the phase I and phase II assessments for the entire assessment period. This estimated cost should also include estimated costs for an independent project manager and contract administration. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record. The estimate may contain a subsidiary schedule showing the amount necessary to perform a phase I assessment if a release is detected. Should the owner or operator submit a subsidiary schedule, the amount guaranteed annually may be in accordance with this schedule upon approval by the secretary.

(1) During the permit life of the facility and during the post-closure care period, the owner or operator shall annually adjust the phase I and phase II assessments estimate for inflation and any other factors affecting phase I and phase II assessment costs.

(2) The owner or operator shall increase the amount of financial assurance for phase I and phase II assessment costs if changes in the phase I and phase II assessments or facility conditions increase the maximum costs of the phase I and phase II assessments by over three percent of the current financial assurance amounts for phase I and phase II costs.

(3) The owner or operator may reduce the amount of the phase I and phase II financial assurance if the cost estimate exceeds the maximum remaining cost for the phase I and phase II assessments, upon specific approval by the secretary. To seek approval, the owner or operator shall provide a revised cost estimate and supporting documentation to the department. If approved, the owner or operator shall place a copy of the revised cost estimate in the operating record, shall notify the secretary that the estimate has been placed in the operating record and shall file a copy with the department.

B. Unless suspended from

the requirements of 20.9.9.9 - 20.9.9.13 NMAC in accordance with Subsection C of 20.9.9.8 NMAC, the owner or operator of each solid waste facility shall secure financial assurance for the costs of phase I and phase II assessments as required under 20.9.9.13 - 20.9.9.16 NMAC. The owner or operator shall provide continuous coverage for the phase I and phase II assessments until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.6.8 NMAC. [20.9.10.11 NMAC - Rp, 20 NMAC 9.1.IX.904, 8/2/2007]

20.9.10.12 FINANCIAL ASSURANCE FOR CORRECTIVE ACTION.

A. An owner or operator of a facility required to undertake a corrective action program under 20.9.9.13 - 20.9.9.17 NMAC, or required to guarantee any portion of a corrective action program as a condition of any permit or order by the secretary, shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate shall account for the total costs of activities as described in the corrective action plan for the entire corrective action period. This estimated cost should also include estimated costs for an independent project manager and contract administration. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record.

(1) The owner or operator shall annually adjust the estimate for inflation and any other factors affecting the corrective action costs until the corrective action program is completed.

(2) The owner or operator shall increase the amount of financial assurance if changes in the corrective action program or facility conditions increase the maximum costs of corrective action by over three percent of the current financial assurance amounts for corrective action costs.

(3) The owner or operator may reduce the amount of the financial assurance if the cost estimate exceeds the maximum remaining cost of corrective action, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the revised cost estimate and supporting documentation to the department. If approved, the owner or operator shall notify the secretary when notice of the amount of financial assurance has been placed in the operating record.

B. The owner or operator of each solid waste facility required to implement a corrective action program shall secure financial assurance for the corrective

action program in compliance with 20.9.10.13 - 20.9.10.23 NMAC. The owner or operator shall provide continuous coverage for corrective action until released from corrective action financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.6.8 NMAC. [20.9.10.12 NMAC - Rp, 20 NMAC 9.1.IX.905, 8/2/2007]

20.9.10.13 ALLOWABLE MECHANISMS.

A. The owner or operator shall establish a financial assurance mechanism to ensure that the funds necessary to meet the costs of closure, post-closure care, phase I and phase II assessments, and corrective action for known releases will be available whenever they are needed. The allowed mechanisms are:

- (1) trust fund;
- (2) surety bond;
- (3) irrevocable letter of credit;
- (4) insurance;
- (5) risk management pool;
- (6) local government financial test;
- (7) local government guarantee;
- (8) local government reserve fund;
- (9) corporate financial test; or
- (10) multiple mechanisms.

B. Owners or operators shall implement one or more of the financial assurance mechanisms specified in 20.9.10.14 - 20.9.10.23 NMAC. Each selected mechanism shall be made payable to or name the New Mexico governmental entity or entities that own or operate the facility as the beneficiary of the instrument, but if no New Mexico governmental entity or entities own or operate the facility, then the instrument shall be made payable to or name the New Mexico environment department as the beneficiary. [20.9.10.13 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.14 TRUST FUND. An owner or operator may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, or corrective action by establishing a trust fund that is worded as shown in forms supplied by the department. This trust fund may also be used as a repository for funds received from other financial assurance mechanisms. The trust fund shall be established as follows:

A. in the case of a trust fund for closure, post-closure care, or phase I and phase II assessments, payments into the trust fund shall be made at least annually over the term of the initial permit or over the remaining life of the facility, whichever is shorter; in the case of a trust fund for corrective action for known releases, payments

into the trust fund shall be made annually over the first half of the estimated length of the corrective action period, or in the time period specified by the permit condition or the secretary's decision; this period is referred to as the pay-in period;

B. for a trust fund used to demonstrate financial assurance for closure, post-closure care, and phase I and phase II assessments, the first payment into the fund shall be at least equal to the current approved cost estimate divided by the number of years in the pay-in period; the amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current cost estimate (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period;

C. for a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least one-half of the current approved cost estimate for corrective action; the amount of subsequent annual payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

where CE is the current remaining cost estimate for corrective action, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period;

D. in the case of closure, post-closure care, and phase I and phase II assessments, the initial payment into the trust fund shall be made prior to the initial receipt of waste; in the case of corrective action, the initial payment into the trust fund shall be made no later than 120 days after the corrective action remedy has been approved by the secretary;

E. if the owner or operator establishes a trust fund after having used one or more other mechanisms, the initial payment into the trust fund shall be at least equal to the amount that the fund would contain if the trust fund had been established initially and annual payments had been made according to the specifications of Paragraphs (1), (2) and (3) of Subsection C of this section, as applicable;

F. the owner or operator, or other person authorized to conduct closure, post-closure care, phase I and phase II assessments, or corrective action activities may request reimbursement from the trust fund for these expenditures by submitting

itemized bills to the secretary; unless there is an imminent threat to public health, welfare and safety or the environment, or undue economic hardship would delay or cease the required activities, requests for reimbursement shall be granted by the secretary only if the trust fund assets are sufficient to cover the remaining costs of required activities, and if justification and documentation of the expenditure is filed with the secretary and placed in the operating record; withdrawals of any funds from the trust fund shall be directed in writing to the trustee by the secretary;

G. the trust fund may be terminated only if the owner or operator substitutes alternate financial assurance as approved in writing by the secretary as specified in 20.9.10.13 - 20.9.10.23 NMAC or if the secretary determines that the owner or operator is no longer required to demonstrate financial assurance;

H. the trustees shall be a trust company or banks authorized to do business as a trust company in New Mexico under the Trust Company Act, NMSA 1978 Section 58-9-4 or 58-10-35, or authorized under federal law;

I. the trustee shall file annual reports on the trust fund balance with the department. [20.9.10.14 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.15 SURETY BOND GUARANTEEING PAYMENT OR PERFORMANCE.

An owner or operator may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, or corrective action by obtaining a surety bond guaranteeing payment into a trust fund or standby trust fund established by the owner or operator. The surety bond and standby trust fund shall be worded as in the forms supplied by the department.

A. In the case of closure, post-closure care, and phase I and phase II assessments, the surety bond shall be effective prior to the initial receipt of waste. In the case of corrective action, the surety bond shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

B. The owner or operator who uses a surety bond to satisfy its financial assurance requirements must also establish a trust fund or standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the trust fund or standby trust fund in accordance with instructions from the secretary. A standby trust fund must meet all the requirements of the trust fund specified in 20.9.10.14 NMAC as applicable, except that, until the standby trust fund is funded pursuant to the require-

ments of this 20.9.10.14 NMAC and the surety agreement, annual payments into the standby trust fund are not required, updating of Schedule A to the trust agreement is not required, annual valuation as required by the trust agreement is not required, and notices of non-payment are not required.

C. Companies providing surety bonds shall be admitted carriers, licensed carriers, or registered carriers of surplus lines of insurance and authorized in the state of New Mexico to do business and be among those listed as acceptable sureties on federal bonds in circular 570 of the U.S. department of the treasury.

D. Except as provided in 20.9.10.23 NMAC, the penal sum of the bond shall be in an amount at least equal to the estimated costs to perform the activities assured by the bond.

E. Under the terms of the bond, the surety shall become liable on the bond obligation when the secretary determines that the owner or operator has failed to perform as guaranteed by the bond.

F. Payments made under the terms of the bond shall be deposited by the surety directly into the trust fund or standby trust fund in accordance with instructions by the secretary. No payments shall be made from the trust fund or standby trust fund unless approved in writing by the secretary.

G. The bond shall remain in effect until the closure and post-closure care or phase I and phase II assessments or any corrective action for which the bond was acting as financial assurance is certified as complete, or until it is replaced by an alternate financial assurance mechanism. [20.9.10.15 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.16 IRREVOCABLE STANDBY LETTER OF CREDIT. An owner or operator may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, and corrective action by obtaining an irrevocable standby letter of credit worded as in forms supplied by the department and payable to a trust fund or standby trust fund established in conformance with 20.9.10.14 NMAC.

A. In the case of closure, post-closure care, and phase I and phase II assessments, the letter of credit shall be effective prior to the initial receipt of waste. In the case of corrective action, the letter of credit shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

B. The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state of New Mexico agency. The issuing institution shall be

authorized to transact business in the state of New Mexico.

C. A letter from the owner or operator referring to the letter of credit by number, issuing institution, issue date, and providing the name and address of the facility, and the amount of funds assured, shall be submitted to the secretary along with the letter of credit. A copy of the letter from the owner or operator and a copy of the letter of credit shall be placed in the operating record.

D. The institution issuing the letter of credit shall be an institution with assets of at least one billion dollars (\$1,000,000,000). If the assets of the issuing institution are less than this amount, the letter of credit shall be fully collateralized by the owner or operator.

E. The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the secretary 120 days in advance of cancellation. If the issuing institution notifies the owner or operator that it plans to cancel the letter of credit, the owner or operator shall obtain alternate financial assurance at least 30 days prior to the cancellation date. If the owner or operator fails to obtain alternate financial assurance in a timely manner, the secretary shall draw funds guaranteed by the letter of credit and place them in the trust fund or standby trust fund.

F. The trust fund or standby trust fund established by the owner or operator shall be worded as in forms supplied by the department.

G. The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in 20.9.10.13 - 20.9.10.23 NMAC or if the owner or operator is notified in writing by the secretary that financial assurance is no longer required.

H. The owner or operator shall file an originally signed duplicate of the standby trust agreement and originally signed duplicate of the letter of credit with the department.

[20.9.10.16 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.17 INSURANCE. An owner or operator may demonstrate financial assurance for closure, post-closure care, and phase I and phase II assessments by obtaining insurance which conforms to the requirements of 20.9.10 NMAC. In the case of closure, post-closure care, and phase I and phase II assessments, the insurance shall be effective prior to the initial receipt

of waste. In the case of corrective action, the insurance shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

A. The insurer shall be authorized to transact the business of insurance in the state of New Mexico and:

(1) have assets of one hundred million dollars (\$100,000,000) or more; or

(2) be an admitted carrier, a licensed carrier or a registered carrier of surplus lines of insurance or reinsurance in one or more states and have either a surplus of not less than twenty-five million dollars (\$25,000,000) above undiscounted actuarial reserves (including incurred but not reported (IBNR) claims), or have an A.M. best rating of not less than a B+ or the equivalent rating of other recognized rating companies.

B. The certificate of insurance shall be worded as in a form supplied by the department.

C. The insurance policy shall guarantee that funds will be available for closure post-closure care, phase I and phase II assessments, and corrective action, as applicable. The policy shall also guarantee that the insurer will, as necessary, provide funds up to the face amount of the policy to persons authorized by the secretary to conduct activities covered by the policy. The face amount of the policy shall be at least equal to the most recent cost estimate for each of the covered activities.

D. Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

E. The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator, and to the secretary, 120 days in advance of cancellation. If the insurer notifies the owner or operator that it plans to cancel the policy, the owner or operator shall obtain alternate financial assurance at least 60 days prior to cancellation of the policy. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(1) the secretary deems the facility abandoned;

(2) the permit is terminated or revoked or a new permit is denied;

(3) closure is ordered by the secretary or a court of competent jurisdiction;

(4) the owner or operator is named a debtor in a voluntary or involuntary bankruptcy proceeding;

(5) the premium due is paid.

F. For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. treasury for 26-week treasury securities.

G. The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted or if the secretary notifies the owner or operator that financial assurance is no longer required.

H. The owner or operator shall file a copy of the certificate of insurance and insurance policy with the department. The owner or operator shall report any changes in either surplus or rating to the secretary. In addition, a copy of the latest annual rating (if applicable) and a copy of the latest audited financial statements shall be forwarded by the insurer to the owner or operator and the secretary.

[20.9.10.17 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.18 RISK MANAGEMENT POOL. An owner or operator may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, or corrective action by joining a risk management pool. In the case of closure, post-closure care, and phase I and phase II assessments, participation in an approved risk management pool shall be effective prior to the initial receipt of waste. In the case of corrective action, participation shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

A. A risk management pool shall not be an allowed mechanism unless the pool is approved by the secretary. Approved pools shall incorporate any mechanisms or combination of mechanisms in 20.9.10.13 - 20.9.10.23 NMAC and have the following characteristics:

(1) be evidenced by a written contractual agreement among participating private entities or a joint powers agreement among participating governmental entities;

(2) would not be in violation of the anti-donation clause of the New Mexico State Constitution if funds were used;

(3) is liquid in nature, allowing for prompt initiation and payment of closure, post-closure care, phase I and phase II

assessments, or corrective action activities;

(4) has a defined annual contribution table that provides for timely periodic payments from the risk sharers;

(5) provides for guaranteed and timely supplemental funding in the event of an incident that depletes the assets of the pool;

(6) has incorporated in its framework a trust fund or standby trust fund that conforms with 20.9.10.14 NMAC.

B. The risk management pool shall provide an explicit guarantee that funding in the amount of estimated closure, post closure care, phase I and phase II assessments and any corrective action costs will be paid by the pool into the trust fund or standby trust fund established by the facility in the event the owner or operator fails to undertake and complete the covered activities.

C. The owner or operator shall file a copy of the agreement establishing the risk management pool and the contribution table. The owner operator shall file an original duplicate of the trust fund agreement or standby trust fund agreement, and the guarantee by the pool to pay into the standby trust fund or trust fund for covered activities for the particular facility.

[20.9.10.18 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.19 LOCAL GOVERNMENT FINANCIAL TEST. A local government that satisfies the requirements of Subsections A through E of this section may demonstrate financial assurance pursuant to Subsection A of 20.9.10.13 NMAC up to the amount specified in Subsection F of this section for closure, post-closure care, phase I and phase II assessments, and corrective action.

A. Financial component. The local government shall satisfy one of the following:

(1) if the local government has outstanding general obligations bonds, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all outstanding general obligation bonds; or,

(2) if the local government does not have outstanding general obligation bonds, it must satisfy each of the following financial ratios based on the local government's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and a ratio of annual debt service to total expenditures less than or equal to 0.20.

B. The local government shall prepare its financial statements in conformity with generally accepted accounting principles for governments and have its

financial statements audited by an independent certified public accountant or appropriate state agency.

C. A local government is not eligible to assure its obligations using the local government financial test if it is currently in default on any outstanding general obligation bonds; has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; operated at a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years; or receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement. However, the secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the secretary deems the qualification insufficient to warrant disallowance of the test.

D. Public notice component. The local government shall place a reference to all closure, post-closure care, phase I and phase II assessments, and corrective action costs assured through the financial test into its comprehensive annual financial reports (CAFR) and budgets. Upon initial receipt of waste at the facility, the reference must be included in the next CAFR. In the case of existing facilities, for closure, post closure care, and the phase I and phase II assessment, the reference must be included prior to the effective date of 20.9.10.19 NMAC. In the case of corrective action, the reference must be included not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.9 NMAC, the permit issuance, or the secretary's decision. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operation record until insurance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. The reference shall include the amount of each cost estimate and the year in which the local government expects these costs to be incurred. References in the budget must occur as budgeted line items if the activities are to occur in the period covered by the budget, but may appear in a supplemental data section if the activities will not occur until after the period covered by the budget.

E. Record keeping and reporting requirements.

(1) The local government shall submit the following items to the department:

(a) a letter signed by the local government's chief financial officer that lists all the current cost estimates covered

by a financial test, as described in Subsection F of 20.9.10.19 NMAC, provides evidence and certifies that the local government meets the conditions of Subsections A, B and C of 20.9.10.19 NMAC, and certifies that the local government meets the conditions of Subsections D and F of 20.9.10.19 NMAC;

(b) the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years and where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits; and

(c) a report to the local government from the local government's independent certified public accountant or the appropriate state agency stating that the certified public accountant or state agency has compared the data in the chief financial officer's letter with the owner's or operator's most recent independently audited, year-end financial statements, and in connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted; a copy of the supporting documentation shall also be placed in the facility operating record.

(2) The items required in Subsection E of 20.9.10.19 NMAC must be placed in the facility operating record as follows: in the case of closure, post-closure care, and the phase I and phase II assessment, prior to the initial receipt of waste at the facility, or for existing facilities, prior to the effective date of this part; or in the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of 20.9.9 NMAC, the permit issuance, or the secretary's decision.

(3) After the initial placement of the items in the facility's operating record, the local government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the local government's fiscal year.

(4) The local government owner or operator is no longer required to meet the requirements of Subsection E of 20.9.10.19 NMAC when the owner or operator substitutes alternate financial assurance as specified in 20.9.10.13 NMAC, or the owner or operator is released from the requirements of 20.9.10.13 - 20.9.10.23 NMAC in accordance with Subsection B of 20.9.10.9 NMAC, Subsection B of 20.9.10.10 NMAC, Subsection B of 20.9.10.11 NMAC, or Subsection B of 20.9.10.12 NMAC.

(5) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the owner or operator's fiscal year, obtain alternative or supplemental financial assurance, and place the required submissions for that assurance in the operating record.

(6) The secretary, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the secretary finds that the local government no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance that meets the requirements of 20.9.10 NMAC.

F. Calculation of costs to be assured. The portion of the closure, post-closure care, phase I and phase II assessments, and corrective action costs which a local government can assure under 20.9.10.19 NMAC is determined as follows:

(1) if the local government does not assure other environmental obligations through a financial test, it may assure closure, post-closure care, phase I and phase II assessments, and corrective action costs in an amount not to exceed 43 percent of the local government's total annual revenue;

(2) if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, it must add those costs to the closure, post-closure care, the phase I and phase II assessments, and corrective action costs it seeks to assure under this paragraph; the total shall not exceed 43 percent of the local government's total annual revenue;

(3) the local government shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in Paragraphs (1) and (2) of Subsection F of 20.9.10.19 NMAC. [20.9.10.19 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.20 LOCAL GOVERNMENT RESERVE FUND. A local government may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, and corrective action by establishing a reserve fund within its existing financial accounting system.

A. The reserve fund shall be created by resolution of the governing body specifying the use of funds only for purposes of closure, post-closure care, phase I and phase II assessments, or corrective action for the facility. The reserve fund shall specify that the funds shall be used for closure, post-closure care, phase I and phase II assessments and corrective action costs in compliance with 20.9.2 - 20.9.10 NMAC and orders issued pursuant to such rules by the secretary. In the case of closure, post-closure care, and phase I and phase II assessments for new facilities, the resolution shall be effective prior to the initial receipt of waste. In the case of corrective action, the resolution shall be effective not later than 120 days after the corrective action remedy has been approved by the secretary. The resolution shall specify withdrawals from the fund will only occur with approval by the secretary. Funding of the reserve fund shall be in conformance with the formulas specified for trust funds in 20.9.10.14 NMAC. The reserve fund shall be audited annually by the state auditor under the Single Audit Act.

B. The local government shall file a copy of the resolution with the department. The local government shall file audit reports of the reserve fund annually with the department.

[20.9.10.20 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.21 LOCAL GOVERNMENT GUARANTEE.

A. An owner or operator may demonstrate financial assurance for closure, post-closure, phase I and phase II assessment, and corrective action, as required by 20.9.10.9 - 20.9.10.12 NMAC by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in 20.9.10.19 NMAC, and must comply with the terms of a written guarantee.

B. Terms of the written guarantee. The guarantee must be effective prior to the initial receipt of waste, or in the case of existing facilities, prior to the effective date of this part. In the case of closure, post-closure care, or phase I and phase II assessments, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.9 NMAC, the permit issuance, or the secretary's decision. The guarantee must provide that if the owner or operator fails to perform closure, post-closure care, phase I and phase II assessments, or corrective action of a facility covered by the guarantee, the guarantor will perform, or pay a third party to perform, closure, post-closure care, and corrective action as required; or establish a fully funded trust

fund as specified in 20.9.10.14 NMAC in the name of the owner or operator.

(1) The guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the secretary. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the secretary, as evidenced by the return receipts.

(2) If a guarantee is canceled, the owner or operator must within 90 days following receipt of the cancellation notice by the owner or operator and the secretary, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the secretary. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record and notify the secretary.

C. Record keeping and reporting.

(1) The owner or operator must place a certified copy of the guarantee along with the items required under Subsection E of 20.9.10.19 NMAC into the facility's operating record prior to the initial receipt of waste, or in the case of existing facilities, prior to the effective date of this part. In the case of closure, post-closure care, or phase I and phase II assessments, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.9 NMAC, the permit issuance, or the secretary's decision.

(2) The owner or operator is no longer required to maintain the items specified in Subsection C of 20.9.10.21 NMAC when the owner or operator substitutes alternate financial assurance as specified in 20.9.10.13 NMAC through 20.9.10.23 NMAC; or the owner or operator is released from the requirements of 20.9.10.13 NMAC through 20.9.10.23 NMAC in accordance with Subsection B of 20.9.10.9 NMAC, Subsection B of 20.9.10.10 NMAC, Subsection B of 20.9.10.11 NMAC, or Subsection B of 20.9.10.12 NMAC.

(3) If a local government guarantor no longer meets the requirements of Subsection E of 20.9.10.19 NMAC the owner or operator must, within 90 days following the close of the guarantor's fiscal year obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the secretary. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days.

[20.9.10.21 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.22 CORPORATE FINANCIAL TEST. A private entity that satisfies the financial test requirements of this section may provide a corporate guarantee for financial assurance up to the amounts specified in this section for closure, post-closure care, phase I and phase II assessments, and corrective action.

A. Financial component.

(1) The owner or operator shall satisfy at least one of the following three conditions:

(a) a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(b) a ratio of less than 1.5 comparing total liabilities to net worth; or

(c) a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(2) The tangible net worth of the owner or operator shall be greater than:

(a) the sum of the current closure, post-closure care, phase I and phase II assessments, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million; or

(b) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided all of the current closure, post-closure care, phase I and phase II assessments and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements;

(c) the owner or operator shall have assets located in the United States amounting to at least the sum of current closure, post-closure care, phase I and phase II assessments, corrective action cost estimates, and any other environmental obligations covered by a financial test as described in Subsection C of 20.9.10.22 NMAC.

B. Recordkeeping and reporting requirements.

(1) An owner or operator seeking to demonstrate that it meets the corporate financial test shall file the following items with the department:

(a) a letter signed by the owner's or operator's chief financial officer that lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities and cost estimates required for any facilities described in Subsection C of 20.9.10.22 NMAC, and provides evidence demonstrating that the

firm meets the conditions of Subsection A of this section;

(b) a copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year; to be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant; an adverse opinion, disclaimer of opinion, or other qualified opinion shall be cause for disallowance, except that the secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the secretary deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test;

(c) if the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subparagraphs (b) or (c) of Paragraph (1) of Subsection A of 20.9.10.22 NMAC that are different from data in the audited financial statements referred to in Subparagraph (b) of Paragraph (1) of Subsection B of 20.9.10.22 NMAC or any other audited financial statement or data filed with the securities and exchange commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required; the special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences; and

(d) if the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in Subparagraph (b) of Paragraph (2) of Subsection A of 20.9.10.22 NMAC, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(2) The owner or operator shall meet the requirements of 20.9.10.22 NMAC unless the owner or operator provides alternate financial assurance that is approved in writing by the secretary or if the secretary notifies him in writing that he is no longer required to provide financial assurance.

(3) The owner or operator shall satisfy the requirements of the corporate financial test at the close of each fiscal year. If the owner or operator no longer meets the requirements of the test, the owner or operator shall, within 60 days following the close of the owner or operator's fiscal year, obtain alternate financial assurance approved in writing by the secretary.

(4) The secretary, based on a reasonable belief that the owner or operator may no longer meet the requirements of the corporate financial test, may require the owner or operator to provide reports of its financial condition at any time. If the secretary finds that the owner or operator no longer meets the requirements of the corporate financial test, the owner or operator shall provide alternate financial assurance.

C. Calculation of costs to be assured. When calculating the current cost estimates for closure, post-closure care, phase I and phase II assessments, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a corporate financial test, the owner or operator shall include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if they are assured through a corporate financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

[20.9.10.22 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

20.9.10.23 MULTIPLE FINANCIAL MECHANISMS. An owner or operator may satisfy financial assurance requirements by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in Subsection A of 20.9.10.13 NMAC, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate approved by the secretary for closure, post-closure care, the phase I and phase II assessments, or corrective action, as applicable. The language of the mechanism listed in 20.9.10.13 NMAC through 20.9.10.23 NMAC must ensure that the instruments satisfy the following criteria:

A. the financial assurance mechanisms must ensure that amount of funds assured is sufficient to cover the cost of closure, post-closure care, phase I and phase II assessments, or corrective action for known releases when needed, as appli-

able;

B. the financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

C. the financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closer and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.9.17 NMAC, until the owner of operation is released from the financial assurance requirements under 20.9.10.9.9 - 20.9.10.12 NMAC;

D. the financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law. [20.9.10.23 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

HISTORY OF 20.9.10 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB 74-1, Solid Waste Management Regulations, filed 05/03/1974;
EIB/SWMR-2, Solid Waste Management Regulations, filed 04/14/1989;
EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/1991;
EIB/SWMR-4, Solid Waste Management Regulations, filed 07/18/1994.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/1995), repealed 8/2/2007.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 07/18/1994) was renumbered, reformatted, amended and replaced by 20 NMAC 9.1, Solid Waste Management Regulations, effective 11/30/1995. That applicable portion of 20 NMAC 9.1, Subpart IX, Financial Assurance, (filed 10/27/1995) was **renumbered, reformatted and replaced** by 20.9.10 NMAC, Financial Assurance, effective 8/2/2007.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 9 SOLID WASTE
PART 20 RECYCLING, ILLEGAL DUMPING AND SCRAP TIRE MANAGEMENT**

20.9.20.1 ISSUING AGENCY:
New Mexico Environmental Improvement

Board.

[20.9.20.1 NMAC - Rp, 20 NMAC 9.2.I.101, 8/2/2007]

20.9.20.2 SCOPE: This part applies to the transporting, processing, storage, recycling, use, abatement, and generation of scrap tires. It establishes eligibility criteria for the Recycling and Illegal Dumping Fund. With the exception of 20.9.20.45 NMAC, 20.9.20.50 NMAC, 20.9.20.55 NMAC, 20.9.20.60 NMAC, and 20.9.20.63 NMAC, this part does not apply to permitted or registered solid waste facilities, registered recycling facilities, composting facilities or collection centers. A registered recycling facility, composting facility or collection center that stores 20,000 or more scrap tires or processes 200,000 or more scrap tires per year shall also comply with the requirements of 20.9.20.57 - 20.9.20.59 NMAC.

[20.9.20.2 NMAC - Rp, 20 NMAC 9.2.I.102, 8/2/2007]

20.9.20.3 STATUTORY

AUTHORITY: This part is adopted under the authority of the Recycling and Illegal Dumping Act, Sections 74-13-1 et seq. NMSA 1978 and the Solid Waste Act, Sections 74-9-1 et seq. NMSA 1978.

[20.9.20.3 NMAC - Rp, 20 NMAC 9.2.I.103, 8/2/2007]

20.9.20.4 DURATION:
Permanent.

[20.9.20.3 NMAC - Rp, 20 NMAC 9.2.I.104, 8/2/2007]

20.9.20.5 EFFECTIVE DATE:
August 2, 2007, unless a later date is cited at the end of a section.

[20.9.20.5 NMAC - Rp, 20 NMAC 9.2.I.105, 8/2/2007]

20.9.20.6 OBJECTIVE: The objective of the Recycling, Illegal Dumping, and Scrap Tire Management rule is to implement the provisions of the act with the purposes stated in Section 74-13-2 NMSA 1978.

[20.9.20.6 NMAC - Rp, 20 NMAC 9.2.I.106, 8/2/2007]

20.9.20.7 DEFINITIONS: As used in this part, the following definitions apply.

A. "Abatement" means to reduce in amount, degree or intensity or to eliminate.

B. "Act" means the Recycling and Illegal Dumping Act, Sections 74-13-1 et seq. NMSA 1978.

C. "Agricultural use" means the beneficial use of scrap tires in conjunction with the operations of a farm or ranch that includes construction projects

and aids in the storage of feed, as defined in the act.

D. "Alliance" means the recycling and illegal dumping alliance.

E. "Board" means the environmental improvement board.

F. "Civil engineering application" means the use of scrap tires or other recycled material in conjunction with other aggregate materials in engineering applications.

G. "Composting" means the process by which biological decomposition of organic material is carried out under controlled conditions and the process stabilizes the organic fraction into a material that can be easily and safely stored, handled and used in an environmentally acceptable manner.

H. "Cooperative association" means a refuse disposal district created pursuant to the Refuse Disposal Act, Sections 4-52-1 et seq. NMSA 1978; a sanitation district created pursuant to the Water and Sanitation District Act, Sections 73-21-1 et seq. NMSA 1978; a special district created pursuant to the Special District Procedures Act, Sections 4-53-1 et seq. NMSA 1978; or other associations created pursuant to the Joint Powers Agreements Act, Sections 11-1-1 et seq. NMSA 1978; or the Solid Waste Authority Act, Sections 74-10-1 et seq. NMSA 1978.

I. "Department" means the New Mexico environment department.

J. "Dispose" means to deposit scrap tires or solid waste into or on any land or water.

K. "Hauler's temporary storage facility" means a facility where less than 100 scrap tires are stored for no more than 72 hours by a registered scrap tire hauler or registered commercial hauler for the purpose of separating scrap tires from tires that will be reused for their original purpose.

L. "Household" means any single and multiple residence, hotel or motel, bunkhouse, ranger station, crew quarters, campground, picnic ground or day-use recreation area.

M. "Illegal dumping" means disposal of trash, scrap tires or any solid waste in a manner that violates the Solid Waste Act or the Recycling and Illegal Dumping Act.

N. "Illegal dumpsite" means a place where illegal dumping has occurred.

O. "Land reclamation" means the filling and restoring of excavated land for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim the land for re-use. Disposal of scrap tires in a permitted or registered solid waste facility is not "land reclamation."

P. "Land reclamation

project" means a civil engineering application designed to fill and restore land which had been excavated before the project and was not excavated for the burying of scrap tires, and does not include bank stabilization and erosion control projects.

Q. "Market development" means activities to expand or create markets for recyclable and reusable materials.

R. "Modify" means to change the terms or conditions of a permit or registration including:

(1) any change in the fundamental method of processing of scrap tires;

(2) any lateral or vertical expansion or alteration of the storage areas of the scrap tires, used tires, or tire derived products;

(3) storage of scrap tires, used tires, or tire derived products beyond the permitted or registered boundaries; but

(4) "modify" does not include:

(a) routine maintenance, repair, or replacement;

(b) an increase in the process rate, if such increase does not exceed the design capacity of the tire recycling facility, civil engineering application or violate any condition of the permit;

(c) a change in the hours of operation, unless such hours are specified in a permit condition;

(d) a change in the operating plan that is not the subject of a permit condition; and

(e) temporary changes allowed by the secretary under Subsection B of 20.9.20.39 NMAC and Subsection D of 20.9.20.41 NMAC when there is an imminent danger to public health, welfare, or the environment.

S. "Motor vehicle" means a vehicle or device that is propelled by an internal combustion engine or electric motor power that is used or may be used on the public highways for the purpose of transporting persons or property and includes any connected trailer or semi-trailer.

T. "Operator" means the person(s) responsible for the overall operation or construction of all or any portion of a tire recycling facility, civil engineering application, or business that generates or hauls scrap tires.

U. "Owner" means the person(s) who owns all or part of a tire recycling facility, civil engineering application, or business that generates or hauls scrap tires.

V. "Passenger tire equivalent" or "PTE" is a conversion factor for converting between numbers of scrap tires and weight; for passenger and light truck tires, the total weight of scrap tires, in pounds, divided by 22.5 pounds produces

the passenger tire equivalent. For purposes of this part, any numerical requirement associated with scrap tires may be measured in either PTEs or the actual number of scrap tires.

W. "Person" means any individual, partnership, company, corporation, firm, association, trust, estate, or legal entity, including government entities.

X. "Processing" means techniques to change physical, chemical or biological character or composition of solid waste but does not include composting, transformation or open burning.

Y. "Public entity" means:

(1) any state or local government;

(2) any department, agency, special purpose district, or other instrumentality of federal, state or local government; or

(3) any pueblo, tribe or Indian nation.

Z. "Recycling" means any process by which recyclable materials are collected, separated or processed and reused or returned to use in the form of raw materials or products.

AA. "Reusable tire" or "used tire" means a whole tire which has been used but is suitable for reuse for its originally intended purpose and has been specifically separated from scrap tires for reuse or resale. A used tire which appears to be suitable for its originally intended purpose but which has not been separated from scrap tires and stacked either vertically or horizontally shall be considered a scrap tire.

BB. "Reuse" of a tire means the return of a tire to use for its originally intended purpose without a change to its original form.

CC. "Scrap tire" means a tire, including a baled tire, that is no longer suitable for its originally intended purpose because of wear, damage, defect or obsolescence.

DD. "Scrap tire baling" means the process by which scrap tires are mechanically compressed and bound into block form.

EE. "Scrap tire generator" means a person who generates scrap tires, including retail tire dealers, retreaders, scrap tire processors, automobile dealers, automobile salvage yards, private company vehicle maintenance shops, garages, service stations and city, county and state government, but does not include persons who generate scrap tires in a household or in beneficial agricultural operations.

FF. "Scrap tire hauler" means a person who transports scrap tires for hire for the purpose of recycling, disposal, transformation or use in a civil engineering application.

GG. "Scrap tire manifest" means a document containing information

as required by, Section 20.9.20.50, that is necessary to transport scrap tires in the state of New Mexico.

HH. "Secretary" means the secretary of the New Mexico environment department or his or her designee.

II. "Storage" or "temporary storage" means storage for a period of time allowed by a permit for storage of scrap tires. Storage or temporary storage does not include a staging area where scrap tires will be staged for 5 days or less during construction.

JJ. "Tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a motor vehicle.

KK. "Tire-derived fuel" means whole or chipped tires that produce a low sulfur, high-heating-value fuel.

LL. "Tire-derived product" means a usable product produced from the processing of a scrap tire but does not include baled tires.

MM. "Tire recycling" means a process in which scrap tires are collected, stored, separated or reprocessed for reuse as a different product or shredded into a form suitable for use in rubberized asphalt or as raw material for the manufacture of other products.

NN. "Tire recycling facility" means a place operated or maintained for tire recycling but does not include:

(1) retail business premises where tires are sold, if no more than five hundred loose scrap tires or two thousand scrap tires, if left in a closed conveyance or enclosure, are kept on the premises at one time;

(2) the premises of a tire retreading business, if no more than three thousand scrap tires are kept on the premises at one time;

(3) premises where tires are removed from motor vehicles in the ordinary course of business, if no more than five hundred scrap tires are kept on the premises at one time;

(4) a solid waste facility having a valid permit or registration issued pursuant to the provisions of the Solid Waste Act or regulations adopted pursuant to that act or registration issued pursuant to the Environmental Improvement Act; or

(5) a site where tires are stored or used for beneficial agricultural uses.

OO. "Vector" means any agent capable of transmitting a disease from one individual or organism to another. Vectors include, but are not limited to, mosquitoes, flies and other insects, rodents, and vermin.

[20.9.20.7 NMAC - Rp, 20 NMAC 9.2.I.107, 8/2/2007]

20.9.20.8 PROHIBITED ACTS:

A. A person shall not store or use in a civil engineering application,

except for beneficial agricultural use, more than one hundred scrap tires anywhere in this state, unless the person has a valid permit or registration from the department, or is excluded from the definition of a tire recycling facility pursuant to Subsection NN of 20.9.20.7 NMAC.

B. A person shall not operate or maintain a tire recycling facility unless the facility has a valid permit issued pursuant to the provisions of the Recycling and Illegal Dumping Act or is a facility where tires are stored and used for beneficial agricultural uses and complies with rules enacted pursuant to the Recycling and Illegal Dumping Act.

C. A person shall not transport scrap tires for hire to a place other than a permitted tire recycling facility or permitted civil engineering application unless the place is specifically excluded from the definition of a "tire recycling facility".

D. A person shall not transport scrap tires for hire either for disposal or recycling purposes without being registered as a scrap tire hauler by the department pursuant to rules adopted in accordance with the Recycling and Illegal Dumping Act.

E. A scrap tire generator shall not release scrap tires to a person other than a registered scrap tire hauler pursuant to the Recycling and Illegal Dumping Act, a registered commercial waste hauler pursuant to the Solid Waste Act, or a self-hauling agricultural operation.

F. A person shall not engage in the open burning of scrap tires.

G. A person shall not store or dispose of scrap tires or tire-derived products in a manner that creates a public nuisance, promotes the breeding or harboring of disease vectors or creates a potential for fire or other health or environmental hazards.

H. A generator, scrap tire hauler or registered solid waste hauler shall not transport scrap tires without possessing a New Mexico scrap tire manifest approved by the department, except as otherwise provided in this part.

I. A person shall not engage in, maintain or allow illegal dumping.

[20.9.20.8 NMAC - Rp, 20 NMAC 9.2.I.108, 8/2/2007]

20.9.20.9 TIRE RECYCLING FACILITIES; ENTRY BY DEPARTMENT; AVAILABILITY OF RECORDS TO DEPARTMENT:

The secretary or any authorized representative, employee or agent of the department may enter, inspect, monitor, sample, or obtain records of a tire recycling facility, civil engineering application, scrap tire generator, or scrap tire hauler

as provided in Section 74-13-5 NMSA 1978. The secretary, authorized representative, employee, agent or other law enforcement officer shall present proper identification prior to inspection.

[20.9.20.9 NMAC - Rp, 20 NMAC 9.2.III.301, 8/2/2007]

20.9.20.10 PERMITS FOR SCRAP TIRE STORAGE, RECYCLING FACILITIES, AND CIVIL ENGINEERING APPLICATIONS AND REGISTRATIONS FOR SCRAP TIRE HAULERS:

A. Any person seeking to store more than 100 scrap tires or seeking to construct, operate, or modify a tire recycling facility or civil engineering application that uses more than 100 scrap tires shall first obtain a permit.

B. Any permit or registration for a civil engineering application granted prior to the effective date of these regulations shall remain in effect.

C. Permits are not required for a hauler's temporary storage facility that is used by a registered scrap tire hauler or a registered commercial hauler to separate scrap tires from reusable tires. Such facilities shall be included in the application for registration of the commercial hauler under Subsection A of 20.9.3.31 NMAC or registration of the scrap tire hauler under Subsection I of 20.9.20.26 NMAC.

D. A tire recycling facility or civil engineering application at a permitted or registered solid waste facility is not required to obtain a tire recycling or civil engineering application permit.

E. The department shall maintain a list of permitted and registered solid waste facilities and permitted tire recycling facilities and civil engineering applications on its solid waste bureau website.

[20.9.20.10 NMAC - Rp, 20.9.2.II.200, 8/2/2007]

20.9.20.11 APPLICATION REQUIREMENTS FOR TIRE RECYCLING FACILITY OR STORAGE PERMITS:

Any person seeking a tire recycling facility permit or storage permit to process or temporarily store scrap tires, including tire bales, shall file an application, which shall contain the following information.

A. A site layout plan of the proposed facility drawn to scale that is in compliance with the requirements of 20.9.20.36 NMAC and 20.9.20.37 NMAC. The map shall include at least the following information:

- (1) site/facility name;
- (2) labels of all features shown on the map;
- (3) north arrow;

(4) map scale;
 (5) all structures and buildings that are or will be constructed at the facility including those used in collection, storage or processing operations;
 (6) location of equipment;
 (7) property boundaries;
 (8) water sources, arroyos, wetlands, ditches and other topographic features;
 (9) wells;
 (10) fences;
 (11) easements, and power lines;
 (12) all access routes and internal roads used for residential, commercial and emergency use;
 (13) loading and unloading areas;
 (14) the location of the areas used for collection of scrap tires, processing of scrap tires, used tires, tire derived products, and residuals from processing; and
 (15) the location and width of fire lanes.

B. The name, mailing address, telephone number and e-mail address, if available, of the proposed facility, facility owner, operator, and property owner.

C. The location of the front gate of the proposed facility in latitude and longitude, as determined by a geographic information system unit or survey, and the physical address, if available.

D. Total acreage of the proposed facility site.

E. A copy of the deed or other legal description of the site.

F. Zoning of the site, and the zoning of all adjacent properties, if applicable.

G. The anticipated start up date of the facility and hours of operation.

H. An emergency contingency plan that meets the requirements of 20.9.20.47 NMAC.

I. An affidavit certifying that the proposed site complies with the applicable regulations of all local governing bodies having jurisdiction over the proposed facility, including planning, zoning, building, code enforcement and drainage departments.

J. Affidavits certifying that all applicable notifications required by 20.9.20.19 NMAC have been published and posted.

K. Any other information deemed applicable and requested by the secretary.

L. The following operational information:

(1) a list and description of the equipment to be used for handling, processing, recycling, or disposing of scrap tires;

(2) a detailed narrative of the method of any processing;

(3) the maximum number of scrap

tires to be processed in one year, if applicable;

(4) the maximum number of scrap tires to be processed in one month, if applicable;

(5) the maximum number of unprocessed scrap tires that will be located at the site at any one time;

(6) the maximum number of processed scrap tires that will be located at the site at any one time, if applicable;

(7) the plans for the transportation of scrap or processed tires or both to and from the site;

(8) a description of the methods to be employed to prevent, control or contain a tire fire, including a description of the facility's water source and capacity;

(9) a description of the methods to be employed to monitor and control vectors for scrap and processed tires in storage at the site;

(10) a description of the method to be used to remove residuals from the site; and

(11) any other information requested by the secretary.

M. Closure plans pursuant to 20.9.20.51 NMAC and 20.9.20.52 NMAC.

N. All applications shall be signed by the owner and operator, with a statement certifying that all information in the application is true and correct.

[20.9.20.11 NMAC - N, 8/2/2007]

20.9.20.12 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR FACILITIES THAT STORE 20,000 OR MORE SCRAP TIRES AT ANY ONE TIME OR PROCESS 200,000 SCRAP TIRES OR MORE PER YEAR:

Any person seeking a permit for a facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year shall submit the following information in addition to all information required in 20.9.20.11 NMAC:

A. an operation and maintenance manual that addresses all of the operating requirements; and

B. proposed financial assurance to meet the requirements of 20.9.20.57-20.9.20.59 NMAC.

[20.9.20.12 NMAC - N, 8/2/2007]

20.9.20.13 APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATION PERMITS:

A. Any person seeking a permit for a civil engineering application that uses 101 to 999 scrap tires and is two (2) bales high or less, other than a commercial feed operation that uses scrap tires as tarp weights, shall comply with the requirements of 20.9.20.36 NMAC and 20.9.20.37 NMAC and file an application which

includes the following information. If the civil engineering application applicant has obtained an approval form the U.S. army corps of engineers or construction industries division for the siting or design of the civil engineering application, then it may file only the information in paragraphs (1), (2), (4), (6), (7), (8) and (9) of this subsection.

(1) The name, mailing address, telephone number, and e-mail address, if available, of the applicant, property owner, and builder of the civil engineering application.

(2) The location of the of the civil engineering application, including its physical address if available.

(3) A copy of the deed or other legal description of the property on which the proposed civil engineering application will be constructed.

(4) If different from the civil engineering application site, the location, including the physical address, if available, and the name, mailing address, telephone number, and the e-mail address, if available, of the property owner of the temporary storage site where scrap tires will be stored temporarily before and during construction.

(5) A detailed narrative describing the proposed civil engineering application, unless the civil engineering application has a set of plans signed and stamped by a registered professional engineer.

(6) If the civil engineering application is to be in a floodplain, a waterway, or a wetland, written authorization of the project by the U.S. army corps of engineers or other appropriate authorities.

(7) The anticipated date when scrap tires will be brought to the civil engineering application site or temporary storage site.

(8) The origins, if known, of the scrap tires to be used for the civil engineering application.

(9) The proposed dates of completion of the civil engineering application and removal of scrap tires kept in temporary storage.

(10) The method to be used to anchor scrap tires, if applicable.

(11) The method to be used to cover scrap tires, if applicable.

(12) The method to be used to fill scrap tires; if applicable.

(13) Any other information deemed applicable and requested by the department.

(14) An affidavit certifying that the proposed site complies with the applicable regulations of all local governing bodies having jurisdiction over the proposed facility, including planning, zoning, building, code enforcement and drainage departments.

B. A commercial feed

operation that uses over 100 scrap tires for the weighting of tarps shall file an application, which shall include:

(1) the name, mailing address, telephone number, and e-mail address, if available, of the applicant, and property owner where the scrap tires will be used;

(2) the physical address or other description of the location where the scrap tires will be used;

(3) an affirmative statement that the scrap tires will be used only for tarp weights; and

(4) any other information deemed applicable and requested by the department.

C. All applications shall be signed by the applicant, with a statement certifying that all information in the application is true and correct.

[20.9.20.13 NMAC - N, 8/2/2007]

20.9.20.14 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATION THAT USES 1000 TO 99,999 SCRAP TIRES AND IS NO MORE THAN TWO BALES HIGH:

Any person seeking a permit for a civil engineering application that uses 1000 to 99,999 scrap tires and is no more than 2 bales high shall submit an application which includes the following information in addition to that required under 20.9.20.13 NMAC. If the civil engineering application applicant has obtained an approval form the army corps of engineers or construction industries division for the siting or design of the civil engineering application, then it may file only the information required in 20.9.20.13 NMAC.

A. A site layout plan of the proposed civil engineering application that is in compliance with the requirements of 20.9.20.37 NMAC, drawn to scale. The plan shall include at least the following information:

(1) labels of all features shown on the map;

(2) map scale;

(3) north arrow;

(4) the proposed civil engineering application;

(5) all structures and buildings at the civil engineering application site if within 100 feet of the civil engineering application;

(6) temporary storage areas for other material, equipment, and residuals from processing;

(7) loading and unloading areas for scap tires and other material to be used for the civil engineering project;

(8) location of all storage areas for scrap tire, tire derived products, used tires and fire lanes;

(9) property boundaries;

(10) water sources, arroyos, wetlands, ditches and other topographic fea-

tures;

(11) wells;

(12) fences;

(13) easements, and power lines; and

(14) all access routes and internal roads used for residential, commercial and emergency use.

B. If the scrap tires to be used for the proposed civil engineering application will be kept in temporary storage before and during construction on property that is different from the one described in Subsection A of 20.9.20.14 NMAC, the applicant must provide a plat map of the temporary storage facility that includes all items required in Subsection A of 20.9.20.14 NMAC for the civil engineering application.

C. An emergency contingency plan that meets the requirements of 20.9.20.47 NMAC.

[20.9.20.14 NMAC - N, 8/2/2007]

20.9.20.15 PERMIT APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATION THAT USES 100,000 SCRAP TIRES OR MORE OR IS MORE THAN TWO SCRAP TIRE BALES HIGH:

Any person seeking a permit for a civil engineering application that uses 100,000 scrap tires or more or is more than two scrap tire bales high shall submit the following information in addition to that required under 20.9.20.14 NMAC:

A. facility plans, elevations, drawings and cross sections of the proposed civil engineering application signed and sealed by a professional engineer registered in New Mexico; and

B. if the scrap tires to be used for the proposed civil engineering application will be kept in temporary storage before and during construction on property that is different from the proposed civil engineering application, demonstration that the temporary storage facility is in compliance with 20.9.20.37 NMAC.

[20.9.20.15 NMAC - N, 8/2/2007]

20.9.20.16 PERMIT APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS USING SCRAP TIRES FOR LAND RECLAMATION:

Any person seeking a permit for a civil engineering application using scrap tires for land reclamation shall file an application which shall include:

A. the name, mailing address, telephone number and e-mail address, if available, of the proposed land reclamation site, the applicant, and the land reclamation site's property owner;

B. the physical address of the proposed land reclamation site, if available;

C. a copy of the deed or other legal description of the property on which the proposed land reclamation site will be constructed;

D. the anticipated start up date when tires will be brought to the site;

E. the anticipated completion date;

F. the origins, if known, of the scrap tires to be used for land reclamation;

G. a description of other fill materials and their application;

H. a description of compaction methods;

I. the method of placement and commingling of scrap tires below ground mixed in a proportion no greater than 33% scrap tires by volume with soil suitable as fill material;

J. the approximate volume, dimensions and depth of the depression to be filled;

K. the approximate number of scrap tires proposed to be placed in the site;

L. ground storage area that is in compliance with the requirements of 20.9.20.37 NMAC;

M. a description of the final cover;

N. an emergency contingency plan that meets the requirements of 20.9.20.47 NMAC;

O. a letter from the local county official or municipal authority in which the site is or will be located that the applicant has provided notice of the proposed civil engineering application to the county or municipality;

P. a sworn notarized affidavit signed by the property owner certifying that the excavated area, hole or disturbed land area existed before the project and was not excavated for the burying of scrap tires; and

Q. all applications shall be signed by the applicant, with a statement certifying that all information in the application is true and correct.

[20.9.20.16 NMAC - N, 8/2/2007]

20.9.20.17 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS THAT PLAN TO USE 100,000 OR MORE SCRAP TIRES PER YEAR FOR LAND RECLAMATION:

Any person seeking a permit for a civil engineering application that plans to use more than 100,000 scrap tires per year for land reclamation shall submit the following information in addition to that required under 20.9.20.16 NMAC.

A. Site layout plan of the land reclamation site and any above ground storage areas signed and sealed by a profes-

sional engineer registered in New Mexico. The site layout plan shall include at least the following if applicable:

- (1) location of temporary storage areas of scrap tires and tire derived products;
- (2) location of fire lanes and fire control facilities;
- (3) security fencing, gates and gatehouse, site entrance and access roads and fire lanes in accordance with 20.9.20.37 NMAC;
- (4) locations of buildings; and
- (5) locations and descriptions of processing equipment.

B. An operation and maintenance manual that shall address all of the operating requirements.

C. Proposed financial assurance to meet the requirements of 20.9.20.57- 20.9.20.59 NMAC. [20.9.20.17 NMAC - N, 8/2/2007]

20.9.20.18 PERMIT APPLICATION REVIEW:

A. Upon receipt of an application for a permit, the department shall review the application to determine if additional information is necessary or shall determine the application complete. If the department determines that additional information is necessary, it shall notify the applicant in writing.

B. The applicant shall submit any information requested within 60 days of receipt of a request for additional information, or the application shall be denied without prejudice. The department may extend the response time for good cause. When submitting the information, the applicant shall submit three copies. If the permit application is not complete after two requests for additional information, the secretary may deny the permit application without prejudice. [20.9.20.18 NMAC - N, 8/2/2007]

20.9.20.19 PUBLIC NOTICES, HEARINGS AND MEETINGS:

A. Within thirty (30) days after an application for a facility that proposes to store 20,000 or more scrap tires at any one time or process 200,000 or more scrap tires per year or a land reclamation project that proposes to use 100,000 or more scrap tires per year is deemed complete, the applicant shall provide public notice. The notice shall be published once in a newspaper of general circulation in the county where the facility is proposed to be constructed, operated or closed. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper expected to give the general public effective notice. A notice shall also be posted on the property boundary where the entrance to the

facility will be. The posted notice shall be at least 1 1/2 feet by 2 1/2 feet in size with clear, legible letters. The notice shall be printed in both English and Spanish or other predominant language of the area. The notice shall include the following:

- (1) name, address, and telephone number of the applicant and contact person;
- (2) the anticipated start-up date of the facility or modification, and planned hours of operation;
- (3) a description of the facility, including the general process, location, size, quantity, rate, and type of tires to be handled and a description of any proposed modification; and
- (4) a statement that written comments regarding the application should be provided to the department and stating the date by which comments must be submitted.

B. Thirty (30) days shall be allowed for the public to submit written comments to the department. Should the secretary determine that there is significant public interest, a public hearing shall be held in the geographic area likely to be impacted by the tire facility. [20.9.20.19 NMAC - N, 8/2/2007]

20.9.20.20 P E R M I T ISSUANCE:

A. The secretary shall issue the permit, issue the permit with terms and conditions, or deny the permit within 60 days after the application is deemed complete or if a public hearing is held, within 120 days following the public hearing.

B. The secretary shall issue a permit if the applicant demonstrates that the requirements of this part and the act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

C. The terms and conditions of the permit or permit modification shall be the approved representations made by the permit applicant in the application, together with any terms and conditions specifically identified by the secretary.

D. At the time of permit issuance, the tire recycling facility or civil engineering application will be assigned a permit number.

E. A permit issued for a new or existing tire recycling facility shall be for the active life of the facility as described in the approved permit, or for twenty years, whichever is less.

F. A permit issued for a civil engineering application shall terminate upon completion of the civil engineering application or within five years of issuance of the permit, whichever is less. [20.9.20.20 NMAC - N, 8/2/2007]

20.9.20.21 PERMIT DENIAL,

SUSPENSION OR REVOCATION:

A. In addition to the causes for suspension or revocation listed in Subsection B of 74-13-13 NMSA 1978, the secretary may deny, suspend or revoke a permit during its term for:

(1) violation by the owner or operator of any term or condition of the permit, any requirement of the act, these rules or any subsequent rule adopted by the department;

(2) failure of the applicant in the application or during the permit issuance process to disclose fully all relevant facts;

(3) misrepresentation by the owner or operator of any relevant facts at any time;

(4) a determination that the permitted activity endangers public health, welfare or the environment;

(5) failure of the owner or operator to demonstrate the knowledge and ability to operate a facility in accordance with this part;

(6) a history of non-compliance by the owner or operator with environmental regulations, rules or statutes at another facility;

(7) having any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States;

(8) modifying a facility without the approval of the secretary; or

(9) failure to respond to a request for additional information within sixty (60) days of notification.

B. A permit may be revoked in accordance with the procedures set forth in Adjudicatory Procedures - Environment Department, 20.1.5 NMAC. Construction, modification and interim operation, if any, shall cease upon the effective date of the revocation.

C. Once a permit or permit modification is issued and all appeals are final, operations or construction shall begin within one year. If operation or construction does not begin within one year, the secretary may revoke the permit, but in no event shall it be revoked pursuant to this subsection sooner than one year after the effective date of these regulations. [20.9.20.21 NMAC - Rp, 20.9.2.212 NMAC, 8/2/2007]

20.9.20.22 EFFECT OF PERMIT OR REGISTRATION:

A. Any terms or conditions of the permit or registration shall be enforceable to the same extent as a regulation of the board.

B. The existence of a permit or registration issued under this part shall not constitute a defense to a violation of this part or the act.

C. The issuance of a per-

mit does not convey any property rights of any sort, or any exclusive privilege.
[20.9.20.22 NMAC - N, 8/2/2007]

20.9.20.23 PERMIT MODIFICATION:

A. Any owner or operator of a tire recycling facility, storage facility or civil engineering application who seeks to modify such facility or permit conditions shall obtain a permit modification prior to making any modifications. A permit modification shall not extend the term of any permit.

B. An application for a modification shall demonstrate compliance with the portions of this part that pertain to such a modification.

C. The secretary may initiate the modification of permit conditions or require modification of the facility if:

(1) changes occur after permit issuance, which justify permit conditions that are different from or are not included in the existing permit;

(2) the secretary has received information that was not in the record at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance;

(3) the standards or regulations on which the permit was based have changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued; or

(4) the secretary determines good cause exists for modification, such as an act of God, strike, flood, or materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable remedy.

[20.9.20.23 NMAC - N, 8/2/2007]

20.9.20.24 TRANSFER OF PERMITS AND CHANGE IN PERMIT APPLICANT:

A. A change in ownership of a permittee requires a permit transfer and shall be allowed according to the following procedure.

(1) Where the entity owning the permit undergoes an ownership change, but the permitted entity remains the same, the new owner shall, within thirty days of the change, submit the following:

(a) a description of the change in ownership;

(b) the date of the change in ownership;

(c) if the change in ownership is for a facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year or a land reclamation project that uses 100,000 or more scrap tires per year, a statement that the current financial assurance will remain

in effect, or a new proposed financial assurance to meet the requirements of 20.9.20.57 - 20.9.20.59 NMAC has been obtained;

(d) a statement whether the new owner has been convicted of a felony or other crime within ten years immediately preceding the date of the transfer, and if so details of the crime and conviction;

(e) a statement whether the new owner has been fined within the past five years for alleged violations of any environmental laws of this state, any other state or the United States, and if so, details of any allegations, settlements or compliance orders; and

(f) any other information required by the department.

(2) If the change in ownership is for a facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year or a land reclamation project that uses 100,000 or more scrap tires per year, the permittee shall provide proof of public notice of the ownership change using the procedures applicable to permit applications in Subsection A of 20.9.20.19 NMAC, and shall indicate in the public notice that the department will accept public comment on the ownership change for a period of 30 days after the date of publication.

(3) The existing financial assurance required by 20.9.20.57 - 20.9.20.59 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the new owner.

(4) The secretary shall, within 90 days after the submission of all required information, but not before the close of the public comment period, issue an order approving, approving with terms or conditions, or denying the application for permit transfer and revoking the permit. The secretary may condition the approval or deny the application and revoke the permit based on evidence in the administrative record. The secretary may deny the application for any reason set forth in Subsection A of 20.9.20.21 NMAC.

B. A change in the named permittee requires a permit transfer and shall be allowed according to the following procedure.

(1) Where the person owning the permit seeks to transfer the permit to a new person to be named as permittee, the existing owner and the proposed new owner shall file an application with the department requesting transfer of the permit. The application shall contain the following information:

(a) a description of the proposed change of permittee;

(b) an explanation of whether the change in permittee will have any effect on the operations;

(c) If the change in permittee is for a tire recycling facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year or a land reclamation project that uses 100,000 or more scrap tires, a new proposed financial assurance to meet the requirements of 20.9.20.57 - 20.9.20.59 NMAC;

(d) a statement whether the new owner has been convicted of a felony or other crime within ten years immediately preceding the date of the transfer, and if so, details of the crime and conviction;

(e) a statement whether the new owner has been fined within the past five years for alleged violations of any environmental laws of this state, any other state or the united states, and if so, details of any allegations, settlements or compliance orders;

(f) If the change in permittee is for a facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year or a land reclamation project that uses 100,000 or more scrap tires; and

(g) any other information required by the secretary.

(2) The permittee shall provide public notice of a proposed permit transfer using the procedures applicable to permit applications in Subsection A of 20.9.20.19 NMAC, and shall indicate in the public notice that the department will accept public comment on the permit transfer for a period of 30 days after the date of publication.

(3) If applicable, the existing financial assurance required by 20.9.20.57 - 20.9.20.59 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the proposed new permittee.

(4) The secretary shall, within 90 days after the submission of all required information, but not before the close of the public comment period, issue an order approving, approving with terms or conditions, or denying the application for permit transfer, and if necessary, revoking the permit. The secretary may condition the approval or deny the application and if necessary revoke the permit based on evidence in the administrative record. The secretary may deny the application or if necessary revoke the permit for any reason set forth in 20.9.20.21 NMAC.

C. If a permit applicant changes ownership or seeks to transfer the application to a new proposed permittee, the applicant and transferee shall follow the procedures in this section. If the application has already been deemed complete, the application shall be re-noticed and re-submitted.

[20.9.20.24 NMAC - N, 8/2/2007]

20.9.20.25 PERMIT EXPIRATION:

A. A permit issued for a new or existing tire recycling facility shall expire twenty years after issuance.

B. A permit issued for a civil engineering applications shall expire when the project has been completed and the final report in compliance with 20.9.20.53 NMAC has been submitted and approved in writing.

C. A permit shall automatically expire when the department verifies that the closure and any post-closure care plan, including corrective action, have been completed.

D. If a permitted facility begins operation, and thereafter does not operate for at least one year, authorization to accept scrap tires is suspended and closure activities shall begin immediately.

[20.9.20.25 NMAC -Rp, 20.9.2.II.211 NMAC, 8/2/2007]

20.9.20.26 APPLICATION REQUIREMENTS FOR SCRAP TIRE HAULER REGISTRATION: Haulers of scrap tires shall register with the department 30 days prior to beginning operations. A scrap tire hauler operating prior to the effective date of these regulations shall file an application within one year of the effective date of these regulations, and shall be allowed to continue hauling until its application is either approved or denied. Commercial solid waste haulers registered pursuant to 20.9.3.31 NMAC who haul scrap tires using vehicles that are primarily used for the hauling of other solid waste are not required to register under this section. Registrations are not transferable. Applications for a scrap tire hauler registration shall include the following information;

A. the name, address, telephone number, and e-mail address of the operation for which registration is sought, and the name address, telephone number, date of birth, driver's license number, and social security number of the owner and operator, unless the owner and operator are public entities or are a publicly held corporation that has on file and in effect with the federal securities and exchange commission a registration statement required under 15 U.S.C. Section 77e(c);

B. the anticipated start up date, hours of operation, and days of collection;

C. location and zoning of vehicle maintenance and any storage yard(s) and a demonstration that the use meets all zoning and land use regulations and restrictive covenants;

D. certification that drivers and vehicles are, and will continue to be, properly licensed;

E. a statement whether any of the owners or operators have been fined for violation of any environmental laws of any state or the United States;

F. a statement of whether any of the owners or operators have had any permit or registration revoked or permanently suspended for cause under the environmental laws of any state or the United States;

G. a copy of a current warrant issued by the New Mexico public regulations commission, transportation division pursuant to Paragraph (5) of Subsection A of 18.3.2.8 NMAC, if applicable, or in the case of a public entity hauling special waste, proof of financial responsibility;

H. a list of all registered or permitted tire recycling facilities, beneficial agricultural sites or solid waste facilities where scrap tires are expected to be transported on a regular basis;

I. if the hauler has a temporary storage facility used to separate scrap tires from tires that will be sold for reuse, a separate permit for the hauler's temporary storage facility is not required, but the hauler must provide a statement in the application that no more than 99 scrap tires will be stored at any one time at the haulers temporary storage facility, and that scrap tires will be separated from reusable tires and will not be stored for a period exceeding 72 hours;

J. evidence that a surety bond in the amount of \$10,000 has been posted; and

K. any additional information required by the secretary.

L. All applications shall be signed by the owner and operator, with a statement certifying that all information in the application is true and correct.

[20.9.20.26 NMAC - N, 8/2/2007]

20.9.20.27 SCRAP TIRE HAULER BOND REQUIREMENTS: A scrap tire hauler must acquire and maintain a surety bond in the amount of \$10,000 submitted on a form prepared by the department. This form may be obtained by contacting the department solid waste bureau, and will be posted on its website. The purpose of the surety bond is to provide limited financial assurance for the cleanup and proper disposal of scrap tires found to be illegally dumped by the scrap tire hauler.

A. The surety bond provided to the department must be issued subject to the laws and jurisdiction of the state of New Mexico and must issued by a surety company authorized by the superintendent of insurance to do business in New Mexico. The surety bond provided to the department must have original signatures. The wording of the surety bond must be identical to the wording on the form supplied by the depart-

ment.

B. The surety bond must name the secretary of the New Mexico environment department as the obligee for the surety bond. The secretary may designate a third party to receive any funds from the surety in an amount up to \$10,000 to pay for the costs of clean-up activities.

C. The surety bond must be continuous in nature, unless canceled by the surety company. The security company must notify the department sixty (60) calendar days prior to cancellation of the surety bond. Notice must be provided in writing via certified mail to the solid waste bureau chief.

D. In the event of cancellation of a surety bond, the scrap tire hauler must provide a replacement surety bond, executed by an authorized surety company, within thirty (30) calendar days of the department's receipt of the notice of cancellation of the existing surety bond. Should the scrap tire hauler fail to submit alternate bond coverage by the thirty-first (31) calendar day following receipt by the department of the notice of cancellation, the scrap tire hauler's certificate of registration shall be immediately suspended.

E. The surety company shall become liable under the terms of the bond if the department determines that the scrap tire hauler has failed to comply with the provisions of the Solid Waste Act, the Recycling and Illegal Dumping Act and 20.9.2 NMAC through 20.9.10 NMAC or this part. The registered scrap tire hauler is jointly and severally liable for the bond amount and any penalties, clean-up costs, or judgments resulting from hauling activities in violation of the Solid Waste Act, the Recycling and Illegal Dumping Act and 20.9.2 NMAC through 20.9.10 NMAC or this part that exceed the bond amount.

F. The surety's liability is limited to the amount of the surety bond. The amount of monies recoverable from the scrap tire hauler is not limited to the amount of the bond. A scrap tire hauler shall be responsible for paying for any financial obligations, beyond \$10,000 should the department successfully obtain the \$10,000 from the surety pursuant to the terms of the surety bond, caused by improper disposal of scrap tires by the scrap tire hauler or the scrap tire hauler's employee while acting within the scope of employment, as determined by the department.

G. The owner or operator may cancel the surety if the department has given prior written consent. The department will provide such written consent when the scrap tire hauler has given written notification that the scrap tire hauler is no longer in business and/or the date that the scrap tire hauling activities ceased.

[20.9.20.27 NMAC - N, 8/2/2007]

20.9.20.28 SCRAP TIRE HAULER REGISTRATION PROCEDURES:

A. The registration procedures in 20.9.20.26 - 20.9.20.32 NMAC apply to scrap tire haulers.

B. Upon receipt of an application for registration, the department shall review the application to determine if additional information is necessary or shall deem the application complete. The department shall issue a notice of administrative completeness or a notice that additional information is necessary within 60 days after receipt of the application. The secretary may extend the time for good cause.

C. Within 60 days of receipt of a request for additional information regarding any scrap tire hauler registration application, the owner or operator shall submit the information requested by the department, or the secretary may deny the registration application without prejudice. [20.9.20.28 NMAC - N, 8/2/2007]

20.9.20.29 SCRAP TIRE HAULER REGISTRATION DENIAL, REVOCATION, OR SUSPENSION:

A. The secretary may deny, revoke, or suspend a scrap tire hauler registration on the basis of information in the application or evidence in the administrative record, or other information that comes to the secretary's attention at any time.

B. Causes for denying, revoking, or suspending a registration include a finding that the applicant or owner or operator has:

(1) knowingly misrepresented a material fact in the application;

(2) refused to disclose or failed to disclose the information required under the provisions of this part or the act;

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

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

(5) violated a term or condition of the registration, any requirement of this part, or any requirement of the act or otherwise endangered public health or welfare;

(6) knowingly misrepresented a material fact at any time after issuance of the registration;

(7) failed to maintain a valid warrant pursuant to 18.3.2 NMAC; or

(8) failed to comply with the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 (1998 Cum. Supp.).

C. If the department recommends denial of a scrap tire hauler registration, notice shall be provided to the appli-

cant by registered mail. The applicant may request a hearing on the registration denial by filing a written request for hearing with the hearing clerk within 30 days of receipt of the notice. A request for hearing shall be treated as a hearing determination and the hearing conducted pursuant to 20.1.4 NMAC, Permit Procedures - Environment Department. If no request for hearing is filed within 30 days of receipt of the notice, the recommended denial shall become a final action of the secretary.

D. A scrap tire hauler registration may be revoked or suspended in accordance with the procedures set forth in 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. Operation, if any, shall cease upon the effective date of the revocation or suspension. [20.9.20.29 NMAC - N, 8/2/2007]

20.9.20.30 REGISTRATION ISSUANCE:

A. Within 30 days after an application for a scrap tire hauler registration is deemed complete, the secretary shall issue the registration, issue the registration with terms and conditions, or deny the registration.

B. The secretary shall issue a registration if the owner or operator demonstrates that the requirements of this part and the act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

C. The terms and conditions of the registration shall be the approved representations made by the registration applicant in the application, together with any terms and conditions specifically identified by the secretary.

D. At the time of registration issuance, the scrap tire hauler will be assigned a registration number.

E. The department shall maintain a list of registered scrap tire haulers on its solid waste bureau website. [20.9.20.30 NMAC - N, 8/2/2007]

20.9.20.31 SCRAP TIRE HAULER REGISTRATION RENEWAL:

A. A scrap tire hauler shall renew its registration every five years. To renew a registration, the scrap tire hauler shall file a complete renewal application no later than 30 days prior to the expiration date of the registration. A registration renewal application shall include the same information required in 20.9.20.26 NMAC, and in addition provide a complete description of its compliance history and any other information requested by the secretary. The existing registration shall remain in effect until the registration is granted, granted with conditions or denied.

B. A registered scrap tire hauler may continue to operate under the terms and conditions of the existing registration for a period not to exceed one year after the effective date of these rules or until the registration is renewed whichever is first provided that:

(1) the owner and operator are in compliance with the existing registration, this part, and any applicable federal regulations;

(2) a complete renewal application is submitted in a timely fashion in accordance with this section; and

(3) the owner or operator adequately submits any requested additional information by the deadline specified by the secretary. [20.9.20.31 NMAC - N, 8/2/2007]

20.9.20.32 SCRAP TIRE HAULER REGISTRATION EXPIRATION:

A. A scrap tire hauler registration shall expire five (5) years from the date of issuance of the registration.

B. A scrap tire hauler registration shall terminate upon any change of owners or operators of the registered scrap tire hauler, and the new owner or operator shall obtain a new registration prior to operation. [20.9.20.32 NMAC - N, 8/2/2007]

20.9.20.33 CURRENT HOLDERS OF TIRE RECYCLING FACILITY REGISTRATIONS, SPECIFIC TIRE RECYCLING FACILITY PERMITS AND LAND RECLAMATION SITES:

Registered tire recycling facilities, land reclamation sites, and holders of specific permits for tire recycling facilities shall apply for a permit and demonstrate compliance with the provisions of this rule within 180 days after its effective date. [20.9.20.33 NMAC - N, 8/2/2007]

20.9.20.34 CONFIDENTIALITY OF INFORMATION:

A. Permit applicants, owners or operators of tire recycling facilities or civil engineering applications, or scrap tire haulers who submit information to the department may claim such information as confidential. Any claim of confidentiality must be asserted at the time of submittal.

B. To claim confidentiality of information in a submittal, the submitter must clearly mark each page in the document on which the submitter claims there is confidential information, and submit to the department a written description of the basis for the claim of confidentiality at the time of submission. The department shall review the claim of confidentiality based on the written submittal and determine whether the information may be maintained as confi-

dential pursuant to the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978. If the department determines that information in a submittal is confidential, the department may require submission of redacted copies of the submittal for the public record.

C. If no claim of confidentiality is made at the time of submission, any such claims are deemed waived and the department may make the information available to the public without further notice.

D. Information that is determined by the department to be confidential may be disclosed to officers, employees, or authorized representatives of the state or the United States concerned with implementing law enforcement, or when relevant in any proceedings under the act or this part.

[20.9.20.34 NMAC - N, 8/2/2007]

20.9.20.35 FEE SCHEDULE:

There are no fees for tire recycling facility permits, storage permits, civil engineering application permits, or scrap tire haulers registrations.

[20.9.20.35 NMAC - N, 8/2/2007]

20.9.20.36 GENERAL SITING CRITERIA FOR TIRE RECYCLING FACILITIES, STORAGE FACILITIES AND CIVIL ENGINEERING APPLICATIONS:

A. No tire recycling or storage facility shall be located within 25 feet of a floodplain, a watercourse (including arroyos), or a wetland unless the floodplain, watercourse, or a wetland has been altered pursuant to an approval from the U.S. army corps of engineers or other appropriate authority.

B. No civil engineering application shall be constructed in a floodplain, a waterway, or a wetland without authorization by the U.S. army corps of engineers or other appropriate authority.

C. No tire recycling facility or civil engineering application shall be located within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, Sections 18-6-1 et seq. NMSA 1978 and the Prehistoric and Historic Sites Preservation Act, Sections 18-8-1 et seq. NMSA 1978.

[20.9.20.36 NMAC - N, 8/2/2007]

20.9.20.37 REQUIREMENTS FOR STORAGE OF SCRAP TIRES AND TIRE DERIVED PRODUCT BY TIRE RECYCLING AND STORAGE FACILITIES AND FOR TEMPORARY STORAGE BY CIVIL ENGINEERING APPLICATIONS:

A. A scrap tire storage site shall be designed, constructed, and operated

so that the health, welfare and safety of operators, haulers, and others who may utilize the site are maintained.

B. Outdoor storage of scrap tires shall not be located within the right of way of any electric power lines and in no event within 20 feet on either side of an electric power line.

C. Open burning is prohibited at all tire storage sites. Smoking shall be allowed only in designated areas.

D. Scrap tire piles or stacks of tire bales shall be no greater than 10 feet in height, nor shall the pile or stack be more than 50 feet wide by 100 feet long.

E. There shall be a minimum separation of 40 feet between outdoor scrap tire piles, bale stacks, and other stored materials. This 40 foot space shall be designated as a fire lane that totally encircles the tire piles and shall be maintained as an all-weather road.

F. Outdoor storage piles and bale stacks must be separated from grass and weeds by a minimum of 40 feet and from brush and forested areas including pinon and juniper by a minimum of 100 feet.

G. When there are more than three (3) outdoor storage piles of scrap tires or scrap tire bales that are 10 feet high by 50 feet wide by 100 feet long, the separation between the groups shall be at least 75 feet wide.

H. Tires shall not be stored under bridges, elevated trestles, elevated roadways, or elevated railroads.

I. When the bulk volume of scrap tires will be more than 20,000 cubic feet, a firmly anchored fence that is at least six feet high or other method of security that has been approved by the local fire authority is required.

J. All gates to the outdoor storage piles of scrap tires shall be locked when the facility is not staffed.

K. All gateways, fire breaks and separation lanes shall be free of obstructions at all times.

L. The scrap tire storage site shall have fire extinguishers that are in compliance with the local fire code.

M. Each site permitted as a tire recycling or storage facility shall conspicuously display at each entrance a sign at least 1 1/2 feet by 2 1/2 feet in size with clear, legible letters stating the name of the scrap tire storage site using the, name, location, and physical address of the site, the tire recycling or storage facility permit number, the hours of operation and emergency telephone numbers.

N. The facility must have suitable structures or features to prevent surface water run-on from surrounding areas as well as preventing surface runoff from leaving the facility.

O. The scrap tire storage site shall be designed, constructed and maintained in accordance with all local building codes, fire codes, and other applicable local codes and regulations including litter and nuisance codes.

P. An adequate means of suppression or extinguishing fires shall be provided.

[20.9.20.37 NMAC - N, 8/2/2007]

20.9.20.38 GENERAL OPERATING AND CONSTRUCTION REQUIREMENTS:

Owners and operators of all tire recycling facilities and civil engineering application sites shall operate and construct the tire recycling facility or civil engineering application in a manner that:

A. does not cause a public nuisance or create a potential hazard to public health, welfare or the environment;

B. is in compliance with rules adopted by state and local fire authorities; and

C. operates and maintains the facility in accordance with 20.9.20.37 NMAC.

[20.9.20.38 NMAC - N, 8/2/2007]

20.9.20.39 ADDITIONAL OPERATING REQUIREMENTS FOR ALL PERMITTED TIRE RECYCLING FACILITIES:

A. Owners and operators of all tire recycling facilities shall:

(1) ensure that copies of the emergency contingency plan that meets the requirements of 20.9.20.47 NMAC; are readily accessible to employees on duty;

(2) train employees when hired and at least annually thereafter on when and how to implement the emergency contingency plan that meets the requirements of 20.9.20.47 NMAC and document in the operating record that such training has been conducted;

(3) maintain a written operating record and manifests in compliance with 20.9.20.48 - 20.9.20.50 NMAC; and

(4) notify the department both orally and in writing within 24 hours of an incident that may negatively impact the environment, or human health or requires implementation of the facility's emergency contingency plan.

B. The secretary may order temporary changes in operation or facility design in emergency situations when the secretary determines there is an imminent danger to public health, welfare or the environment.

[20.9.20.39 NMAC - N, 8/2/2007]

20.9.20.40 ADDITIONAL OPERATING REQUIREMENTS FOR PERMITTED FACILITIES THAT

STORE MORE THAN 20,000 SCRAP TIRES AT ANY ONE TIME OR PROCESSES MORE THAN 200,000 SCRAP TIRES PER YEAR: Owners and operators of facilities that store 20,000 or more scrap tires at any one time or processes 200,000 or more than scrap tires per year shall:

A. post signs at the facility to indicate the name and address of the site, the hours of operation, the tire recycling facility permit number and emergency telephone numbers; and

B. prominently post key operational procedures.
[20.9.20.40 NMAC - N, 8/2/2007]

20.9.20.41 CIVIL ENGINEERING APPLICATION CONSTRUCTION AND MAINTENANCE REQUIREMENTS:

A. Scrap tires kept in temporary storage before and during construction of a civil engineering application will be stored in compliance with 20.9.20.37 NMAC.

B. Copies of the emergency contingency plan that meets the requirements of 20.9.20.47 NMAC shall be readily accessible to employees on duty.

C. All civil engineering applications shall be constructed in a stable manner.

D. The secretary may order temporary changes in storage, construction or design in emergency situations when the secretary determines there is an imminent danger to public health, welfare or the environment.

E. After completion, all civil engineering applications should be inspected on a regular basis by the site owner or operator to observe any weakness or failure of the structure.

F. In the event of a crack, break or collapse of the civil engineering application, the failure will be repaired in a timely manner so that scrap tires do not enter contiguously owned property or become a health hazard.

G. Loose tires used for civil engineering applications shall be filled with soil or other fill material to prevent the tires from becoming harborage for vectors.

H. The owner or operator of a civil engineering application shall maintain a written operating record and retain manifests in compliance with 20.9.20.48 - 20.9.20.50 NMAC.

I. Upon completion of the civil engineering application, all excess scrap tires held in temporary storage and equipment used for construction shall be removed, and a final report shall be submitted to the department pursuant to 20.9.20.53 NMAC.
[20.9.20.41 NMAC - N, 8/2/2007]

20.9.20.42 ADDITIONAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS FOR A CIVIL ENGINEERING APPLICATION THAT USES 100,000 OR MORE SCRAP TIRES OR IS MORE THAN TWO BALES HIGH: If the civil engineering application constructed is different from the plans submitted in the application, a professional engineer registered in New Mexico shall provide stamped and sealed as-built certification of the civil engineering application actually constructed.
[20.9.20.42 NMAC - N, 8/2/2007]

20.9.20.43 OPERATING REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS USING SCRAP TIRES FOR LAND RECLAMATION:

A. Undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of scrap tires and debris or soil. Any borrow area, hole or other disturbed land area to be used for a land reclamation project must have existed before the project, and it must have been excavated or soil removed for a purpose other than for the burial of tires or tire pieces.

B. Any person holding a permit for a civil engineering application using scrap tires for land reclamation shall:

(1) not adversely affect human health, public safety or the environment, either during fill operations or after the reclamation project is completed;

(2) not create a public nuisance;

(3) place scrap tires below ground mixed in a proportion no greater than 33% scrap tires by volume with soil suitable as fill material and compact and grade the structure in a manner that will prevent erosion;

(4) maintain a written operating record and retain manifests in compliance with 20.9.20.48 - 20.9.20.50 NMAC during the filling process; and

(5) not store scrap tires on the ground surface without burial and mixing with inert material for a period longer than one week.
[20.9.20.43 NMAC - N, 8/2/2007]

20.9.20.44 ADDITIONAL OPERATING REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS THAT USE 10,000 OR MORE SCRAP TIRES PER YEAR FOR LAND RECLAMATION: No more than 10 acres of land shall be reclaimed using scrap tires at any one location.
[20.9.20.44 NMAC - N, 8/2/2007]

20.9.20.45 OPERATING REQUIREMENTS FOR SCRAP TIRE HAULERS AND TRANSPORTERS:

A. Any person who transports scrap tires, whether or not for hire, shall:

(1) collect and transport tires so as to prevent environmental, safety, and public health or welfare hazards and nuisances; and

(2) securely tie, strap or use a fully enclosed container to transport scrap tires to prevent loss of contents during transportation.

B. Additional operating requirements for persons that haul scrap tires for hire follows.

(1) All registered scrap tire haulers shall conspicuously label all vehicles on both sides with the company's name, telephone number and registration number.

(2) Pursuant to 20.9.20.50 NMAC, registered scrap tire haulers shall provide a scrap tire manifest to the scrap tire generator for each load of scrap tires hauled.

(3) Registered scrap tire haulers shall comply with all manifesting requirements in 20.9.20.50 NMAC and record keeping requirements in 20.9.20.48 NMAC and 20.9.20.49 NMAC.

(4) Scrap tire haulers shall provide prior notification to the department in writing of any major changes in operation. A major change includes a change in ownership, a change in location of vehicle maintenance and storage yard and a change in the disposal facility being used. In the case of emergency, where prior notice cannot be given, written notice shall be given within 48 hours after the change.

(5) A scrap tire hauler is responsible for assuring that scrap tires are transported to a permitted or registered facility or beneficial agricultural operation within 30 days after leaving the site of the generator.

(6) A hauler's temporary storage facility shall contain no more than 99 scrap tires at any one time.

(7) Scrap tires shall be stored for no more than 72 hours at a hauler's temporary storage facility.
[20.9.20.45 NMAC - N, 8/2/2007]

20.9.20.46 SCRAP TIRE GENERATOR OPERATING REQUIREMENTS:

A. Each scrap tire generator is responsible for assuring that scrap tires are transported to a permitted or registered facility or beneficial agricultural operation.

B. Each scrap tire generator shall use manifests to document the removal and management of all scrap tires generated on-site.

C. Each scrap tire generator shall monitor and control vectors in outdoor tire storage areas.

D. Each scrap tire generator may transport its scrap tires from its own business locations to a permitted or registered facility or bona fide beneficial agricultural operation without a scrap tire hauler registration and shall provide the manifest to the final destination for completion. The scrap tire generator shall retain the manifest pursuant to 20.9.20.50 NMAC.

E. Each scrap tire generator shall comply with all manifesting requirements in 20.9.20.50 NMAC. [20.9.20.46 NMAC - N, 8/2/2007]

20.9.20.47 CONTINGENCY PLAN FOR EMERGENCIES:

A. Holders of tire recycling facility permits shall maintain a current emergency contingency plan designed to minimize hazards to public health, welfare or the environment.

B. A copy of the emergency contingency plan shall be kept at the permitted facility and copies shall be provided to the appropriate emergency response authorities of the local government.

C. The provisions of the emergency contingency plan shall be carried out immediately whenever there is a fire, explosion, or release of contaminants which could pose an immediate or imminent threat to public health, welfare or the environment.

D. The emergency contingency plan shall be amended immediately whenever the following occurs.

(1) The facility permit is modified.

(2) The plan fails in an emergency.

(3) The facility's design, operations, maintenance, or other circumstances change in a way that increases the potential for fires, explosions, or releases of hazardous constituents, or necessitate changes to the planned emergency response.

(4) The list of emergency coordinators changes.

(5) The list of emergency equipment changes.

E. The emergency contingency plan for emergencies shall include the following, if applicable.

(1) A description of the actions facility personnel should take in response to fires or other disaster.

(2) A description of arrangements with local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(3) A list of the name(s) and telephone numbers of the emergency coordinator(s). If more than one person is listed, one must be named as the primary emergency coordinator.

(4) A list of all emergency equipment at the facility (such as fire extinguishing systems, communications and alarm systems), along with the location, physical description, and a summary of the capabilities of each item.

(5) An evacuation plan for facility personnel which describes signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked by fire or releases of toxins.

(6) Instructions for the emergency coordinator or his designee, in case of an imminent or actual emergency situation, to immediately:

(a) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(b) notify appropriate state and local agencies with designated response roles if their assistance is needed.

(7) Instructions for the emergency coordinator, whenever there is a fire or other disaster, to as quickly as possible identify the nature, source, amount, and extent of any accident of fire by means of observation, review of facility records or manifests, or if necessary, by chemical analysis.

(8) Instructions for the emergency coordinator to assess possible hazards to public health, welfare or the environment that may result from the fire or explosion.

(9) Instructions for the emergency coordinator to provide for appropriate treatment, storage, or disposal of recovered waste, or any other material that results from a release, fire, or explosion at a facility, after the emergency situation is under control.

[20.9.20.47 NMAC - N, 8/2/2007]

20.9.20.48 RECORD KEEPING:

A. All persons holding a tire recycling facility permit shall maintain manifests and any records necessary to comply with its annual report requirements which shall include:

(1) the type of processing;

(2) the number of scrap tires or weight of the scrap tires received from each scrap tire generator or scrap tire hauler;

(3) the name, mailing address, contact name, telephone number and e-mail address if available, of each transporter that delivered scrap tires to the facility;

(4) the name, mailing address, contact name, telephone number and e-mail address if available, of the scrap tire generator where the scrap tires originated;

(5) the number of unprocessed scrap tire remaining at the site at the end of the calendar year;

(6) the number of processed scrap tire remaining at the site at the end of the

calendar year; and

(7) the number of tire bales, if applicable, remaining at the site at the end of the calendar year.

B. Any person holding a civil engineering application permit shall maintain a record during the construction of the project that includes manifests and any records necessary to comply with applicable record keeping requirements and the final project report requirements which shall include:

(1) the number of scrap tires or weight of the scrap tires received from each scrap tire generator or scrap tire hauler;

(2) the name, mailing address, contact name, telephone number and e-mail address if available, of each transporter that delivered scrap tires to the civil engineering application; and

(3) the name, mailing address, contact name, telephone number and e-mail address if available, where the scrap tires originated.

C. Any person holding a scrap tire hauler registration shall maintain manifests and any records necessary to comply with its annual report requirements which shall include:

(1) the number of scrap tires or weight of the scrap tires for each month, by origin and destination;

(2) the name, mailing address, and e-mail address if available, of each scrap tire generator or scrap tire hauler; and

(3) the name, mailing address, and e-mail address if available, of each authorized facility where scrap tires are delivered.

D. Any person holding a scrap tire hauler registration shall retain all manifests showing the collection and disposition of all used or scrap tires.

E. All records, plans, manifests and information required by this part shall be furnished upon request and be made available at reasonable times for inspection by the department.

F. All records, plans, manifests and annual reports required by this part shall be retained by the facility during the operational life of the facility and for a period of three (3) years after closure of the facility.

G. Any person holding a tire recycling facility permit or a civil engineering application permit shall retain at the permitted site a copy of the terms and conditions of the permit or registration, the emergency contingency plan if applicable, and permit or registration certificate.

H. Any person holding a scrap tire hauler registration shall keep a copy of the certificate of registration and any terms and conditions in any vehicle used to transport the scrap tires.

[20.9.20.48 NMAC - Rp, 20 NMAC

9.2.III.301, 8/2/2007]

20.9.20.49 ANNUAL REPORTS AND FINAL REPORTS: Any person having a tire recycling facility permit, civil engineering application permit or scrap tire hauler registration shall submit an annual report to the secretary within 60 days after the end of each calendar year describing the operations of the past year.

A. For tire recycling facilities, the report shall include the following information:

- (1) the type of processing;
- (2) the number of scrap tires or weight of the scrap tires received annually from each scrap tire generator or scrap tire hauler;
- (3) the name, mailing address, contact name, telephone number and e-mail address if available, of each transporter that delivered scrap tires to the facility;
- (4) the name, mailing address, contact name, telephone number and e-mail address if available, where the scrap tires originated;

(5) the number of unprocessed scrap tire remaining at the site at the end of the calendar year;

(6) the number of processed scrap tire remaining at the site at the end of the calendar year; and

(7) the number of tire bales, if applicable, remaining at the site at the end of the calendar year.

B. For scrap tire haulers, the report shall include the following information:

(1) the number of scrap tires or weight of the scrap tires for each month, by origin and destination;

(2) the name, mailing address, contact name, telephone number and e-mail address if available, of each scrap tire generator or scrap tire hauler; and

(3) the name, mailing address, contact name, telephone number and e-mail address if available, of each authorized facility where scrap tires are delivered.

C. For civil engineering projects taking more than one year, the report shall include the following information:

(1) the number of scrap tires or weight of the scrap tires received from each scrap tire generator or scrap tire hauler;

(2) the name, mailing address, contact name, telephone number and e-mail address if available, of each scrap tire generator or scrap tire hauler;

(3) the name, mailing address, contact name, telephone number and e-mail address if available, where the scrap tires originated; and

(4) the status of the civil engineering application to include the number of scrap tires or weight of scrap tires that have

not been used for the project yet, the number that is still needed, and the portion of the project that has already been completed.

D. For civil engineering projects taking less than one year, the report shall be submitted to the department 30 days after completion and shall include:

(1) as built drawings including cross section and plan view, if different from the proposed design; if the civil engineering application used 100,000 scrap tires or more or is more than two scrap tire bales high, the as built shall be signed and sealed by a professional engineer registered in New Mexico;

(2) the total number of scrap tires or tire bales used for the civil engineering application;

(3) the length, width and height of the civil engineering application; and

(4) photographs of the civil engineering application.

[20.9.20.49 NMAC - Rp, 20 NMAC 9.2.III.301, 8/2/2007]

20.9.20.50 SCRAP TIRE MANIFEST SYSTEM:

A. Each shipment of ten or more scrap tires generated, or recycled or disposed in New Mexico, and transported by a scrap tire generator or hauler shall be accompanied by a scrap tire manifest that complies with this section, in a format approved by the department. The department will place a copy of the approved format on the solid waste bureau website, and will also make it available at the department. The manifest form shall be provided by the transporter or if transportation is performed by the generator, then the generator shall supply the manifest. The manifest form shall include:

(1) the name, physical address, mailing address and telephone number of the generator;

(2) the name, address, and telephone number of all haulers in the order each will be transporting the scrap tires; if the scrap tires are being transported for hire, the scrap tire or commercial hauler's registration number shall be included;

(3) if the hauler removes scrap tires from the shipment for reuse, the number and type of tires removed, the name, phone number and physical address, of the used tire reseller or individual to whom the scrap tires were delivered;

(4) the name, telephone number and permit or registration number of the facility to which the scrap tires are to be delivered;

(5) the number and type of scrap tires released by the scrap tire generator;

(6) the number and type of scrap tires delivered to the final destination;

(7) sequential numbering; and

(8) a minimum of 4 copies; copy

4 will be retained by the scrap tire generator upon completion of tire loading; copy 3 will be retained by the scrap tire transporter upon delivery of tires to a permitted processing facility; copy 2 will be retained by the processing facility; copy 1, or the original copy, shall be returned to the generator by the processing facility in accordance with the requirements of this section.

B. The generator or his authorized agent shall sign and date the manifest and obtain the signature of the initial hauler and date of acceptance on the manifest. The generator shall retain a copy of the manifest. Each hauler shall obtain the signature and date of the individual who accepts the scrap tires for recycling, further transportation or disposal, retain a copy of the manifest, and provide the original manifest to the next hauler or facility operator who receives the scrap tires.

C. Once the scrap tires reach a permitted tire recycling facility, a permitted civil engineering application site, a bona fide beneficial agricultural use, or a solid waste facility having a valid permit or registration, that destination shall be considered the final destination and must return the signed and dated manifest to the generator. If the scrap tires are transported from the permitted or registered facility or site, the facility or site shall be considered a generator of scrap tires, and a new manifest must be initiated.

D. If a registered scrap tire or registered commercial hauler removes tires for reuse or resale while transporting from a generator site to a permitted tire recycling facility, a permitted civil engineering application site, a bona fide beneficial agricultural use, or a solid waste facility having a valid permit or registration, he shall retain copies and invoices for the sale of any tires removed from the original shipment for a period of three (3) years, showing the name, address, and if available, the phone number of the customer.

E. If a registered scrap tire or registered commercial hauler removes for reuse all tires from an individually manifested shipment, the hauler shall return the original manifest to the generator within 60 days of the date of collection. If all are not removed, the manifest shall be adjusted to show the number of tires removed. The manifest shall follow the scrap tires to the next hauler or final destination.

F. The manifest shall accurately reflect the required information and shall be signed and dated by the generator, each hauler of the scrap tires, and by the final destination, acknowledging delivery, number or weight, and receipt of the scrap tires. All signatories shall be duly authorized agents of their organizations. The generator shall keep a copy of the originating manifest for three years.

G. The final destination of the scrap tires shall be a permitted tire recycling facility, a permitted civil engineering application site, a bona fide beneficial agricultural use, or a solid waste facility having a valid permit or registration issued pursuant to the Solid Waste Act 74-9-1, et seq. NMSA 1978.

H. A scrap tire hauler shall release the scrap tires and provide the accompanying scrap tire manifest(s) to the final destination within 30 days after the release of scrap tires from the scrap tire generator.

I. The generator shall contact the department if the original manifest is not received within 60 days of the date of release of the scrap tires.

J. Upon discovery of any significant discrepancy including, but not limited to, factual misrepresentation on the manifest, irregularities in transportation or any unauthorized action in regard to the shipment, delivery, or disposal of the scrap tires, the person discovering the discrepancy shall notify the department, the generator, the hauler, and the final destination in writing within 24 hours. A discrepancy of over 20% between the number of tires released by the generator site, if measured by number, and scrap tires accepted at the final destination, if measured by weight, and unless otherwise accounted for, shall be considered significant.

K. Within thirty days of receipt of a scrap tire shipment at the final destination, the owner or operator of the final destination shall send the original signed copy of the manifest to the scrap tire generator, acknowledging receipt of the shipment. The facility owner or operator shall list any significant discrepancies on the manifest. Other methods of return of the manifest may be allowed upon specific approval from the secretary.

L. A copy of the manifest shall be retained by each hauler and final destination for their operating records. The scrap tire generator shall retain for a period of three years both the originating copy and the returned original manifest signed by the solid waste facility owner or operator and all haulers transporting the waste. Haulers shall retain a copy of the manifest for a period of three years.

M. Copies of the manifest shall be retained by the final destination throughout any closure period.

N. This section shall not apply to scrap tires that are collected incidentally to the collection and transportation of municipal solid waste to a permitted or registered facility.

O. The transportation of scrap tires between a permitted or registered solid waste facility and another permitted or registered solid waste facility or permitted

civil engineering application shall be exempt from this section.

P. Transportation of scrap tires by the New Mexico department of transportation and its contractors is exempt from this section.

Q. Registered commercial waste haulers that are hired to transport scrap tires from an illegal dump site or an abatement project are exempt from this section.

[20.9.20.50 NMAC - N, 8/2/2007]

20.9.20.51 CLOSURE REQUIREMENTS FOR TIRE RECYCLING FACILITIES AND CIVIL ENGINEERING APPLICATIONS: Closure plans are required in the application for a permit or permit modification, pursuant to 20.9.20.11 NMAC.

[20.9.20.51 NMAC - N, 8/2/2007]

20.9.20.52 CLOSURE REQUIREMENTS FOR TIRE RECYCLING FACILITIES:

A. The owner or operator of the tire recycling facility shall prepare a written closure plan that describes the steps necessary for closure of the tire recycling facility and any anticipated future uses of the property following closure.

B. The owner or operator of the tire recycling facility shall notify the department in writing of the intent to close at least 30 days before the last day tires are to be accepted at the facility and shall notify the department in writing within 14 days after the closure is complete.

C. Within 30 days after site closure is complete, the owner or operator shall notify the department certifying that all requirements have been met.

D. If the facility was required to provide proof of financial assurance for closure, the department shall inspect the site within 30 days of closure. If the closure is found to be satisfactory, the department shall approve the closure in writing and release the financial assurance instruments.

E. Owners or operators of tire recycling facilities shall:

(1) remove all processed and unprocessed tires;

(2) dismantle and remove any improvements related to scrap tire handling and processing, if required in the approved closure plan; and

(3) comply with all other conditions of the approved closure plan of the permit.

[20.9.20.52 NMAC - N, 8/2/2007]

20.9.20.53 COMPLETION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS: Upon completion of a civil engineering application,

the owner or operator shall:

A. remove all scrap tires not used for the civil engineering application;

B. submit a completion report to the department within 60 days after completion. The report shall include photographs documenting that the project has been completed and that all scrap tires not used in the project have been removed; and

C. provide the department with a final report of the completed civil engineering application including as built drawings in accordance with Subsection D of 20.9.20.49 NMAC. If the civil engineering application used 100,000 scrap tires or more or is more than two scrap tire bales high, the as built shall be signed and sealed by a professional engineer registered in New Mexico.

[20.9.20.53 NMAC - N, 8/2/2007]

20.9.20.54 ADDITIONAL CLOSURE AND COMPLETION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS THAT USE SCRAP TIRES FOR LAND RECLAMATION:

A. For completion of a civil engineering application that uses scrap tires for land reclamation, the owner or operator shall cover the site with 30 inches of compacted native soils and 6 inches of top soil to provide a 36-inch final cover that meets original grade and implement measures where necessary to control erosion and rodent intrusion.

B. Upon completion of closure, a detailed description of the location of the land reclamation site, including a plat signed by a registered surveyor, shall be filed with the appropriate county land recording agent. The description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the department. The description shall perpetually notify any potential purchaser of the property that:

(1) scrap tires have been used to reclaim the land; and

(2) if applicable, its use is restricted as described in the post-closure care plan.

C. The owner or operator shall prepare a written closure and post-closure care plan that describes the steps necessary for closure and post-closure care of the project and any anticipated future uses of the property following closure. The written plan shall include the following:

(1) a vegetation plan, if appropriate; and

(2) a monitoring and repair plan that describes methods to be used to ensure cover integrity, including but not limited to settlement, ponding, water erosion, wind erosion, and inadequate drainage.

[20.9.20.54 NMAC - N, 8/2/2007]

20.9.20.55 ENFORCEMENT of this part shall be done in compliance with the Recycling and Illegal Dumping Act, Sections 74-13-13 through 74-13-16 NMSA 1978 and the Solid Waste Act, Section 74-9-31 and Section 74-9-34 and Sections 74-9-36 through 74-9-38 NMSA 1978.

[20.9.20.55 NMAC - N, 8/2/2007]

20.9.20.56 RECYCLING AND ILLEGAL DUMPING FUND CRITERIA AND PROCEDURES FOR AWARDING GRANTS AND LOANS:

A. Counties, municipalities, cooperative associations, Indian nations, pueblos, tribes, or land grant communities may apply to the department for a grant, or loan for the purposes stated in the Recycling and Illegal Dumping Act, Sections 74-13-12 and 74-13-17 NMSA 1978.

B. Counties, municipalities, cooperative associations, Indian nations, pueblos, tribes, or land grant communities seeking a contract for abatement of illegal dumpsites or the recycling of scrap tires shall submit an application on a form developed by the department. All dumpsite abatement contract applications will be prioritized for award using the following criteria:

- (1) number of scrap tires and estimated amount and type of other on-site solid waste;
- (2) population within a five-mile radius of the illegal dumpsite or stockpile;
- (3) schools, hospitals, businesses and industries within a five-mile radius of the illegal dumpsite or stockpile;
- (4) the distance to rivers, streams and arroyos;
- (5) the fire hazard posed; and
- (6) whether the illegal dumpsite or stockpile is still active, and if so, what action, if any, is being taken by the governing body of the county, municipality, cooperative association, Indian nation, pueblo or tribe, or land grant community to terminate the activity.

C. Counties, municipalities, cooperative associations, Indian nations, pueblos, tribes, or land grant communities seeking a grant or loan for the recycling of scrap tires, abatement of illegal scrap tire dumpsites, or other purposes described in Section 74-13-17 NMSA 1978 shall submit an application on a form developed by the department. All such grants or loans will be prioritized for award using the criteria in Subsection B above, or for the recycling of scrap tires or other purposes described in Section 74-13-17 NMSA 1978, using the following criteria:

- (1) need;

- (2) urgency;
- (3) amount of local funding available;
- (4) consistency with surrounding land use;
- (5) population served;
- (6) consistency with department priorities;
- (7) alternative solutions available;

and

- (8) in no event shall a grant, loan or contract for processing be awarded to a person who receives less than ninety-five percent of recyclable materials from sources in New Mexico.

D. The department shall allocate budgeted grant money consistent with the requirements of Section 74-13-17 NMSA 1978.

E. In accordance with Subsection C of Section 74-13-7 NMSA 1978, the recycling and illegal dumping alliance shall review and make recommendations to the department for establishing priorities for each funding and application cycle and for funding grant applications for grants from the recycling and illegal dumping fund.

F. The department shall establish funding and application cycles.

G. Once applications have been submitted, the department shall:

- (1) review all applications for eligibility, completeness, and adequacy of technical and financial information;
- (2) use a point system to evaluate each application; and
- (3) make recommendations to the secretary for awarding grants and loans based on fund availability and points.

H. Grants or loans are contingent on the execution of an acceptable contract between the department and the entity awarded the grant or loan. Each contract shall, at a minimum:

- (1) clearly state the proposed use of funds;
- (2) establish a work plan and schedule;
- (3) create a budget; and
- (4) for abatement projects, state the mechanisms to be used by local authorities to prevent future illegal dumping at the site to be abated.

[20.9.20.56 NMAC - N, 8/2/2007]

20.9.20.57 FINANCIAL ASSURANCE APPLICABILITY AND EFFECTIVE DATE:

A. The requirements of 20.9.20.57 - 20.9.20.59 NMAC apply to owners and operators of all tire recycling facilities and civil engineering applications that use scrap tires for land reclamation required to provide financial assurance pursuant to Subsection B of 20.9.20.12 NMAC and Subsection C of 20.9.20.17 NMAC,

except owners and operators who are the United States, the state of New Mexico, or any agency, department, instrumentality, office, or institution of those governments whose debts and liabilities are the debts and liabilities of the United States or the state of New Mexico.

B. The owner or operator of a tire recycling facility modified after the effective date of these regulations shall have an approved financial assurance mechanism in place prior to implementing the modification.

C. For tire recycling facilities operating on or after September 1, 1995, the requirements of 20.9.20.57 - 20.9.20.59 NMAC apply beginning 180 days following the effective date of these regulations.

[20.9.20.57 NMAC - N, 8/2/2007]

20.9.20.58 FINANCIAL ASSURANCE FOR CLOSURES:

A. The owner or operator of a tire recycling facility or civil engineering application that uses scrap tires for land reclamation that is required to provide financial assurance pursuant to Subsection B of 20.9.20.12 NMAC and Subsection C of 20.9.20.17 NMAC shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to close the facility. The owner or operator shall file a copy of the estimate with the department concurrently with any request for approval of a financial assurance mechanism, and shall place a copy of the estimate in the operating record, and notify the department that the estimate has been placed in the operating record.

B. During the active life of the facility, the owner or operator shall annually adjust the cost estimate for inflation and any other factors affecting closure costs. A copy of the adjusted closure cost estimate shall be filed with the department, and a copy shall be placed in the operating record.

C. The owner or operator shall increase the amount of financial assurance if changes to the closure or facility conditions increase the maximum cost of closure or abatement at any time during the remaining active life by over 3 percent of the current financial assurance amount.

D. The owner or operator may reduce the amount of financial assurance for closure if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the adjusted cost estimate and supporting documentation to the department. If approved, the owner or operator may revise any financial assurance documents to reflect the adjusted closure cost estimate, and shall

file a duplicate original of each financial assurance document with the department within 15 days following approval, and shall place a copy of the estimate and approval in the operating record.

E. Cost estimates for all facilities shall include department contract management costs of at least 10 percent of the estimated closure costs.

F. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection D of 20.9.20.52 NMAC. [20.9.20.58 NMAC - N, 8/2/2007]

20.9.20.59 ALLOWABLE MECHANISMS FOR FINANCIAL ASSURANCE: The owner or operator of a tire recycling facility or civil engineering applications that use scrap tires for land reclamation that are required to post financial assurance shall select a financial assurance mechanism from those allowable mechanisms for closure identified in 20.9.10.13 NMAC. [20.9.20.59 NMAC - N, 8/2/2007]

20.9.20.60 VARIANCES: Any person seeking a variance from any requirement of this part shall do so in accordance with Permit Procedures - Environment Department, 20.1.4 NMAC. [20.9.20.60 NMAC - N, 8/2/2007]

20.9.20.61 RECYCLING AND ILLEGAL DUMPING ALLIANCE: The recycling and illegal dumping alliance shall complete the requirements of Subsection C of 74-13-7 NMSA 1978. [20.9.20.61 NMAC - N, 8/2/2007]

20.9.20.62 EXEMPTIONS: Any person claiming to be exempt from the act because the scrap tires will be used in an beneficial agricultural use shall demonstrate that the scrap tires will be used on land that has qualified as "Special Method of Valuation - Land Used Primarily For Agricultural Purposes", pursuant to 3.6.5.27 NMAC. Upon request, verification that the property upon which the tire recycling facility or civil engineering application is located has been granted an agricultural exemption by the assessor of the county where the tire recycling facility or civil engineering application is located shall be submitted to the secretary. In addition, any person claiming to be exempt from the act must show, upon request, that the scrap tires are being put to a beneficial agricultural use. [20.9.20.62 NMAC - N, 8/2/2007]

20.9.20.63 REUSABLE TIRES: Reusable tires shall be kept for resale for a period not to exceed one year. After that

time, they are considered scrap tires subject to the Recycling and Illegal Dumping Act, Sections 74-13-1 et seq. NMSA 1978 and the Solid Waste Act, Sections 74-9-1 et seq. NMSA 1978. [20.9.20.63 NMAC - N, 8/2/2007]

20.9.20.64 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this part does not relieve a person of the obligation to comply with other applicable local, state and federal laws. [20.9.20.64 NMAC - Rp, 20 NMAC 9.2.109, 8/2/2007]

HISTORY OF 20.9.20 NMAC:
Pre NMAC History: none.

History of Repealed Material: 20 NMAC 9.2, Tire Recycling (filed 07/18/1995) repealed 8/2/2007.

NMAC History: 20 NMAC 9.2, Tire Recycling (filed 07/18/1995) was renumbered, reformatted and replaced by 20.9.20 NMAC, Recycling, Illegal Dumping and Scrap Tire Management, effective 8/2/2007.

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 22, effective July 1, 2007

19.31.4.22 EMERGENCY ORDER FOR FISH SALVAGE: Under authority of 19.31.10.14 promulgated by the state game commission on April 1, 2007, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists within Comanche Creek in Taos county. The department will be conducting a fish restoration project requiring removal of all fishes. Bag limits on cutthroat trout will be increased to 2, and on other trout to 5. Tackle restrictions will remain in place. This relaxation will go into effect at 12:01 a.m., July 1, 2007, and will remain in effect through 11:59 p.m., July 22, 2007. [19.31.4.22 NMAC - N/E, 7-1-07]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 23, effective June 27, 2007

19.31.4.23 EMERGENCY ORDER FOR FISH SALVAGE: Under authority of 19.31.10.14 promulgated by the state game commission on April 1, 2007, I,

BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists within Estancia Park Lake in Torrance county. The extent to which, fish life may be destroyed by a confirmed oxygen depletion within the pond, potentially causing death to game fish. Bag limits on sport fish will be unlimited. Manner and method regulations will also be suspended. However, anglers over eleven (11) years of age will still be required to possess a valid fishing license. This relaxation will go into effect at 12:01 a.m. on June 27, 2007, and will remain in effect through 11:59 p.m., July 1, 2007. [19.31.4.23 NMAC - N/E, 6-27-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency repeal and replace of 8.102.460 NMAC, Recipient Policies - Defining Group Work Program Activities, originally filed June 18, 2001 effective July 16, 2007.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE
PROGRAMS
PART 460 RECIPIENT POLI-
CIES - DEFINING GROUP WORK
PROGRAM ACTIVITIES**

8.102.460.1 ISSUING AGENCY: New Mexico Human Services Department. [8.102.460.1 NMAC - Rp/E, 8.102.460.1 NMAC, 07/16/2007]

8.102.460.2 SCOPE: The rule applies to the general public. [8.102.460.2 NMAC - Rp/E, 8.102.460.2 NMAC, 07/16/2007]

8.102.460.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the AFDC program. The federal act created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act.

Through the New Mexico Works Act of 1998, the New Mexico works program was created to replace the aid to families with dependent children program.

C. Under authority granted to the governor by the federal Social Security Act, the human services department is designated as the state agency responsible for the TANF program in New Mexico.

D. Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and Title IV-A of the federal Social Security Act, the department is creating the New Mexico works program as one of its cash assistance programs.

E. In close coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

[8.102.460.3 NMAC - Rp/E, 8.102.460.3 NMAC, 07/16/2007]

8.102.460.4 D U R A T I O N : Permanent.

[8.102.460.4 NMAC - Rp/E, 8.102.460.4 NMAC, 07/16/2007]

8.102.460.5 EFFECTIVE DATE: July 16, 2007.

[8.102.460.5 NMAC - Rp/E, 8.102.460.5 NMAC, 07/16/2007]

8.102.460.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment and child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one participant is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.460.6 NMAC - Rp/E, 8.102.460.6 NMAC, 07/16/2007]

8.102.460.7 DEFINITIONS : [Reserved]

8.102.460.8 WORK PROGRAM: The purpose of the work program is to facilitate the rapid entry of NMW participants

into successful employment. This is achieved by participation in and successful completion of the activities described in this part.

[8.102.460.8 NMAC - Rp/E, 8.102.460.8 NMAC, 07/16/2007]

8.102.460.9 PROGRAM ACTIVITIES: The following sections describe the various work program activities in which participants may participate. A participant may participate in multiple work program activities at the same time or one after the other. The activities to be completed during an established period are identified in a work participation agreement by the participant and approved by ISD.

[8.102.460.9 NMAC - Rp/E, 8.102.460.9 NMAC, 07/16/2007]

8.102.460.10 WORK PARTICIPATION:

A. Requirement: A participant that is required to participate in various work program activities shall be expected to attend and complete all required activities, such as the assessment, individual responsibility plan (IRP), work participation agreement (WPA) and monthly participation requirements. A participant who fails to complete any requirement or participation falls below program requirements in any month, the benefit group shall be subject to a sanction for failure to participate as required.

B. Conciliation: Each participant shall be entitled to a single conciliation process the first time that the participant fails to meet participation requirements. See 8.102.620 NMAC for provisions concerning the conciliation process.

[8.102.460.10 NMAC - Rp/E, 8.102.460.10 NMAC, 07/16/2007]

8.102.460.11 PARTICIPATION WAIVER: Based on request and verification of existing condition, a participant may be qualified for a waiver from the work requirement.

A. Categories of waivers: Work program participation shall be waived for a participant:

(1) who is completely disabled, either temporarily or permanently, as determined by ISD in accordance with 8.102.420.11, 8.102.420.12, and 8.102.420.13 NMAC; IRU shall make the determination whether a waiver should be granted;

(2) who is 60 years of age or older; or

(3) who provides the sole care for a disabled person as defined in 8.102.420.11 NMAC.

(a) In order to show that the participant is a necessary primary caretaker, the participant requesting the waiver must

demonstrate that the participant cannot be out of the home for the number of hours necessary to meet program participation requirements.

(b) Only those care activities around which work program activities cannot be scheduled are taken into consideration.

(c) Transportation to medical appointments, food purchase and preparation activities, home maintenance chores, etc. are activities which may be scheduled and performed at times other than work program participation hours and so would not be taken into consideration.

(d) A requirement to be on call for the medical emergencies of a medically fragile participant is taken into consideration in determining whether a waiver is granted.

(4) A single parent, not living with the other parent of a child in the home, or caretaker relative with no spouse, with a child under the age of 12 months. This waiver shall not exceed 12 months a participant's lifetime. No more than one such waiver is granted to a benefit group at a time.

(5) A single custodial parent caring for a child who has not attained 6 years of age or who is a medically fragile child if the parent is unable to obtain child care for one or more of the following reasons and children youth and families department (CYFD) certifies as to the unavailability or unsuitability of child care:

(a) the unavailability of appropriate child care within a reasonable distance from the participant's home or work site, or;

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements, or;

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(6) A woman in her third trimester of pregnancy. The waiver is extended for six weeks beyond the termination of the pregnancy when the participant's work requirement cannot be waived by another participation waiver.

(7) A participant whose personal circumstances preclude participation for a period not to exceed one month. This includes persons who are temporarily ill, who are pending a domestic violence determination, or who have requested a waiver related to disability but for which the disability waiver has not been determined.

(8) A participant who demonstrates by reliable medical, psychological or mental reports, court orders, police reports, or personal affidavits if no other evidence is available, that family violence or threat of family violence effectively bars the participant from employment. IRU shall make the determination whether a waiver should be

granted.

(9) A participant may be entitled to the family violence option (DVO). This option allows for a participant in a domestic violence environment and unable to meet work program requirements to have all work requirements waived for the length of time certified by a trained domestic violence counselor. The certification that waives work requirements shall be made, on the basis that the environment where the participant resides would make it more difficult to escape the domestic violence or would unfairly penalize the participant in light of past or current experiences. The certification shall indicate that the participant is in a domestic violence environment which precludes compliance with work program requirements.

(a) A participant's DVO waiver shall be reviewed every six months and shall be determined by IRU based on the domestic violence counselor's certification. The participant shall be temporarily waived from work program requirements pending the determination from IRU.

(b) A participant who can continue to comply with work requirements as certified by a trained domestic violence counselor, may participate in a temporary alternative work activity for 24 weeks as described in 8.102.460.24 NMAC.

(10) A participant may demonstrate good cause of the need for the exemption. A good cause waiver may exist and shall be determined by IRU based on clients existing condition(s). Good cause is not considered to exist for failure to meet any of the above criteria.

B. Waiver determination: The determinations required under 8.102.460.11 NMAC shall be made by IRU based upon information provided by the participant requesting the waiver.

(1) It shall be the responsibility of the participant requesting a waiver to provide all information necessary to the caseworker. A waiver shall not be granted until the participant provides all the information needed to make the waiver determination.

(2) A participant who has not provided all the necessary information to make a determination shall be subject to meeting work program participation requirements.

C. Temporary waiver: A person who has provided all information necessary to make the determination shall be temporarily granted the waiver pending final determination by IRU.

D. Complete disability and special needs and considerations: The caseworker shall be responsible for explaining work program requirements and waivers of work program participation, including possible accommodations for special needs or considerations.

(1) Special needs or considera-

tions may include a physical, mental, neurological or sensory impairment that limits the ability to work; functional impairments that limit mobility, such as lifting, bending, walking, sitting for a prolonged period of time and climbing stairs; learning disabilities; or substance abuse problems.

(2) A participant who requests a waiver of work program participation based on disability must submit medical reports to the county office within thirty days of requesting a waiver. The caseworker shall submit for review a completed medical social summary, request for disability determination and all medical reports to the IRU.

(3) Incapacity review unit (IRU) responsibility: The IRU shall have sole responsibility for reviewing all medical reports and making a determination that a participant is waived due to disability, that there are limitations requiring special needs or considerations, or that full participation is possible.

(4) Complete disability: A participant may be considered completely disabled and exempt from meeting work program participation requirements if the participant:

(a) has a physical or mental impairment that is expected to last at least thirty days; and

(b) cannot reasonably be expected to participate in any of the approved work program activities for the NMW work program due to the severity of the physical or mental impairment; and

(c) cannot be expected to meet applicable work program participation standards.

E. Modified work participation agreement

(1) Factors limiting full participation: Where a participant is found to be capable of engaging in work activities, and IRU has documented limiting factors in the participant's capacity to work:

(a) the caseworker shall inform the participant and work program contractor of the IRU determination;

(b) the participant shall enter into a modified work participation agreement and individual responsibility plan;

(c) the work program contractor and the participant shall develop a plan for participation in work activities that takes into account the participant's limitations;

(d) the participation in services, activities or programs designed to enhance the participant's capacity to work shall meet the requirements for participation in secondary activities.

(2) Modified work participation agreement: The modified work participation agreement shall include at least twenty hours in qualified primary work activities, unless the participant is temporarily exempted from full participation. The bal-

ance of the hours in the participation standard shall be considered as secondary activities.

(a) Secondary activities may include all those activities identified as qualified secondary activities.

(b) Secondary activities must include participation in services, activities or programs that are intended to enhance the participant's capabilities and capacity to fully participate in work program activities based upon the participant's applicable participation standard.

(c) Required secondary activities may include, but are not limited to, additional screening and assessment to assist the participant in identifying barriers to work; a family assessment; referrals to treatment or counseling facilities; requiring the participant to schedule and attend doctor's appointments, mental health counseling, speech and physical therapy; substance abuse treatment; or continuing participation in services already being provided.

(3) Temporary exemption: The IRU may temporarily exempt a participant from meeting applicable hours in the participation standard in work activities as long as the participant develops, with the work program contractor, and implements a modified work participation agreement and participant responsibility plan.

(a) For purposes of work registration, the participant shall be considered as a volunteer, except that the participant shall be eligible for support services during the time the participant works with the work program contractor to develop and implement the modified work participation agreement and participant responsibility plan.

(b) The duration of the temporary exemption shall be determined by the IRU based on the participant's identified limitations.

(c) The participant shall be required to work with the work program contractor to develop and implement work activities identified in the modified work participation agreement.

(d) The participant's modified work participation agreement may include participation in qualified work activities and may or may not meet the participant's weekly participation standard.

(e) The participant must participate in any services, activities, or programs that are identified in the modified work participation agreement and intended to enhance the participant's ability to work and participate fully in work activities that will lead to self-sufficiency.

(4) Work program contractor:

(a) A work program contractor may identify a work program participant with special needs or considerations related to the participant's ability to fully participate in work activities. The contractor

shall:

(i) inform the participant of the special needs or considerations provision and the possibility of a modified work participation agreement;

(ii) immediately refer the participant back to the caseworker;

(iii) assist the participant, if necessary, in gathering all medical documentation for forwarding to the caseworker; and

(iv) inform the participant that the day after the day the work program contractor refers the participant back to the caseworker begins the thirty day time period for providing medical documentation to the caseworker.

(b) Upon receiving notification that the IRU has determined that a participant is unable to fully participate in work activities, the work program contractor shall work with the participant to develop a modified work participation agreement that takes into account the participant's limitations and emphasizes the participant's capabilities.

(c) The work program contractor shall work with the participant to develop an participant responsibility plan whose ultimate goal is the successful and full participation in work program qualified work activities that will lead to self-sufficiency.

(d) In developing the modified work participation agreement and individual responsibility plan, the work program contractor and participant should consider all available resources in the community, referral to other agencies, and other services that will enhance the participant's capabilities and capacity to work.

(e) The work program contractor shall monitor the requirements and activities in the modified work participation agreement and individual responsibility plan, including increasing interaction with the participant if necessary.

F. Waived participation limited requirements

(1) **Requirements:** The department may establish work participation requirements specific to the participant's circumstances and conditions. Participation requirements shall be based on medical social summary, medical and/or mental health documentation and other related information in regards to the participant's situation. Work requirements shall meet the purposes of improving the participant's income and strengthen family support.

(2) **Component activities:** For those participants who have been determined to have a limited work capacity the following activities, but not limited to, may be allowable as the primary participation requirements through the duration of the waiver such as:

(a) substance abuse services;

(b) mental health services;

(c) pursuit of disability benefits;

(d) job readiness or education directly related to employment;

(e) ESL courses for those participants who do not speak English; or

(f) residence in a domestic violence shelter or receiving counseling or treatment or participating in a criminal justice activity directed at prosecution of the domestic violence perpetrator for no longer than 24 weeks.

(3) Review and documentation:

At time of waiver review documentation of a participant's compliance with prescribed limited participation activity requirements shall be provided to establish on going requirements and to evaluate further conditions or circumstances that department shall consider to determine continued waiver status.

[8.102.460.11 NMAC - Rp/E, 8.102.460.11 NMAC, 07/16/2007]

8.102.460.12 NMW PARTICIPATION REQUIREMENTS:

A. Participation requirements apply to each benefit group member whether the benefit group is considered to be a two-parent or single-parent benefit group. A participant subject to work participation must meet the applicable primary and total work activity requirements set forth in this section and must timely meet requirements with respect to the assessment, the participant responsibility plan (IRP), submittal and approval of a work participation agreement (WPA), work activities, and timely reporting of attendance in work activities as follows:

(1) **Assessment:** The assessment shall be completed and verification received by ISD within 15 days of application approval, or following the day of the assessment appointment as described under good cause in Subsection C of 8.102.460.14 NMAC. Except as allowed for in 8.102.460.14 NMAC, failure to verify completion of the assessment subjects the benefit group to payment sanctioning.

(2) **Individual responsibility plan (IRP):** The completed plan in accordance with 8.102.460.16 NMAC must be signed and the plan received by ISD no later than 15 days from the date of approval of assistance. Failure to complete and sign the IRP subjects the benefit group to payment sanctioning.

(3) **Work participation agreement (WPA):** The WPA shall be provided to ISD no later than 15 calendar days from date of approval, in accordance with the provisions 8.102.460.16 NMAC. Failure to have an agreement submitted to ISD no later than 15 days from the date of approval of assistance subjects the benefit group to payment sanctioning.

(4) **Work activities:** The participant must be engaged in and meet applicable participation requirements, in accordance with the WPA, no later than the fifth day after placement approval.

(5) **Reporting attendance:** Participation in work activities for a month shall be reported to ISD no later than the fifth day of the following month. Failure to meet participation requirements or to timely report attendance each month may subject the benefit group to payment sanctioning.

B. Waiver termination:

The time and activity schedule shall be applicable to a participant whose work program participation has been waived for a period of time but who has become ineligible for the waiver. The base month is the month in which the participant becomes subject to participation, rather than the month of approval.

C. Reopened cases:

(1) A participant who has been approved for benefits with less than a 12-month break in certification shall be required:

(a) to submit a revised WPA within 15 days of approval;

(b) to be engaged in an allowable work activity as specified on the participant's WPA at the participation standard specified in 8.102.460.13 NMAC within 15 days of approval; and

(c) to submit the participation report to ISD no later than the fifth calendar day of the month following the month in which the 15-day time limit expires; the participant shall not be required to meet the participation standard for the 15-day period described in (a) and (b) above.

(2) A participant who fails to meet the participation requirements or to timely report work activity attendance each month may subject the benefit group to payment sanctioning.

(3) A participant who has had more than a 12-month break in benefits shall be required to meet all the steps identified in Subsection A of 8.102.460.12 NMAC.

[8.102.460.12 NMAC - Rp/E, 8.102.460.12 NMAC, 07/16/2007]

8.102.460.13 PARTICIPATION STANDARDS:

A. **General:** Participation standards are divided into primary, secondary and total activity requirements. Participation activities may be met only through those activities listed in Subsection A of 8.102.460.19 NMAC.

(1) Total activity requirements are met using primary activities or using a mix of primary and secondary activities, as described at 8.102.460.19 NMAC. Activity hours used to meet primary work activity requirements are also counted in determin-

ing whether total hour requirements have been met. Unless good cause exists, failure to meet these standards results in payment sanction.

(2) A participant subject to participation shall maintain and provide verification of participation at a rate at least equaling the applicable participation standard to avoid being sanctioned.

B. Calculating hours:

(1) Hours per week represent the weekly average over the month.

(2) Time spent traveling to and from the work-site, location where child care is provided, or both, do not count as hours of participation.

(3) For paid work activities:

(a) paid leave and holiday time count as actual hours;

(b) hours shall be anticipated prospectively and verification provided no less than every six months.

(4) For non-paid activities allowable excused absences count as actual hours when:

(a) the absence occurs on a day that the participant is scheduled to participate in an activity; and

(b) is considered excused by the institution or sponsoring agency.

(5) For non-paid activities allowable holiday absences count as actual hours when:

(a) the absence scheduled holiday occurs on a day that the participant would have been scheduled to participate in an activity; and

(b) the absence is a scheduled holiday as recognized by the department and determined at the beginning of each federal fiscal year.

(6) A participant may be granted no more than 10 excused absences during a one year period and no more than two in any month. The prescheduled hours of participation for the day of absence shall be included in the participation requirement.

(7) Non-paid work experience and community service participation hours are limited to the fair labor standards act (FLSA) rules.

C. Defining single-parent and two-parent benefit group:

(1) For the purpose of this determination, a two-parent benefit group shall be considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

(2) For the purpose of this determination, a single-parent benefit group is any benefit group which does not include both parents of a child in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

D. Two-parent families:

The participation standard for a two-parent family is based on the availability of federal funding for child care. The provisions in this rule do not apply to a two-parent family in which the youngest child is 13 years of age or older, unless the child would qualify as a special needs child under CYFD child care policies.

(1) Able bodied two-parent benefit group:

(a) Where both parents are mandatory work program participants, and federally funded child care is available, the total participation standard shall be 59 hours per week. No fewer than 50 hours per week shall be spent in primary work activities. One parent shall participate at least 30 hours per week in primary work activities, and the other parent shall participate at least 20 hours per week in primary work activities, with the remaining amount apportioned between them as they see fit.

(b) Where both parents are mandatory and federally funded child care is not available, the total participation standard shall be 40 hours per week in primary work activities. Each parent must participate at least 20 hours a week in primary work activities.

(2) Where one parent in a two-parent benefit group has been granted a participation waiver based on disability, the mandatory parent shall be subject to the participation standard for a single parent with a child age six or older.

(3) Where one parent in a two-parent benefit group is a recipient of SSI, the benefit group shall be considered as a single-parent benefit group, and the mandatory parent shall be subject to the appropriate participation standard for the single-parent benefit group.

(4) Where one parent in a two-parent benefit group has been granted a participation waiver for reasons other than disability, the participation standard for the mandatory parent shall be 39 hours a week, and at least 30 hours shall be spent in primary work activities.

(5) Where one parent is ineligible, disqualified or sanctioned; the other parent shall be subject to a participation standard of 39 hours a week, and at least 30 hours shall be spent in primary work activities.

(6) Where a two-parent benefit group includes an adult who does not meet the definition of a parent, that adult shall be subject to the participation standard for a single parent with a child age six or older.

(7) Where both parents in the benefit group are under age 20, the participation standard shall be met for each parent if the parent is maintaining satisfactory attendance in secondary school or its equivalent during the month. Satisfactory attendance shall be based on the requirements of the school and on enrollment in sufficient

course work to assure completion of secondary education before turning age 20.

E. Single-parent benefit group:

(1) **Single parent with a child age six or older:** Each mandatory participant in a single-parent or caretaker relative benefit group shall participate in primary work activities at least 20 hours a week.

(2) **Single parent with a child under age six:** The total participation standard for a single parent with a child under age six shall be 24 hours a week at all times, and of that amount, 20 hours shall be spent in a primary activity or activities.

(3) **Single parent under age 20:** A single parent under age 20 shall be considered to meet the single parent's total program participation standard if the single parent is maintaining satisfactory attendance in a secondary school or its equivalent during the month. Satisfactory attendance shall be based on the requirements of the school and on enrollment in sufficient course work to assure completion of secondary education before turning age 20. [8.102.460.13 NMAC - Rp/E, 8.102.460.13 NMAC, 07/16/2007]

8.102.460.14 ASSESSMENT:

A. Requirements: No later than 15 days after an application is approved, ISD shall assess the education, skills, prior work experience and employability of the participant. The assessment is a necessary pre-cursor to the IRP and participation choice and is a crucial and necessary element in meeting work program requirements. Failure on the part of the participant to participate in or to complete the assessment may result in work program noncompliance and payment sanctioning.

B. Elements: The assessment includes the following elements:

(1) a referral by the caseworker to a local agency or agencies who, acting on behalf of the department, carry out the assessment;

(2) a face-to-face meeting between the participant and the agency, no later than 15 calendar days following approval of assistance to the participant, in which the assessment is carried out; there are a variety of assessment tools and forms in existence; any of these may be used, provided that they address the participant's education, skills, prior work experience and employability;

(3) provision to ISD of a copy of the assessment or a certification as to the completion of the assessment; the copy of the assessment or certification must be provided to ISD by the expiration of the 15-day assessment period.

C. Good cause:

(1) A participant may not be sanctioned for failure to provide ISD with a cer-

tification that the assessment has been completed if:

(a) the participant demonstrates that the participant is unable to obtain a timely assessment and

(b) the participant informs ISD of that fact by the 15th day after approval for benefits; or

(c) department has not demonstrated timely assistance to a participant to complete the assessment or IRP.

(2) Upon being informed that a participant is unable to receive a timely assessment, ISD shall:

(a) determine whether the participant was unable to obtain a timely assessment by any reasonable means; and

(b) arrange for an assessment.

(3) If it is determined that the participant was unable to obtain a timely assessment by any reasonable means, ISD shall extend the time for the participant to provide a certificate of completion of the assessment to three working days from the date of the rescheduled appointment date.

[8.102.460.14 NMAC - Rp/E, 8.102.460.15 NMAC, 07/16/2007]

8.102.460.15 INDIVIDUAL RESPONSIBILITY PLAN:

A. Requirement:

Following completion of the assessment, the department and the NMW participant shall develop an individual responsibility plan (IRP). The importance and relevance of the IRP shall be explained to the NMW participant. The department and participant shall work together to identify appropriate activities and determine goals for reaching self-sufficiency. The signed and completed plan must be received by ISD no later than 15 days from the date of approval of assistance.

B. General purpose:

(1) The IRP is a personal planning tool, which is intended to assist the participant in long-term career planning and in securing and maintaining employment.

(2) The IRP is intended to assist the participant in setting realistic long-term employment goals and to identify those steps which must be taken to achieve the stated goals.

(3) The IRP is not intended to fulfill the limited purpose of identifying work activities which will meet NMW work program participation requirements. The participant is encouraged to use the IRP to choose work activities which will meet work program participation requirements, and at the same time, will assist in setting long-term employment goals.

(4) The IRP is designed to move the participant into whatever employment the participant is capable of handling, and to provide the support services necessary to increase the responsibility and amount of

work the participant will handle over time.

(5) The IRP describes:

(a) the services the department, or

(b) other programs or entities, may provide so that the stated goals may be achieved, including job counseling services, or appropriate substance abuse treatment.

C. Content of the IRP:

The IRP shall include the following elements:

(1) a specific achievable employment goal or goals and a plan for securing and maintaining employment;

(2) commitments by the participant which will assist in meeting long-term goals. Such commitments may include, but are not limited to, school attendance; maintaining certain grades; keeping school-age children in school; immunizing children; undergoing substance abuse treatment, or any other activity that will help the participant become and remain employed;

(3) a signature by the participant acknowledging the importance of the IRP, the identified activities and goals which will assist in achieving self-sufficiency, and the commitment to participate in activities which will achieve the stated goals;

(4) a signature by the department's representative acknowledging that there has been a discussion of the activities and goals with the participant, and that the department shall provide on-going support services as needed so that the participant may achieve the participant's stated goals.

D. IRP reviews: At least once every six months, ISD and the participant shall review and update the IRP. The review consists of a meeting to review the activities and goals set forth in the IRP, to review and document the participant's progress in achieving the stated goals, and to amend activities and goals as determined necessary and appropriate by the participant. Both the participant and ISD must initial or sign the updated IRP.

E. Conciliation and sanction:

(1) A participant shall be required to enter into a conciliation if the participant refuses or fails to develop an IRP; refuses or fails to sign an IRP; or refuses or fails to attend a six-month review of the IRP. The conciliation process is available once for work programs during each occurrence of participation and shall be provided in accordance with 8.102.620 NMAC.

(2) A participant is subject to sanction if the participant fails to develop an IRP; refuses to sign an IRP; or fails or refuses to attend a six-month review of the IRP. A participant is not sanctioned for failure to meet a goal identified on the IRP.

(3) The requirement for completion of an IRP shall not be waived by the department. Prior to entering into concilia-

tion or imposing a sanction, for failure to complete the IRP, the department shall determine if good cause applies to a participant not meeting the required time limit. Good cause for failure to complete a timely IRP shall include those items identified in Subsection A of 8.102.460.17 NMAC.

F. HUD family self-sufficiency agreements: Some housing authorities administer self-sufficiency programs under which residents develop a self-sufficiency plan and agreement with the housing authority. A participant with HUD family self-sufficiency plans may use those plans for their IRP. The participant must supply a copy of the plan to ISD.

[8.102.460.15 NMAC - Rp/E, 8.102.460.16 NMAC, 07/16/2007]

8.102.460.16 WORK PARTICIPATION AGREEMENT:

A. General: The purpose of the WPA is to assure the participant and the department that the work activities in which the participant is engaged meet minimum work program requirements and that support services and support service reimbursements are approved.

B. Contents of the agreement: At a minimum, the WPA shall:

(1) identify the participant's proposed work activities;

(2) identify the level of effort for each activity;

(3) identify the support services to be provided by the department;

(4) be signed by the participant; and

(5) upon approval of the activities and support services, be signed by ISD.

C. Submission of a proposed agreement: The participant must submit a signed proposed WPA to the department:

(1) prior to requesting support services associated with such activity or claiming reimbursement for support services associated with such activity;

(2) 15 days prior to reporting such activity for purposes of meeting minimum work program participation requirements if working when approved for benefits; or

(3) no later than 60 calendar days from approval for benefits.

D. Review and approval:

(1) ISD shall approve the WPA if:

(a) the proposed activities meet the minimum work program participation standards; and

(b) the requested support services allowable under department policy, are appropriate to the activity proposed and funding is available to support the reimbursement; and

(c) the participant has provided ISD with a copy of the participant's IRP.

(2) ISD shall deliver or mail a

copy of the reviewed agreement to the participant no later than three working days after receipt of the proposed WPA.

E. Denial:

(1) In the event that work activities or support services are denied, ISD shall also provide the participant with a short explanation of the reason for denial. Any change in the type of work activities or requested support services requires a new WPA.

(2) If the proposed agreement has been denied in any part, the participant shall contact ISD to discuss changes to the agreement that will allow approval. The participant must submit a revised WPA to ISD that meets work program requirements no later than 30 days from the date of approval of assistance. Failure to have an approved agreement on file by the deadline may subject the benefit group to work program sanctions.

F. Conciliation and sanction:

(1) A participant shall be required to enter into a conciliation if the participant refuses or fails to complete a WPA. The conciliation process is available once for work programs during each occurrence of participation and not again available until there has been a break of 12 months between occurrences of participation when a participant fails or refuses or fails to comply with the IRP process shall be provided in accordance with 8.102.620 NMAC.

(2) The requirement for completion of a WPA shall not be waived by the department. Prior to entering into conciliation or imposing a sanction the department shall determine if good cause applies to a participant not meeting the required time limit. Good cause for failure to complete a timely WPA shall include those items identified in 8.102.460.17 NMAC or if the department has not demonstrated timely assistance to a participant to complete the WPA.

[8.102.460.16 NMAC - Rp/E, 8.102.460.17 NMAC, 07/16/2007]

8.102.460.17 GOOD CAUSE FOR FAILURE TO MEET PARTICIPATION REQUIREMENTS: A participant who has failed to meet participation requirements may avoid sanction if the participant can show good cause.

A. A participant with good cause for failure to participate, who expects the cause of failure to continue for more than 30 days, must contact the department to modify the participant's condition. Good cause applies to timely completion of assessment, IRP, WPA, and work activity participation requirements. Under no conditions shall good cause be granted for more than 30 days during any given reporting period. Good cause may be considered to

exist for no more than 30 days in the event of:

- (1) family death;
- (2) hospitalization;
- (3) major injury to the participant or a benefit group member for whom the participant has been the primary caretaker;
- (4) reported domestic violence; or
- (5) catastrophic event.

B. Good cause shall be considered to exist when a participant meets the minimum primary work participation requirement, but may not meet the secondary work requirement. There is no limit for allowing good cause for this reason during a time period; however, the department shall work with the participant to identify the reason the total work requirement is not met.

C. Good cause applies to a participant not meeting the required time limit to complete the assessment, IRP, or WPA when the department has not demonstrated timely assistance to a participant.

D. Excused absences: For non-paid activities, allowable excused absences that are not approved by the employer or sponsoring agency may be considered good cause based on the approval of ISD.

[8.102.460.17 NMAC - Rp/E, 8.102.460.18 NMAC, 07/16/2007]

8.102.460.18 ORIENTATION:

A. General:

(1) Participants of NMW who are mandatory work program participants shall be provided a work program orientation, which explains the work program and its objectives to the participant.

(2) Participants shall be given information concerning their rights, supportive services provided during participation, and transitional services available after the NMW case closes because of earnings from employment.

(3) Mandatory participants shall be informed of their responsibilities for complying with work program requirements and that failure to do so, without good cause, shall result in the reduction or loss of NMW benefits.

B. Waiver of participation requirement: Persons for whom work program participation was waived at the time of approval, but who later become subject to participation, shall meet the work program participation requirements and time limits set forth at 8.102.460.12 NMAC, except that instead of measuring time from the month of approval, time is measured from the end of the month in which the waiver expires.

C. Orientation content:

(1) The orientation session provides each participant with the following information:

- (a) an explanation that NMW is a

temporary program intended to briefly assist the family while readying themselves for employment;

(b) an explanation of the opportunities available to the participant through the program, including education, training, work experience, and help in job search;

(c) reminder of participant's rights and responsibilities, program regulations and requirements, and the consequences for failure to meet requirements;

(d) overview of supportive services available, such as child care, transportation and education costs reimbursement, employment counseling and contacts with other agencies; supportive services are contingent on funding availability but only after the participant has exhausted all other funding resources;

(e) explanation of participant's obligation to obtain an assessment and return to ISD within 15 days of the date of approval of application;

(f) explanation of participant's obligation to request approval in writing of participant's work participation activities and secure approval of activities by ISD; and

(g) overview of transitional services available to participants whose NMW case closes due to employment/earnings.

(2) Since the amount of information provided to the participant is extensive, ISD may include written program information with the orientation letter or at the orientation.

[8.102.460.18 NMAC - Rp/E, 8.102.460.20 NMAC, 07/16/2007]

8.102.460.19 QUALIFIED WORK ACTIVITIES:

A. Primary work activities: For purposes of meeting the participant's participation standard primary work activities are defined in sections 8.102.460.20 NMAC thru 8.106.420.29 NMAC.

B. Secondary work activities: A secondary activity shall include any primary activity that is not already being credited toward the participant's participation standard as a primary work activity or an activity as defined in section 8.102.460.30 NMAC thru 8.102.460.32 NMAC.

C. Single head of household: A participant who is a single head of household and under age 20 shall be deemed to be meeting the single head of household's participation standard for the month if the single head of household:

(1) reports on a bi-weekly basis satisfactory attendance at a secondary school or in a GED program; the single head of household must be enrolled enough hours to ensure graduation prior to turning age 20 for attendance to be deemed to be

meeting the participation standard; or

(2) participates in education directly related to employment for at least the average number of hours per week specified in 8.102.460.13 NMAC.

D. Limited work requirement: Based on participant circumstances and in order to address barriers a limited participation requirement shall be determined as the best placement as per Subsection D of 8.102.460.11 NMAC.

[8.102.460.19 NMAC - Rp/E, 8.102.460.14 NMAC, 07/16/2007]

8.102.460.20 UNSUBSIDIZED EMPLOYMENT:

A. Unsubsidized employment is full- or part time employment in the public or private sector that is not funded directly or in part by TANF or any other public program.

B. General:

(1) Hours for participants who are employed for wages at or above minimum wage will be determined by actual hours worked and will include paid leave and holidays.

(2) Hours for participants who are self employed will be determined by subtracting business expenses from gross income for the term reported and divided by the federal minimum wage.

C. Component activities: The following shall be considered as qualified participation hours for unsubsidized employment.

(1) A participant who is employed less than 30 hours per week in unsubsidized employment is considered to be participating in the part-time employment work program activity.

(2) A participant who is employed 30 or more hours per week is considered to be participating in the full-time employment work program activity.

(3) A participant whose employer claims a tax credit for hiring economically disadvantaged workers in lieu of public sector subsidies, will be considered unsubsidized.

(4) Child care as self-employment: Participants may meet work participation requirements by providing child care services as self-employment. Participants choosing to provide child care for income shall meet the requirements as indicated below:

(a) A participant electing to participate as child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(b) Upon placement of any child

for pay, by CYFD or by a parent, the participant is considered to be employed.

D. Supervision and documentation: Hours of participation in an employment related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.460.20 NMAC - N/E, 07/16/2007]

8.102.460.21 SUBSIDIZED PRIVATE SECTOR EMPLOYMENT:

A. Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered to be subsidized private sector employment.

B. General: Hours. New Mexico will use TANF funds to offset the wages of employing a TANF participant for an established period of time, at which time the employer is expected to hire the participant.

C. Component activities: The following shall be considered as qualified participation hours for subsidized private sector employment.

(1) Employment will be considered subsidized if the employer receives a TANF or other public sector for an employee.

(2) A participant whose employer claim a tax credit for hiring economically disadvantaged workers in lieu of public sector subsidies, will be considered unsubsidized.

(3) Public sector paid apprenticeships and paid internships shall be considered subsidized employment.

D. Supervision and documentation: Hours of participation in an employment related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.460.21 NMAC - N/E, 07/16/2007]

8.102.460.22 SUBSIDIZED PUBLIC SECTOR EMPLOYMENT:

A. Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered subsidized employment. The employment will be considered subsidized if an employer receives a TANF or other public sector subsidy for an employee.

B. General: An employee cannot receive TANF while employed. Subsidized public sector employees will be paid no less than the greater of federal or state minimum wage.

C. Component activities:

The following shall be considered as qualified participation hours for subsidized public sector employment.

(1) Job search as a paid activity not to exceed four hours per week. Paid job search will be supervised and reported as paid time.

(2) Paid apprenticeships and paid internships shall be considered subsidized employment.

D. Supervision and documentation: Hours of participation in an employment related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.460.22 NMAC - N/E, 07/16/2007]

8.102.460.23 ON-THE-JOB TRAINING (OJT):

A. Training in the public or private sector that is given to a paid employee that provides knowledge and skills essential to the full and adequate performance of the job shall be considered on-the-job training. On-the-job training may be subsidized or unsubsidized. The employer of an OJT participant will retain the employee after the successful completion of the OJT contract and the existence of a written training plan; these plan requirements distinguish OJT from other subsidized employment.

B. General:

(1) Hours in an on-the-job-training activity will be determined by actual hours worked or upon the contract the HSD has with the employer including paid leave and holidays and projected for up to six months.

(2) The department will coordinate with department of labor (DOL), Workforce Investment Act (WIA), one-stops or the New Mexico in-plant-training program to engage TANF participants in this work activity

(3) To qualify as OJT there must be a contractual agreement with the employer and the HSD may pay no more than 50 percent of the participant's wage and benefit package.

C. Component activities: The following shall be considered as qualified participation hours for OJT:

(1) on-the-job training as paid employment; or

(2) professional certification; or

(3) practicum, internship, and clinical training.

D. Supervision and documentation:

(1) Hours for this activity will be projected for up to six months at which time current documentation shall be required in

order to evaluate any changes in the prospective hours of participation.

(2) This activity must be supervised by an employer, work site sponsor, or other responsible party on ongoing bases no less frequently than daily. [8.102.460.23 NMAC - N/E, 07/16/2007]

8.102.460.24 JOB SEARCH AND JOB READINESS ASSISTANCE:

A. Job search includes the acts of seeking or obtaining employment, and preparation to seek or obtain employment.

B. General:

(1) Countable hours for looking for job openings, making contact with potential employers, applying for vacancies and interviewing for jobs, and in labor market training will be determined by actual hours spent on these activities.

(2) Job search hours are countable in meeting primary work activity participation requirements for no more than six weeks during a given federal fiscal year, and they are countable for no more than four consecutive weeks in a row.

C. Component activities:

The following shall be considered as qualified participation hours for job search and job readiness.

(1) Participation in parenting classes, money management classes or life skills training.

(2) Participation in a certified alcohol or drug addiction program where a health or social professional certifies that such treatment or activity is necessary.

(3) In the case of a homeless benefit group, finding a home.

(a) Homeless, in this instance, means the group is living in a shelter, vehicle, outdoors or in other temporary makeshift housing. It does not include persons living with relatives or friends.

(b) The search for the home may be undertaken under the auspices of a homeless program, agency or organization. It must be an organized effort with specific, identified goals and activities designed to help the family obtain a home.

(4) Participation in adult basic education (ABE), English second language (ESL) and general equivalency diploma (GED).

(5) Participation in job search including searching for job openings, applying for jobs and interviewing for positions.

(6) Domestic violence:

(a) Participants who have significant barriers to employment because of domestic violence or abuse may participate in domestic violence work activity to receive services focused on assisting the participant to overcome the effects of domestic violence and abuse. Participant s participating in this activity may reside in a

domestic violence shelter or may receive services while residing elsewhere. The primary focus of such services is on helping the participant to move into employment. Domestic violence is a temporary work-readiness activity limited to no more than 24 weeks.

(b) The need for domestic violence services can be identified at any point, starting with the resource planning session up to the point at which the case is scheduled for closure. Services are provided by local agencies or programs through referral.

(c) Domestic violence activity can include a mix of domestic violence services and other work program activities for no more than 24 weeks. At no point shall a victim of domestic violence be required to carry out any activity which puts the participant at risk of further violence. Domestic violence participation can include:

(i) emergency shelter or re-location assistance;

(ii) child care;

(iii) personal, family and career counseling; and

(iv) participating in criminal justice activities directed at prosecuting the perpetrator.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a bi-weekly timesheet.

(3) Job search and job readiness assistance activities must be supervised by the HSD or other responsible party on an ongoing basis no less frequently than daily. [8.102.460.24 NMAC - Rp/E, 8.102.460.21 NMAC, 07/16/2007]

8.102.460.25 WORK EXPERIENCE:

A. Work experience as an activity provides an participant with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. The purpose of work experience is to improve the employability of those who cannot find employment. Work experience may be in a public or private sector setting. Unpaid apprenticeships and unpaid internships are included as unsubsidized employment.

B. General:

(1) The type of work experience placement needed by a participant may be identified during the assessment or the development of the IRP. A participant in a work experience placement can either be employees or trainees, depending upon the

nature of the placement.

(2) Sponsoring agencies:

Participants may be placed in either a public or private sector work site. The work site is selected based on a participant's individual needs. Sponsoring agencies provide supervision in a safe and healthy work environment and must ensure that the environment is free of discrimination based on race, sex, national origin, handicap, age, religion, or political affiliation.

(a) The sponsoring agency must enter into an agreement with the department which details the expectations and responsibilities of each party and ensures an appropriate work setting.

(b) The sponsoring agency may not displace any currently employed participant in layoff status or infringe on the promotional opportunities of any currently employed participant.

(c) The sponsoring agency shall be encouraged to give a hiring preference consideration to participants assigned to their agency.

(3) Liability insurance: All work providers must sign a work experience agreement and provide trainees with liability insurance. The department shall provide all participants in a trainee activity placement with medical-only and/or liability insurance while participating at a work site with a sponsoring agency. Work-site accidents must be reported to the ISD office within 24 hours of occurrence. A written accident report must be obtained from the work site by the ISD office and submitted to the department's central office within five working days.

C. Component activities:

Participants in a work experience placement can either employees or trainees, depending upon the nature of the placement. The following shall be considered as qualified participation hours for work experience.

(1) Employees: If the work experience placement involves a typical employer-employee relationship, in which the participant has a duty to perform services and the right to be compensated for those services, subject to the employer's right to control the details of performance, the participant must be paid at least the federal minimum wage, receive worker's compensation, unemployment compensation benefits and all other compensated benefits provided to employees under applicable federal and state laws.

(2) Trainees: Trainee activity placements are intended to provide a work training opportunity for participants who are not job ready. If the placement is a trainee activity placement, in which the training meets most or all of the following criteria, the "trainees" shall not be entitled to be paid the federal minimum wage.

(a) Training is similar to that

given in a vocational school.

(b) Training is for the benefit of the trainees.

(c) Trainees do not displace regular employees.

(d) Sponsoring agencies derive no immediate advantage from trainees' activities.

(e) Trainees are not entitled to a job after training is completed.

(f) Sponsoring agencies and trainees understand that the trainee is not paid.

D. Supervision and documentation:

(1) This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than daily.

(2) The fair labor standards act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and number is less than the primary work hour requirement the remaining hours may be deemed up. The maximum amount of weekly hours required by the FLSA are calculated as follows:

(a) **Single parent:** Add the monthly TANF cash assistance benefit to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) **Two-parent:** The initial calculation of participation requirement hours is the same as a single parent, in order to calculate hours for each parent divide by two.

[8.102.460.25 NMAC - Rp/E, 8.102.460.25 NMAC, 07/16/2007]

8.102.460.26 COMMUNITY SERVICE PROGRAMS:

A. Community service is a non-paid work activity. Participants provide services needed by their community. Sponsoring agencies may be either public sector or private nonprofit entities such as libraries, charities, churches, and schools. The HSD will review each placement and take into account, to the extent possible, the prior training, experience, and skills of a participant in making appropriate community service assignments.

B. General: To qualify as a community services placement, the activities carried out must be similar to those which would normally be carried out by a volunteer working with the agency rather than those carried out by an employee. Federal guidelines for determining whether a placement is a "volunteer" versus an "employee" must be followed by the sponsoring agency.

C. Component activities:

The following shall be considered as qualified participation hours for community service programs.

(1) Community service programs will be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.

(2) **Head-start, schools and child care centers:** Some educational and child care programs allow, or require, parents to contribute time in the classroom or on class activities outside the classroom. Time spent in such activities is considered to be community service time and is countable as a primary work activity.

D. Supervision and documentation:

(1) This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than daily.

(2) The fair labor standards act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and the number is less than the primary work hour requirement. The maximum amount of monthly hours required by the FLSA are calculated as follows:

(a) **Single parent:** Add the monthly TANF cash assistance benefit to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) **Two-parent:** The initial calculation of participation requirement hours is the same as a single parent, in order to calculate hours for each parent divide by two.

[8.102.460.26 NMAC - Rp/E, 8.102.460.26 NMAC, 07/16/2007]

8.102.460.27 CHILD CARE FOR COMMUNITY SERVICE PARTICIPANTS:

A. NMW participants may meet participation requirements by providing child care services, at no cost, to other NMW participants engaged in work experience or community services.

B. General: Use of a child care provider by a participant, as provided in this section, is at the sole discretion of the participant.

(1) The department will make a good faith effort to assure the provision of quality care and a safe environment by referring community service participants only to childcare providers who have been certified by CYFD. The department makes no claim as to the quality of care which will be provided, and assumes no liability, phys-

ical or emotional, regarding children referred to a home certified by CYFD.

(2) The minimum number of children a participant may care for is determined based on the number of families needing child care while participating in a community service component. However, at no time will the number exceed child-care standards established by CYFD. A participant electing to participate as child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(3) After successful registration, meeting safety regulations, and receiving training, NMW participants shall become registered child care providers. NMW participants shall then become eligible to receive payments from CYFD for providing child care services.

(4) Hours of participation are based on the number of hours each day the participant is actually providing care for the children, plus one hour before and one after the children leave for the purposes of clean-up and preparation.

(5) Upon placement of any child for pay, by CYFD or by a parent, the participant is considered to be employed.

D. Supervision and documentation:

(1) The provider is required to maintain attendance records to verify the hours of work. Also included in participation hours is time spent registering with CYFD, time spent correcting any deficiencies necessary to complete registration as well as any time spent in attendance at child care training activities.

(2) The ISD office shall maintain a list of registered child care providers who are providing non-paid child care and refer to them any participant in community services who needs child care in order to participate.

[8.102.460.27 NMAC - Rp/E, 8.102.460.27 NMAC, 07/16/2007]

8.102.460.28 VOCATIONAL EDUCATION AND TRAINING:

A. Organized educational programs that are directly related to the preparation of participant s for employment in current or emerging occupations requiring training other than a baccalaureate or advanced degree are considered to be vocational education and training. Engagement shall be reported as primary or secondary participation.

(1) A course of vocational education or training is one whose purpose is to provide the specific knowledge and skills needed by a participant to carry out the

functions and activities of an occupation or class of occupations listed in the DOT (dictionary of occupational titles). College of education English teaching program or a school of nursing LPN program is intended to prepare a participant to work in a vocation which is described in the DOT and is considered to be vocational education. A participant will be granted a degree or certificate at the end of the program which names the occupation.

(2) The following are not considered vocational education:

(a) two- or four-year degree programs which focus on an area of information, but which are not specifically designed to ready a participant to work in that area;

(b) liberal arts degree programs.

B. Approval of vocational education training:

(1) A fixed number of vocational education training education slots shall be authorized by the department and shall not exceed 30 percent of the total number of persons subject to work program participation. For a participant in a slot, all approved hours of participation in vocational education activities shall count in meeting the participant's primary work participation requirement.

(2) No more than 12 consecutive months of such activity are countable in meeting primary work activity participation requirements.

(3) **Assignment to a slot:** To be approved for a vocational education placement:

(a) the participant must be admitted in the specific vocational education program by the facility providing the education or training; and

(b) the participant may not already have a post-graduate degree or have a certificate qualifying the participant to work at a particular vocation; and

(c) a vocational education slot must be available for use; assignment to a slot is made by the caseworker on a first come, first served basis.

(4) Enrollment in an agreed-upon vocational training program is the responsibility of the participant.

(5) **Level of effort:** Participation requirement hours shall be considered based on:

(a) actual supervised class time hours;

(b) labs and similar activities are considered class time;

(c) actual hours of completed supervised study-time; and

(d) holiday time and excused absences.

C. Component activities:

The following shall be considered as qualified participation hours for vocational education and training.

(1) **Vocational associate degree programs:** Programs consisting of both academic and vocational for credit course work that requires approximately 60 credits. Completion of these programs can provide an associate of arts, associates of science or associates of applied science degree in fields defined as vocational as per subsection B of this section.

(2) **Instructional certificate programs:** Programs designed to upgrade job related skills which generally require up to a year to complete and involve less academic work than associate degrees.

(3) **Industry skills certifications:** Certificates for students who demonstrate specific skills often thru testing. Preparation for tests include both self-study and courses offered at post secondary institutions or other training providers.

(4) **Non-credit course work:** Curriculum designed to accommodate those who want specific job related skills.

D. Supervision and documentation:

(1) Verification of level of effort shall be required to determine that a participant has satisfactorily completed the hours by one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a bi-weekly timesheet.

[8.102.460.28 NMAC - Rp/E, 8.102.460.24 NMAC, 07/16/2007]

8.102.460.29 NEW MEXICO WAGE SUBSIDY PROGRAM:

A. The New Mexico wage subsidy program is a subsidized employment opportunity where a TANF cash assistance participant is hired into full-time employment.

B. The employer is reimbursed a portion of the wages paid to the TANF cash assistance participant for up to 12 months, depending on availability of funds. Payments to employers are made from TANF block grant funds. This subsidy will be a 50-50 match.

C. Requirements for participating employers: Participating employers shall:

(1) hire NMW participants for subsidized positions and offer a reasonable possibility of unsubsidized employment after the subsidy period;

(2) not require participants to work in excess of forty hours per week;

(3) pay a wage that is equal to the wage paid to permanent employees performing the same job duties; and will not be less than the federal minimum wage;

(4) ensure that the subsidized employment does not impair an existing contract or collective bargaining agreement;

(5) ensure that the subsidized

employment does not displace currently employed persons or fill positions that are vacant due to a layoff;

(6) maintain health, safety and work conditions at or above levels generally acceptable in the industry and not less than those of comparable jobs offered by the employer;

(7) provide on-the-job training necessary for subsidized participants to perform their duties;

(8) sign an agreement for each placement outlining the specific job offered to a subsidized employee and agreeing to abide by all of the requirements of the wage subsidy program;

(9) provide workers' compensation coverage for each subsidized employee; and

(10) provide other benefits (includes but is not limited to, health care coverage, paid sick leave, holiday and vacation pay) equal to those for new employees, or as required by state and federal law, whichever is greater;

D. Department requirements: The department shall determine whether a TANF cash assistance participant is eligible to participate in the program. In order to be eligible the participant must:

(1) have sufficient work experience;

(2) be registered as a participant with work programs;

(3) be in "good standing" with the department;

(4) must have citizenship documentation and a social security number.

E. Department procedures for implementing wage subsidy: The department shall:

(1) suspend regular TANF cash assistance payments to the benefit group for the calendar month in which an employer makes the first subsidized wage payment to a participant in the benefit group;

(2) pay employers each month, from the TANF block grant, an amount that equals fifty percent of the wages paid by the employer to program participants;

(3) issue a supplemental TANF cash assistance payment if the net monthly full-time wage paid to the participant is less than the TANF cash assistance amount for which the participant would otherwise be eligible;

(4) reimburse the participating employer each month through current invoice procedures;

(5) assist the work program contractor by making participant referrals.

F. Effects on TANF cash assistance:

(1) The participant is ineligible for TANF cash assistance while participating in the wage subsidy program.

(2) The months of participation in

the wage subsidy program will count against a participant's 60 month term limit.

(3) The participant remains eligible for Medicaid.

(4) The participant's wages count against his or her food stamp benefits.

(5) The participant may be eligible for a supplemental cash assistance payment if the wage subsidy employment is lost during the month, or if the net monthly full-time wage paid to the participant is less than the TANF cash assistance to which the participant would otherwise be eligible.

(6) The participant's earnings are exempt from HUD housing determinations.

(7) The participant is considered to be in active case status while in subsidized employment and, therefore, must comply with all eligibility requirements of the NMW cash assistance program.

G. Contractor procedures for wage subsidy: The department's work program contractor shall:

(1) offer a one-day work readiness session for all participants who are accepted into the wage subsidy program;

(2) develop a list of referrals and submit them to potential employers;

(3) submit a list of referrals to the local ISD office to verify eligibility for NMW cash assistance;

(4) assist the TANF cash assistance participant in submitting an employment application to the state personnel office;

(5) provide case management by monitoring employees' work efforts and production to ensure job retention.

H. Voluntary quit provision:

(1) If a wage subsidy participant voluntarily quits a job without good cause the participant will no longer be considered for participation in the wage subsidy program.

(2) The TANF cash assistance participant will then have 10 days to notify the work program contractor and renew his or her work participation activities.

(3) If the TANF cash assistance participant fails to complete this process, the department will follow the policy and procedures for imposing sanctions for non-cooperation with the work program.

[8.102.460.29 NMAC - Rp/E, 8.102.460.19 NMAC, 07/16/2007]

8.102.460.30 JOB SKILLS TRAINING:

A. Education or job skills required by an employer to provide a participant with the ability to obtain employment or to advance within the workplace is considered job skills training.

B. General: Secondary work activities are countable towards the total work participation standard for a par-

ticipant who has completed the primary work activity hours.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a primary work activity:

(1) full-time training for adult basic education (ABE), English as a second language (ESL);

(2) post-secondary education; or

(3) any other job related training that can not be considered vocational education as outlined in 8.102.460.26 NMAC.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a bi-weekly timesheet.

(3) Job skills training directly related to employment must be supervised on at least a daily ongoing basis.

(4) Countable work participation hours shall be determined by actual hours spent in class time and completion of supervised study hours to include holidays and excused absences.

[8.102.460.30 NMAC - N/E, 07/16/2007]

8.102.460.31 EDUCATION RELATED TO EMPLOYMENT:

A. Any organized activity which is designed to improve the participant's knowledge or skills for the specific purpose of increasing the participant's ability to perform in the workplace is considered to be education directly related to employment.

B. General: NMW participants may engage in this activity if they have not received a high school diploma or a certificate of high school equivalency or needs specific education related to current employment or job offer. Secondary work activities are countable towards the total work participation standard for a participant who has completed the primary work activity hours.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a primary work activity:

(1) English as a second language (ESL) for to participants who are unable to or uncomfortable with their ability to communicate in English, either spoken or written; or

(2) literacy training for participants who have trouble understanding written English and is based on a demonstrated or acknowledged difficulty in reading com-

prehension, regardless of the level of education completed; or

(3) adult basic education (ABE) to assist participants who need classes providing basic educational training before working on a general equivalency degree (GED); or

(4) GED classes for participants who have completed a general equivalency diploma pre-test and the results indicate the participant is ready; or

(5) high school attendance for participants who are attending an accredited high school, participant who has recently dropped out of high school shall be encouraged to re-enroll or required to pursue a GED; or

(6) post-secondary institution for participants who are enrolled in advanced educational training activity through colleges, technical institutes or universities and who are attending classes in order to complete a two- or four-year college degree; or

(7) education directly related to employment shall include any other job related class provided by a facility or organization.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a bi-weekly timesheet.

[8.102.460.31 NMAC - N/E, 07/16/2007]

8.102.460.32 SECONDARY SCHOOL/GED:

A. The secondary school/GED work program activity serves participants who are age 18 or older. This may be a qualified activity for a participant who is under age 18 but cannot enroll in high school if the participant has:

(1) successfully completed a previous Education work program activity - English as a second language or adult basic education; or

(2) completed a general equivalency diploma pre-test and the results indicate the participant is ready for GED classes.

B. Participation must be supervised on no less than a daily basis. Participants in this activity must maintain satisfactory progress as defined by the school. Secondary work activities are countable towards the total work participation standard for a participant who has completed the primary work activity hours.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a primary work

activity:

(1) ABE or ESL; or

(2) GED or high school shall only be included when they are prerequisites for employment.

D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a bi-weekly timesheet.

(3) Countable hours shall be determined by actual hours spent in class time and completion of supervised study hours to include holidays and excused absences.

[8.102.460.32 NMAC - N/E, 07/16/2007]

HISTORY OF 8.102.460 NMAC:

History of Repealed Material: 8 NMAC 3.FAP, Financial Assistance Program - Repealed, 07/01/97.

8.102.460 NMAC Recipient Policies - Defining Group Work Program Activities - Repealed 07/01/01.

8.102.460 NMAC Recipient Policies - Defining Group Work Program Activities - Repealed 07/16/07.

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an emergency amendment to 8.102.100 NMAC, Sections 3, 6, 7 and 8, effective 07/16/2007.

8.102.100.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 abolished the AFDC program. The federal act created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, the New Mexico works (NMW) program was created to replace the [aid to families with dependent children] AFDC program.

C. Under authority granted to the governor by the federal Social

Security Act, the human services department (HSD) is designated as the state agency responsible for the TANF program in New Mexico.

D. Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and Title IV-A of the federal Social Security Act, the department is creating the New Mexico works program as one of its [financial] cash assistance programs.

E. In close coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

[8.102.100.3 NMAC - N, 07/01/2001; A/E, 07/16/2007]

8.102.100.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, [assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem] resources and support. The further purpose of the program is to increase family income through family employment and child support and by [viewing financial] utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~**B.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~**C.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~**D.** The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.~~

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one individual is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.100.6 NMAC - N, 07/01/2001; A/E, 07/16/2007]

8.102.100.7 DEFINITIONS

A. Definitions A-L:

(1) Applicant: means person applying for cash assistance on behalf of a benefit group.

~~(1)~~ **(2) Application:** means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

~~(2)~~ **(3) Attendant:** means an individual needed in the home for medical, housekeeping, or child care reasons.

~~(3)~~ **(4) Authorized representative:** means an adult who is designated in writing by the applicant who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.

~~(4)~~ **(5) Basic needs:** include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

~~(5)~~ **(6) Beginning month:** means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area. A benefit group is budgeted prospectively in a beginning month. A beginning month is also an initial month.

~~(6)~~ **(7) Benefit group:** means a pregnant woman or a group of people that includes a dependant child, all of that dependant child's full, half, step- or adopted siblings living with the dependant child's parent or relative within the fifth degree of relationship and the parent with whom the children live.

~~(7)~~ **(8) Benefit month:** means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.

~~(8)~~ **(9) Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

~~(9)~~ **(10) Capital gains:** means proceeds from the sale of capital goods or equipment.

~~(10)~~ **(11) Cash assistance:** means cash payments funded by the temporary assistance for needy families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.

(12) Caretaker: means an individual who assumes parental control over a child living in the home.

~~(11)~~ **(13) Certification:** means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

~~(12)~~ **(14) Certification period:** means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months.

~~(13)~~ **(15) Collateral contact:**

means an individual or agency designated by the benefit group to provide information concerning eligibility.

[(44)] (16) Conciliation process: means a 30- day process during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction.

[(45)] (17) Date of admission: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

[(46)] (18) Date of entry: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

[(47)] (19) Department: means the human services department.

[(48)] (20) Dependent child: means a natural child, adopted child, stepchild or ward who is:

(a) seventeen years of age or younger; or

(b) eighteen years of age and is enrolled in high school; or

(c) between eighteen and twenty-two years of age and is receiving special education services regulated by the [state board of education (SDE)] public education department.

[(49)] (21) Director: means the director of the income support division.

[(20)] (22) Diversion payment: means a lump sum payment, which will enable the applicant to keep job or to accept a bona fide offer of employment.

[(21)] (23) Documentation: means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

[(22)] (24) Earned income: means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

[(23)] (25) Education works program (EWP): provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post sec-

ondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the education works cash assistance program.

[(24)] (26) Emancipated: means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

[(25)] (27) Encumbrance: means debt owed on property.

[(26)] (28) Equity value: means the fair market value of property, less any encumbrances owed on the property.

[(27)] (29) Expedited services: means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the food stamp program.

[(28)] (30) Expungement: means the permanent deletion of cash benefits from an EBT account that is stale.

[(29)] (31) Fair hearing: means an administrative proceeding which a claimant [and/or] or his representative may request if:

(a) an application is not acted on within a reasonable time after the filing of the application;

(b) an application is denied in whole or in part; or

(c) the cash assistance or services are modified, terminated or not provided.

[(30)] (32) Fair market value (FMV): means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

[(31)] (33) Federal act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

[(32)] (34) Federal fiscal year: October 1 through September 30 of the calendar year.

[(35) Federal means-tested public benefit: means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa and the commonwealth of the Northern Mariana Islands, supplemental security income (SSI), and the TANF block grant program under Title IV of the Social Security Act; medicaid and SCHIP.

[(33)] (36) Federal poverty guidelines: means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services.

[(37) Five-year bar: means the federally imposed prohibition on receiving federal means-tested public benefits for cer-

tain qualified aliens who entered the United States (U.S.) on or after August 22, 1996, until they continuously lived in the U.S. for five years. The count for the five year bar begins on the date the non-citizen attains qualified alien status.

[(34)] (38) Food Stamp Act: the Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

[(35)] (39) General assistance (GA) benefit group: means a benefit group in which all members receive cash assistance financed by state or local funds.

[(36)] (40) Government entity: includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

[(37)] (41) Gross income: means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

[(38)] (42) Gross income test (85 percent test): for the benefit group to be eligible, the gross earned income of the benefit group must be less than 85 percent of the federal poverty guidelines as determined in 8,102.500.8 NMAC.

[(39)] (43) Head of household: means the payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker.

[(40)] (44) Immigrant: means [alien as defined in the federal act] a non-citizen or an alien within the meaning found in Title IV of the Personal Responsibility and work Opportunity Reconciliation Act of 1996.

[(41)] (45) Immigration and naturalization service (INS): a division of the U.S. department of justice.

[(42)] (46) Impairment: means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical [and/or], psychiatric, [process] or both processes. To evaluate both physical [and/or] and mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

[(47) Individual development account: means accounts created for eligible individuals which are established and

maintained by an authorized financial institution to be used for individual development.

(48) Individual development program: means a program that establishes and administers individual development accounts and reserve accounts in order to provide financial training required by the division for account owners.

~~(43)~~ **(49) Ineligible alien:** means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

~~(44)~~ **(50) Initial month:** means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

~~(45)~~ **(51) Inquiry:** means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

~~(46)~~ **(52) Institution of higher education:** means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

~~(47)~~ **(53) Institution of post-secondary education:** means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

~~(48)~~ **(54) Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

~~(49)~~ **(55) Issuance month:** means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

(56) Legal guardian: means a judicially or parental created relationship between a child and appointed adult.

B. Definitions M-Z:

(1) Medicaid: medical assistance under title XIX of the Social Security Act, as amended.

(2) Minor unmarried parent: means an unmarried parent under the age of 18 years or is age 18 and enrolled in high

school.

(3) Month of approval: means the month the action to approve a benefit group for cash assistance is taken.

(4) Net income tests: means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(5) Net monthly income: means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

(6) Non-benefit group members: means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(7) Non-citizen U.S. national: means a person who is not an U.S. citizen but was born in an outlying possession of the U.S. on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains island or the Northern Mariana islands.

~~(7)~~ **(8) Notice of adverse action (NOAA):** means a written notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overissuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. ~~Participants~~ Recipients have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

~~(8)~~ **(9) Overissuance:** means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

~~(9)~~ **(10) Parent:** means natural parent, adoptive parent, stepparent or legal guardian.

~~(10)~~ **(11) Participant:** means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

~~(11)~~ **(12) Payment standard:** means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's

standard of need, and prior to reduction by sanction ~~and/or~~, recoupment or both.

~~(12)~~ **(13) Permanent total disability:** means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

~~(13)~~ **(14) Person:** means an individual.

~~(14)~~ **(15) Project area:** means the geographic area designated to a county office that is responsible for the administration of the department's programs.

~~(15)~~ **(16) Prospective budgeting:** means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

~~(16)~~ ~~Quarterly reporting:~~ means a reporting requirement that allows a 12-month certification period and requires a benefit group to submit a report form every third month during a certification period.

(17) Qualified alien status: means a person lawfully admitted into the United States under INA guidelines as defined in PROWRA of 1996.

~~(17)~~ **(18) Real property:** means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

~~(18)~~ **(19) Recertification:** means a complete review of all conditions of eligibility which are subject to change and a redetermination of the amount of assistance payment for an additional period of time.

~~(19)~~ **(20) Recipient:** means a person receiving cash assistance benefits ~~(same as a participant)~~.

~~(20)~~ **(21) Refugee:** means a lawfully admitted individual granted conditional entry into the United States.

~~(21)~~ **(22) Regular reporting:** means a reporting requirement that requires a participating household to report a change within ten days of the date a change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for a change in an allowable expense.

(b) A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

~~(22)~~ **(23) Resource standard:** means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1500 for liquid

resources.

~~(23)~~ **(24) Retrospective budgeting:** means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

~~(24)~~ **(25) Resource planning session:** means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

(26) School age: means any dependent child who turns six years prior to September first and is under 18 years of age.

~~(25)~~ **(27) Secretary:** means the secretary of the department.

~~(26)~~ **(28) Self-employed:** means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

~~(27)~~ **(29) Semiannual reporting:** means a reporting requirement that allows up to a 12-month certification period and requires a household to submit a report in the sixth month of a 12-month certification period or in the same month a food stamp semiannual report is due.

~~(28)~~ **(30) Services:** means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

~~(29)~~ **(31) Shelter for battered women and children:** means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

~~(30)~~ **(32) Single-parent benefit group:** means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

~~(31)~~ **(33) Sponsor:** means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

~~(32)~~ **(34) Sponsored alien:** means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

~~(33)~~ **(35) Stale:** means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of

withdrawal.

~~(34)~~ **(36) Standard of need:** means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

~~(35)~~ **(37) State-funded alien eligible:** means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

~~(36)~~ **(38) Supplemental security income (SSI):** means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 212(a) of P.L. 93-66.

~~(37)~~ **(39) Temporary total disability:** means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

~~(38)~~ **(40) Two-parent benefit group:** means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

~~(39)~~ **(41) Term limits:** means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

~~(40)~~ **(42) Unearned income:** means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, Individual Indian Money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

~~(41)~~ **(43) Vehicle:** means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the trans-

portation of goods; vehicle does not ~~mean boats, trailers or a mobile home~~ include any boat, trailer or mobile home used as the principal place of residence.

~~(44)~~ **(44) Verification:** means the use of third-party information or documentation to establish the accuracy of statements on the application.

(45) Vocational education: means an organized education program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advance degree. Vocational education must be provided by an educational or training organizations, such as a vocational-technical school, community college, or post-secondary institution or proprietary school.

~~(43)~~ **(46) Wage subsidy program:** means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.102.100.7 NMAC - N, 07/01/2001; A, 02/14/2002, A, 05/15/2003; A, 1/1/2004; A, 02/28/2007; A/E, 07/16/2007]

8.102.100.8 ABBREVIATIONS AND ACRONYMS

A. Abbreviations and acronyms

(1) AFDC: aid to families with dependent children (replaced by TANF effective July 1, 1997)

~~(2) ARSCH: adult residential shelter care home~~

~~(3)~~ **(2) BG:** benefit group

~~(4)~~ **(3) BIA:** bureau of Indian affairs

~~(5)~~ **(4) BIA-GA:** bureau of Indian affairs-general assistance

~~(6)~~ **(5) CA:** cash assistance

~~(7)~~ **(6) CE:** categorical eligibility or categorically eligible

~~(8)~~ **(7) CFR:** code of federal regulations

~~(9)~~ **(8) CS:** child support

~~(10)~~ **(9) CSED:** (HSD) child support enforcement division

~~(11)~~ **(10) CYFD:** (New Mexico) children youth & families department

~~(12)~~ **(11) DOH:** (New Mexico) department of health

~~(13)~~ **(12) DOL:** department of labor

~~(14)~~ **(13) DOT:** dictionary of occupational titles

~~(15)~~ **(14) E&T:** employment and training (food stamp work program)

~~(16)~~ **(15) EBT:** electronic benefit transfer

~~(17)~~ **(16) EI:** earned income

~~(18)~~ **(17) EW:** eligibility worker (now caseworker)

~~(19)~~ **(18) EWP:** education

works program
 [(20)] (19) FAP: financial assistance program
 [(21)] (20) FAA: family assistance analyst (formally ISS)
 [(22)] (21) FFY: federal fiscal year
 [(23)] (22) FMV: fair market value
 [(24)] (23) FNS: food and nutrition service (previously FCS)
 [(25)] (24) FPL: federal poverty level
 [(26)] (25) FSP: food stamp program
 [(27)] (26) GA: general assistance
 [(28)] (27) GED: general equivalency degree
 [(29)] (28) HHS: (U.S.) health and human services
 [(30)] (29) HSD: (New Mexico) human services department
 [(31)] (30) HUD: (U.S.) housing and urban development
 [(32)] (31) IDA: individual development account
 [(33)] (32) INS: (U.S.) immigration and naturalization service
 [(34)] (33) IPV: intentional program violation
 [(35)] (34) IRP: individual responsibility plan
 [(36)] (35) IRU: incapacity review unit
 [(37)] (36) ISD: (HSD) income support division
 [(38)] (37) ISD2: integrated services delivery for ISD
 [(39)] (38) ISS: income support specialist (now caseworker)
 [(40)] (39) JTPA: Job Training Partnership Act (now WIA)
 [(41)] (40) LIHEAP: low income home energy assistance program
 [(42)] (41) LITAP: low income telephone assistance program
 [(43)] (42) MAD: (HSD) medical assistance division
 [(44)] (43) MVD: (New Mexico) motor vehicle division
 [(45)] (44) NADA: national automobile dealers association
 [(46)] (45) NMAC: New Mexico administrative code
 [(47)] (46) NMW: New Mexico works
 [(48)] (47) NOAA: notice of adverse action
 [(49)] (48) POS: point of sale
 [(50)] (49) QC: quality control
 [(51)] (50) QR: quarterly reporting or quarterly reporters
 [(52)] (51) RR: regular reporting or regular reporters
 [(53)] (52) RRP: refugee resettlement program

[(54)] (53) SAVE: systematic alien verification for entitlements
 [(55)] (54) SE: self employment
 [(56)] (55) SR: semiannual reporting
 [(57)] (56) SSA: social security administration
 [(58)] (57) SSI: supplemental security income
 [(59)] (58) SSN: social security number
 [(60)] (59) TANF: temporary assistance to needy families (block grant program under Title IV-A of the Social Security Act)
 [(61)] (60) UCB: unemployment compensation benefits
 [(62)] (61) UEI: unearned income
 [(63)] (62) USDA: United States department of agriculture
 [(64)] (63) VA: veterans administration
 [(65)] (64) WIA: Workforce Investment Act
 [(66)] (65) WID: work incentive deduction
 [(67)] (66) WPA: work participation agreement

B. [Reserved]

[8.102.100.8 NMAC - N, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 02/28/2007; A/E, 07/16/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.102.510 NMAC, Sections 3, 6, 8, 9, 10, 11, 13 and 14 effective 07/16/2007.

8.102.510.3 S T A T U T O R Y AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the AFDC program. The federal act created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998, the New Mexico works program was created to replace the aid to families with dependent children program.

C. Under authority granted to the governor by the federal Social Security Act, the human services department

is designated as the state agency responsible for the TANF program in New Mexico.

D. Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and Title IV-A of the federal Social Security Act, the department is creating the New Mexico works program as one of its ~~financial~~ cash assistance programs.

E. In close coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at Title 7, Code of Federal Regulations.

[8.102.510.3 NMAC - Rp 8.102.510.3 NMAC, 07/01/2001; A/E, 07/16/2007]

8.102.510.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, ~~[assisting parents to develop the discipline necessary for self sufficiency and to improve their self esteem]~~ resources and support. The further purpose of the program is to increase family income through family employment and child support and by ~~[viewing financial]~~ utilizing cash assistance as a support service to enable and assist parents to participate in employment.

~~**B.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).~~

~~**C.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.~~

~~**D.** The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.~~

B. The objective of education works program (EWP) is to provide cash assistance to a benefit group where at least one individual is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

[8.102.510.6 NMAC - Rp 8.102.510.6 NMAC, 07/01/2001; A/E, 07/16/2007]

8.102.510.8 RESOURCE STANDARDS: To be eligible on the condition of need, the value of all countable personal

and real property, belonging to, or considered as belonging to or considered available to the benefit group shall not exceed the liquid and non-liquid resource limits. Property in excess of ~~[this amount]~~ the liquid and non-liquid resource limits makes the benefit group ineligible unless the nature of the property or an express condition of its ownership prohibits its transfer. Resources are evaluated based upon their equity value.

A. Liquid resources:

Liquid resources are those properties in the form of cash or other financial instruments which are easily convertible to cash and include but are not limited to: savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, and similar properties. The value of countable liquid resources may not exceed \$1,500.

B. Non-liquid resources:

Non-liquid resources are all resources that cannot be easily converted to cash and include, but are not limited to: both real and personal property. The value of countable non-liquid resources may not exceed \$2,000.

[8.102.510.8 NMAC - Rp 8.102.510.8 NMAC, 07/01/2001; A/E, 07/16/2007]

8.102.510.9 C O U N T A B L E RESOURCES:

A. Real property non-liquid:

(1) Real property means land and the structures ~~[(including mobile homes)]~~ and improvements affixed to it.

(2) The value of real property owned by or considered available to the benefit group, except as exempted in Subsection A of 8.102.510.10 NMAC, shall be considered in determining whether non-liquid resources exceed \$2000.

(3) Grazing permits are classified as real property.

B. Personal property

(liquid or non-liquid): The value of personal property other than that exempted in Subsection B of 8.102.510.10 NMAC, belonging to, considered as belonging to, or available to the benefit group, is considered in determining whether the value of property exceeds the resource limits. Personal property is all property other than real property, and includes such possessions as bank accounts, cash (other than the current month's income), motor vehicles, livestock, tools, equipment, and rights to receive money, such as stocks, bonds, contract rights and insurance policies, etc. The types of personal property that must be counted in determining whether the benefit group's resources exceed the resource limits include, but are not limited to: the following.

(1) Life insurance:

(a) Life insurance policies owned

by a member of the benefit group shall be considered as a resource that may be converted into cash. The cash value of the life insurance policy shall be counted toward the liquid resource limit.

(b) Information about lapsed insurance shall be obtained since many lapsed policies have a cash value.

(2) Cash, bank accounts and other readily negotiable assets: "Other readily negotiable assets" include stocks, bonds, negotiable notes, purchase contracts and other similar assets. For purposes of cash assistance eligibility, the value of such assets is their current market value. These shall be counted toward the liquid resource limit.

(3) Motor vehicles, equipment, and tools:

(a) The equity value of all motor vehicles, equipment and tools is subject to consideration.

(b) The value of motor vehicles, equipment and tools, except as set forth in Paragraph 1 of Subsection B of 8.102.510.10 NMAC below, is subject to the non-liquid resource test.

(4) Asset conversion: Money received from one-time only or sporadic sales of real or personal property such as crops, rugs, jewelry, royalties etc. shall be considered an asset, rather than income, provided that the property is not sold or transferred in connection with a business or self-employment activity. Actual verified expenses associated with the purchase, sale or production of such items shall be deducted from payments received from the sale to arrive at ~~["net income.,"]~~ "net asset". Assets converted into money are subject to the \$1,500 liquid assets limitation, regardless of whether they were fully or partially exempt prior to conversion.

(5) Lump sum payments: Payments of a one-time nature, such as retroactive monthly payments, payments in the nature of a windfall, personal injury and worker's compensation awards, gambling winnings, etc. shall be considered to be a resource in the month received. Countable value is considered as a liquid resource. Resource eligibility is determined on the first moment of the first day of the month. Changes during the month do not affect the resource determination for that month; what is left at the first moment of the first day of the month following its receipt will be the countable amount.

[8.102.510.9 NMAC - Rp 8.102.510.9 NMAC, 07/01/2001; A/E, 07/16/2007]

8.102.510.10 R E S O U R C E EXCLUSIONS:

A. Real property:

(1) The home: The value of the benefit group's home and certain other property, as defined below, is not consid-

ered in determining eligibility. The "home" is the dwelling place occupied by the benefit group. The home is considered to be occupied by the benefit group during a temporary absence from the home when there is a definite plan to return to the home and no one else is occupying it. "Home" includes, in addition to the residence building and the land upon which it is constructed, the following:

(a) a reasonable amount of land within reasonable proximity to the residence building if that land is currently used by and useful to the client;

(b) outbuildings within reasonable proximity to the residence building, such as barn, garage and well, if the well is a principal source of water;

(c) buildings used for rental purposes if located on land contiguous to the land upon which the residence building is constructed and if these buildings cannot be divided from the residence land and sold separately;

(d) grazing permits currently being used to graze livestock owned by the client;

(e) furniture, equipment and household goods necessary for the operation and maintenance of the home.

(2) Other real property - burial plots: One burial plot for each person included in the benefit group; a burial plot shall consist of the space needed to bury members of the immediate family.

B. Exempt personal

property: The value of the following items of personal property shall not be considered in determining eligibility for financial assistance.

(1) Vehicles:

(a) Transportation to or from work/daily living: Vehicles used for transportation of benefit group members to or from work or work activities, for daily living activities, or for transportation of goods or services shall not be considered in the determination of resources attributed to the benefit group.

(b) Specially equipped vehicles: A vehicle that is specially equipped for the handicapped shall not be considered in the determination of resources attributed to the benefit group.

(2) Exempt income: Any income which is exempt under income provisions is also exempt from consideration as a resource. To maintain its exempt status, exempt income which is accumulated must be kept separately from non-exempt savings.

(4) (3) Funeral agreements:

The equity value of funeral agreements owned by ~~an~~ a benefit group member. Funeral agreements include any arrangement under which prepaid funeral services are provided or cash benefits which are

intended to pay for funeral services are paid upon the death of the person. Included as such agreements are contracts with funeral homes, life or burial insurance, or trust or escrow accounts in financial institutions or banks, provided that the trust or escrow accounts contain provisions making the funds payable only upon the death of a named individual. There is no limit on the amount which can be disregarded.

~~[(5)]~~ **(4) Contingent and unliquidated claims:** A "contingent and unliquidated claim" is an as yet undetermined right of the client to receive, at some future time, a resource such as an interest in an estate not probated or damages or compensation resulting from an accident or injury. Such a claim is not considered a resource to meet requirements if the client can demonstrate that the client has consulted an attorney, or that under the circumstances, it is reasonable not to have consulted an attorney, and that the client is making every reasonable effort to prosecute the client's claim or to proceed with the probate. If the client can demonstrate that the client's share in an estate not probated would be less than the expense of the proceedings to probate the estate, the value is not considered a resource.

~~[(6)]~~ **(5) Work-related equipment exclusion:** Work-related equipment, such as the tools of a trades person or the machinery of a farmer, which are essential to the employment or self-employment of a benefit group member, are excluded, in an amount not to exceed \$1000 per individual, and remain excludable, if the trades person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

~~[(7)]~~ **(6) Livestock:** The value of livestock is an excluded non-liquid resource.

~~[(8)]~~ **C. Individual development account (IDA):** ~~[Subject to the limitations below,]~~ As defined in the Individual Development Account Act 58-30 NMSA, 1978, funds in an IDA are exempt from consideration as resources in determining benefit group eligibility based on the following limitations.

~~[(a)]~~ To be disregarded, the IDA must be designated for [(a)] a qualified use and meet all requirements as follows.

~~[(i)] post-secondary education of a dependent child included in the benefit group;~~

~~[(ii)] purchase of a principal residence for a first-time home buyer;~~

~~[(iii)] business capitalization.]~~

~~[(b)]~~ **(1) IDA requirements:** ~~[To be disregarded, the IDA must meet the following requirements:]~~

~~[(i)]~~ **(a)** the benefit group member must first establish and

maintain a savings account with a balance of \$1,500;

~~[(ii)]~~ **(b)** the benefit group member must establish the IDA for one of the three purposes listed above;

~~[(iii)]~~ **(c)** in order for such accounts to be excludable, the IDA must be a trust created or organized in the United States, with trust language restricting use of account funds to the purposes as designated in this section; and

~~[(iv)]~~ **(d)** the IDA must be funded exclusively with income earned by a benefit group member or by contributions made by a non-benefit group member;

~~[(v)]~~ **(e)** funds withdrawn from the account and used for any purpose other than those specified under this section, will cause the account to lose its status as an excluded resource, starting with the month in which the funds are so used; the amounts withdrawn also constitute an overpayment of assistance, and must be reported and shall be recouped.

(2) IDA qualified uses: Allowable uses of the money withdrawn from an IDA are listed in subparagraph (a) thru (d) of this subsection.

~~[(e)]~~ **(a) Post-secondary education expenses:** In order to be considered used for the qualified purpose, the post-secondary education funds must be paid from an IDA directly to an eligible education institution, as set forth in this section. For purposes of this regulation, post-secondary education expenses include:

(i) tuition and fees required for the enrollment or attendance of a student at an eligible education institution; an eligible institution is an institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 USC 1088(a)(1) or 1141(a)); an area vocational education school (as defined in section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any state; or

(ii) books, fees, supplies, and equipment required for courses of instruction at an eligible educational institution.

~~[(f)]~~ **(b) Business capitalization:** In order to be considered used for the qualified purpose, for business capitalization, the funds have to be paid directly from the IDA to a business capitalization account established in a federally insured financial institution that is restricted to use solely for qualified business capitalization expenses. A qualified business means any business that does not contravene any law or public policy. Qualified business capitalization expenses include capital, plant, equipment, working capital, and inventory expenses. To be a qualified business, there must be a business-plan which:

(i) is approved by a

financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity;

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

~~[(g)]~~ **(c) First-time home purchase by a qualified buyer:** The purpose of the IDA is to assist a qualified first-time home buyer to accumulate part of the cash necessary to initiate purchase of the individual's first home.

(i) Only IDA's established by qualified first-time home buyers shall be disregarded. A qualified first-time home buyer is one who has never had an ownership interest in a principal residence.

(ii) The IDA may be used only for the purchase of a qualified principal residence. A qualified principal residence is one which qualifies as the principal home under Subsection 1034 the federal internal revenue services code, and the costs for which do not exceed 100[%] percent of the average area purchase price applicable to such residence, determined in accordance with paragraphs (2) and (3) of Subsection 143(e) of the internal revenue services code.

(iii) No more than \$1500 may be accumulated in an IDA for first-time home purchase. Any amount in excess of \$1500 is considered in determining whether the benefit group meets the cash resource limit.

(d) Home improvements: Costs of major home improvements or repairs on the home of the account owner.

(e) Death of account owner: The amount deposited by the deceased account owner held in an IDA shall be distributed directly to the account owner's spouse. If the spouse is deceased or there is no spouse the amount shall be distributed to a dependent or other named beneficiary of the deceased. The account and matching funds designated for that account from a reserve account may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

(f) Vehicle acquisition: Acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner.

~~[(h)]~~ **D. Federally excluded resources:** Certain resources are excluded pursuant to federal law. For a listing of federally excluded resources see 8.139.527 NMAC.

[8.102.510.10 NMAC - Rp 8.102.510.10 NMAC, 07/01/2001, A, 05/15/2003; A/E, 07/16/2007]

8.102.510.11 RESOURCE AVAILABILITY:

A. Availability: Resources that are actually available or which are considered to be available are considered in determining eligibility for assistance. For purposes of ~~[financial]~~ cash assistance eligibility, the countable resources of all benefit group members shall be considered to be available to the benefit group. The resource determination shall be made based upon the status of resources on the first moment of the first day of each month. Subsequent changes shall not effect the determination of eligibility or ineligibility until the first moment of the first day of the following month.

B. Potentially available resources: The benefit group is required to take all appropriate steps to make available to itself any property resources to which the group may be entitled but whose value is not currently available, ~~[e.g.]~~ which includes, but is not limited to, an inheritance, where the estate has not yet gone through probate. The fact that specific property is not readily marketable on the client's terms is not a condition prohibiting transfer. The current value of property, which must be partitioned in order to be accessible, is not considered available if the net value (after estimated costs of partition and other closing costs) is less than the resource limit. If the amount likely to be derived from the ~~[client's/applicant's]~~ recipient's share of the property exceeds the resource limit, the ~~[client/applicant]~~ recipient will be required to initiate attempts to obtain the ~~[client's/applicant's]~~ recipient's share of the estate.

~~[C. Resources of benefit group members: Property that belongs to any member of the benefit group is considered available to the entire benefit group.]~~

[D.] C. SSI recipients and other non-members: The property of individuals receiving SSI or of other non-members shall not be considered available, regardless of relationship to benefit group members, except as indicated in ~~[F.] E.~~ below.

[E.] D. Alien sponsor: The gross income and resources belonging to an individual who is the sponsor of an alien included in the cash assistance benefit group, and the income belonging to the sponsor's spouse, shall be counted in its entirety to determine the eligibility and payment amount if the sponsor has executed an affidavit of support pursuant to Subsection 213-A of the Immigration and Nationality Act. The income and resources of the alien sponsor, and spouse, shall be counted until the sponsored alien achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

~~[F.] E.~~ **Deeming resources:** A liquid resource owned by a parent of a minor parent living in the home, shall be deemed on a pro rata basis, unless the parent of the minor parent receives SSI.

[G.] E. Joint property:
(1) Joint resources: Resources owned jointly by separate benefit groups shall be considered available in their entirety to each benefit group, unless it can be demonstrated by an applicant or recipient that such resources are inaccessible to it. The benefit group must verify that:

(a) it does not have the use of the resource;

(b) it did not make the purchase or down payment;

(c) it does not make the continuing loan payments; and

(d) the title is transferred to or retained by the other benefit group;

(e) if a benefit group can demonstrate that it has access to only a part of the resource, the value of that part is counted toward the benefit group's resource level; a resource will be considered totally inaccessible, if it cannot be practically subdivided and the benefit group's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply; for purposes of this provision, ineligible aliens or disqualified individuals residing with a benefit group are considered benefit group members.

(2) Joint bank accounts: If signatories to a joint bank account are separate benefit groups, the funds in the account are considered available to each benefit group to the extent that it has contributed to the account. If the participation benefit group has not contributed to the account, the funds are considered available only if there is clear and convincing evidence that the other benefit group intends that the participation benefit group actually owns the funds.

[8.102.510.11 NMAC - Rp 8.102.510.11 NMAC, 07/01/2001; A/E, 07/16/2007]

8.102.510.13 ELIGIBILITY DETERMINATION:

A. Determination: ~~[H.]~~ After determining what property is available to the benefit group and determining the value of that resource, the net value of the countable real and personal property exceeds resource limits, the benefit group shall be ineligible for assistance on the basis of need.—The benefit group shall remain ineligible on the condition of need for as long as the value of the property exceeds the resource standards. The basis of need is determined by:

(1) what property is available to the benefit group;

(2) the value of all available resources;

(3) what the net value of all

countable real and personal property.

B. Receipt of resources: Resources acquired by a benefit group member after approval of an assistance grant shall be evaluated for purposes of financial assistance eligibility at the time of the change. Reporting requirements as indicated in Subsection D of 8.102.630.8 NMAC apply. If ownership or availability of resources makes the benefit group ineligible, assistance is terminated effective the month following the month the notice of adverse action expires.

[8.102.510.13 NMAC - Rp 8.102.510.13 NMAC, 07/01/2001; A/E, 07/16/2007]

8.102.510.14 NON-TRANSFER OF REAL PROPERTY**A. Requirement:**

(1) For the parent or the specified relative to be included in the benefit group, ~~[the specified relative]~~ a benefit group member must not have transferred real property for the purpose of becoming eligible for cash assistance within the two-year period preceding the date of application.

(2) A transfer is considered to be for the purpose of becoming eligible if:

(a) the transfer was made without a reasonable return; and

(b) the person had no reasonable plan for support at the time of the transfer other than assistance from the department.

B. Transfer:

(1) For the purpose of this provision, transfer includes the sale, conveyance by deed, or any other method of transferring the title to the property involved, including transfer by gift. The transfer may be for either the title to the real property or other interests or rights in the property, such as mineral or water rights.

(2) A child under the age of 18 years cannot transfer property, except through a guardian. ~~[Normally, a child will not own property in the child's own right, but]~~ If facts indicate the existence of a trust, inheritance or prior gifts to the child, it must be determined whether a transfer has taken place ~~[within the two-year period].~~

C. Reasonable return: A reasonable return is considered to have been received when the person who made the transfer received compensation in cash or in kind equal to the value of the property at the time of transfer. The determination as to whether a reasonable return was received is based on the person's equity interest in the property at the time of the transfer.

D. Equity less than \$2000: If the value of the person's equity, plus all other countable resources, was less than \$2000, the transfer is not considered to be for the purpose of becoming eligible.

E. Reasonable value not received:

(1) ~~[H.]~~ When it is determined that

the property was transferred for the purpose of becoming eligible, but the client has subsequently made efforts to obtain a reasonable return, or to regain title, and is willing to continue such efforts, if indicated, eligibility on this condition exists. ~~[H]~~ When the client is not willing to pursue a reasonable return, or to attempt to regain title to the property, the case shall not be eligible for six months from the month ~~[SD]~~ the department makes the determination that the transfer was made.

(2) Any proceeds received in return for property transfers shall be evaluated to determine if they affect the client's ongoing eligibility for ~~[financial]~~ cash assistance.

[8.102.510.14 NMAC - Rp 8.102.510.14 NMAC, 07/01/2001; A/E, 07/16/2007]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

June 21, 2007

Leo R. Lucero,
Agency Analysis Bureau Chief
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rules:

- * 1.18.667 NMAC ERRDS,
Department of Environment,
- * 1.18.795 NMAC ERRDS,
Homeland Security and Emergency
Management Department.

A review of the rules shows that their impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS
1.18.795 NMAC ERRDS, Homeland
Security and emergency Management
Department

1. Subject matter: 1.18.795 NMAC, Executive Records Retention and Disposition Schedule for the Homeland Security and emergency Management Department. This is a new rule created 1.18.795 NMAC ERRDS, Homeland Security and Emergency Management Department. This records retention and disposition schedule is a timetable for the management of specific records series of the Homeland Security and Emergency Management Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Homeland Security and Emergency Management Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Homeland Security and Emergency Management Department. Persons and entities normally subject to the rules and regulations of the Homeland Security and Emergency Management Department may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Homeland Security and Emergency Management Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Homeland Security and Emergency Management Department. Any person or entity outside the covered geographical area that conducts business with or through the Homeland Security and Emergency Management Department may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address

of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: July 23, 2007.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.795 NMAC ERRDS, Homeland Security and Emergency Management Department.

Alvin Garcia Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.15.2 NMAC, Sections 303, effective 07/23/2007.

1.15.2.303 [ELECTRONIC MAIL:

A. Program: ~~electronic records~~

B. Maintenance system: ~~agency preference~~

C. Description: ~~electronic mail is electronic messaging for delivering text, graphical, audio, or multimedia content. Electronic mail messages generally consist of a header, a message, and on occasion attachments. The header contains information about the source and the route the message took from sender to recipient, which is ignored by normal users, but may contain technical information relevant to information systems staff.~~

D. Retention:
(1) ~~E-mail with transitory informational value: until no longer needed for reference but no longer than 30 days after date sent or received~~

(2) ~~E-mail records with established retention value: refer to retention periods set for those records in the records retention and disposition schedule for the agency including the general records retention and disposition schedules (administrative, personnel, financial). These schedules have already been developed and filed by the SRCA.~~

E. Methodology for e-mail disposition:

(1) ~~E-mail with transitory informational value: E-mail considered to have transitory informational value may be disposed of when information communicated no longer has any informational value.~~

When informational value ends, e-mail user (sender, recipient) may transfer these communications along with their attachments to a destroy bin and to be destroyed per 1.13.3 NMAC Management of Electronic Records and 1.13.30 NMAC Destruction of Public Records.

(2) E-mail records with established finite retention value: E-mail communications (messages) considered to have informational value because they pertain to or are of records with established retention value including permanent, may be printed and filed off to the appropriate paper file or may be filed off to electronic folders (removed from inbox) and disposed of when they have met their established legal retention per Destruction of Public Records 1.13.30 NMAC. [The] information system administrator with the assistance and guidance of e-mail users shall create these folders outside the e-mail system based on a filing system that reflects the records retention and disposition schedule for the agency including the general schedules (administrative, personnel, financial). When the legal retention value for these records [electronic folders] has been met, the assigned records liaison officer for the agency with the assistance of the e-mail user (sender, recipient) may transfer these communications along with their attachments to a destroy bin to be destroyed per 1.13.3 NMAC Management of Electronic Records and 1.13.30 NMAC Destruction of Public Records.

(3) E-mail records with permanent retention value: permanent archival records on electronic media shall be maintained by the custodial agency or transferred to the NM archives per Section 13 of 1.13.3 NMAC Management of Electronic Records.

(4) Purging the e-mail system: The information systems administrator shall purge the e-mail system of all active (inbox) communications that are older than 30 days per 1.15.2.303 ~~electronic mail~~, 1.13.3 NMAC Management of Electronic Records, and 1.13.30 NMAC Destruction of Public Records. [RESERVED]

[Rn, 1 NMAC 3.2.90.10.30.A303, 12-30-98; 1.15.2.303 NMAC - Rn, 1 NMAC 3.2.90.10.A303, 10/01/2000; A, 1/6/2002; A, 07/15/2004, Repealed, 07/23/2007]

[Refer to 1.13.4 NMAC, Records Management Requirements for Electronic Messaging for guidance on electronic mail.]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.15.3 NMAC, Sections 303, effective 07/23/2007.

1.15.3.303 [ELECTRONIC

MAIL:

A. Program: ~~electronic records~~

B. Maintenance system: ~~entity preference~~

C. Description: ~~electronically transmitted information (including graphics) of a transitory nature. If electronic mail system is being utilized to transmit documentation (i.e., correspondence, memoranda, etc.) other than of a transitory nature (i.e., administrative, procedural, or policy), then print or file off and retain for required length of time for specific document.~~

D. Retention: ~~until no longer needed for reference but no longer than 30 days after date created]~~
[RESERVED]

[7-13-98; 1.15.3.303 NMAC - Rn, 1 NMAC 3.2.90.11.A303, 10/1/2000; A, 1/6/2002, Repealed, 07/23/2007]

[Refer to 1.13.4 NMAC, Records Management Requirements for Electronic Messaging for guidance on electronic mail.]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.667 NMAC ERRDS, Department of Environment

1. Subject matter: 1.18.667 NMAC. Executive Records Retention and Disposition Schedule for the Department of Environment. This rule is a modification to the existing ERRDS, 1.18.667 NMAC, filed July 8, 2000. Sections 1.18.667.13, 1.18.667.120 were added to the existing schedule. Sections 1.18.667.121, 1.18.667.123 and 1.18.667.124 were amended to better define the record series and change the retention of these records. Sections 1.18.667.10, 1.18.667.11, 1.18.667.12, 1.18.667.122 and 1.18.667.125 were repealed. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Cabinet Secretary of the Department of Environment, and legal counsel for the Department of Environment.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Department of Environment. Persons and entities normal-

ly subject to the rules and regulations of the Department of Environment may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Department of Environment.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Environment. Any person or entity outside the covered geographical area that conducts business with or through the Department of Environment may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: July 23, 2007.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.667 NMAC ERRDS, Department of Environment.

Alvin Garcia Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.790 NMAC, Sections 141-144 effective 7/23/2007.

1.18.790.141 [TOXIC INVENTORY EMERGENCY (TIER II) REPORT FILES:

A. Program: ~~emergency management~~

B. Maintenance system: ~~alphabetical by county, then by entity~~

C. Description: ~~records concerning required inventory of chemicals maintained by various public and private facilities. File may include toxic inventory emergency report, map of site, correspon-~~

dence, material safety data sheet, etc.

D. Retention: ~~10 years from date file created, then transfer to archives for review and final disposition~~

E. Confidentiality: ~~Portions of record may contain confidential information per CFR 40 Subsection 53.15 (i.e., trade secrets and confidential or privileged information).] [RESERVED] [1.18.790.141 NMAC - Rp, 1.18.790.167 NMAC, 5/14/2007; Repealed, 7/23/2007]~~

1.18.790.142 [EMERGENCY MANAGEMENT AND HOMELAND SECURITY TRAINING FILES:

A. Program: ~~emergency management~~

B. Maintenance system: ~~chronological by date of course~~

C. Description: ~~records concerning emergency management and homeland security training. File may include application (i.e., name, address, DOB, SSN, employment history, etc.); course description (i.e., name of instructor, type of course, etc.); copy of certification, etc.~~

D. Retention:
(1) Accepted: ~~six years after date of certification~~

(2) Rejected: ~~three years after date of rejection~~

E. Confidentiality: ~~Portions of record may be confidential per 5 USC, Section 552a (i.e., social security number).] [RESERVED] [1.18.790.142 NMAC - N, 5/14/2007; Repealed, 7/23/2007]~~

1.18.790.143 [FORM "R" REPORT FILES:

A. Program: ~~emergency management~~

B. Maintenance system: ~~chronological by calendar year, then alphabetical by company.~~

C. Description: ~~annual reports of activities, uses and regulated allowable releases of extremely toxic chemicals into the environment by New Mexico facilities. Files may include form "R" report with attachments, cover letter, revisions, correspondence, etc.~~

D. Retention: ~~10 years after date of report, then transfer to archives for review and final disposition~~

E. Confidentiality: ~~Portions of record may contain confidential information per CFR 40 Subsection 53.15 (i.e., trade secrets and confidential or privileged information).] [RESERVED] [1.18.790.143 NMAC - Rp, 1.18.790.168 NMAC, 5/14/200; Repealed, 7/23/2007]~~

1.18.790.144 [RELEASE REPORT (304) FILES:

A. Program: ~~emergency~~

management

B. Maintenance system: ~~chronological by calendar year, then alphabetical by company~~

C. Description: ~~emergency reports submitted by facilities regarding excessive toxic chemical releases, either as a result from routine maintenance or an emergency situation. Files may include release report (i.e., name of facility, date of report, date of release, time of release, substance released, quantity, reason for release, actions taken, potential health concerns or effects), correspondence, etc.~~

D. Retention: ~~30 years after date report issued~~

E. Confidentiality: ~~Portions of record may contain confidential information per CFR 40 Subsection 53.15 (i.e., trade secrets and confidential or privileged information).] [RESERVED] [1.18.790.144 NMAC - Rp, 1.18.790.169 NMAC, 5/14/2007; Repealed, 7/23/2007]~~

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY
MOTOR TRANSPORTATION
DIVISION**

This is an amendment to 18.2.3 NMAC, Sections 3 and 9 through 17, effective July 16, 2007

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 2 MOTOR CARRIER
PART 3 MOTOR CARRIER
SAFETY**

18.2.3.1 ISSUING AGENCY: Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504-1628. [4-30-97; 18.2.3.1 NMAC - Rp 18 NMAC 2.3.1, 6-29-00]

18.2.3.2 SCOPE: This part applies to all owners, operators and drivers of commercial motor carrier vehicles. [4-30-97; 18.2.3.2 NMAC - Rp 18 NMAC 2.3.2, 6-29-00]

18.2.3.3 STATUTORY AUTHORITY: ~~[Section 9-11-6.2 NMSA 1978]~~ Section 9-19-6 NMSA 1978 and Section 65-3-4 NMSA 1978. [4-30-97; 18.2.3.3 NMAC - Rp 18 NMAC 2.3.3, 6-29-00; A, 07-16-07]

18.2.3.4 DURATION: Permanent. [4-30-97; 18.2.3.4 NMAC - Rp 18 NMAC 2.3.4, 6-29-00]

18.2.3.5 EFFECTIVE DATE: June 29, 2000, unless a later date is cited at

the end of a section, in which case the later date is the effective date.

[4-30-97; 18.2.3.5 NMAC - Rp 18 NMAC 2.3.5, 6-29-00]

18.2.3.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Transportation Act. [4-30-97; 18.2.3.6 NMAC - Rp 18 NMAC 2.3.6, 6-29-00]

18.2.3.7 DEFINITIONS: Reserved. [4-30-97; 18.2.3.7 NMAC - Rp 18 NMAC 2.3.7, 6-29-00]

18.2.3.8 SPECIAL NOTE: All statutory references in 18.2.3 NMAC are to the New Mexico Statutes Annotated, 1978 (NMSA 1978) unless otherwise specified. [2-3-93; 4-30-97; 18.2.3.8 NMAC - Rp 18 NMAC 2.3.8, 6-29-00]

18.2.3.9 REFERENCES TO CODE OF FEDERAL REGULATIONS: For the purposes of 18.2.3 NMAC, the term "Code of Federal Regulations" means the Code of Federal Regulations published by the office of the federal register, national archives and records administration in effect on ~~[October 1, 2003]~~ October 1, 2006.

A. Appendix A: Code of Federal Regulations, Title 49, Parts 1 to 99, Revised as of ~~[October 1, 2003]~~ October 1, 2006, published by the office of the federal register.

B. Appendix B: Code of Federal Regulations, Title 49, Parts 100 to 185, Revised as of ~~[October 1, 2003]~~ October 1, 2006, published by the office of the federal register.

C. Appendix D: Code of Federal Regulations, Title 49, Parts 200 to 399, Revised as of ~~[October 1, 2003]~~ October 1, 2006, published by the office of the federal register. [11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.9 NMAC - Rp 18 NMAC 2.3.9, 6-29-00; A, 7/31/02; A, 3/31/03; A, 1/30/04; A, 07-16-07]

18.2.3.10 GENERAL: The department of public safety hereby adopts Parts 385, 387 and 390 of Title 49 of the Code of Federal Regulations, the provisions in these parts are applicable to intrastate carriers (49 CFR Parts 385, 387 and 390 - Federal Motor Carrier Safety Regulations), with the following amendments:

A. Where the regulations refer to the United States department of transportation (DOT), and the transportation is intrastate, substitute the New Mexico department of public safety.

B. Where the regulations

refer to the federal motor carrier safety administration, and the transportation is intrastate, substitute the New Mexico department of public safety.

[B-] C. Where the regulations refer to the secretary of the United States department of transportation, and the transportation is intrastate, substitute the New Mexico secretary of the department of public safety.

[C-] D. Where the regulations refer to a special agent of the ~~[federal highway administration]~~ federal motor carrier safety administration, substitute all personnel safety certified and approved by the director of the motor transportation division of the department of public safety.

[D-] E. Any part of 49 CFR not specifically adopted by these regulations is hereby deemed to be omitted and should not be considered to be part of these regulations.

[E-] Part 385.307 is amended to add: "Beginning July 1, 2004 after a new intrastate entrant satisfies all applicable state pre-operational requirements, it will be subject to the new entrant safety monitoring procedures for a period of 18 months. During this 18 month period:

(1) ~~the new intrastate entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively; an accident rate or driver or vehicle violation rate that is higher than the industry average for similar motor carrier operations may cause the department of public safety, motor transportation division to conduct an expedited safety audit or compliance review at any time;~~

(2) ~~a safety audit will be conducted on the new intrastate entrant, once it has been in operation for enough time to have sufficient records to allow the department of public safety, motor transportation division to evaluate the adequacy of its basic safety management controls; this period will generally be at least 3 months;~~

(3) ~~all records and documents required for the safety audit shall be made available for inspection upon request by an individual certified under federal motor carrier safety administration regulations to perform safety audits.]~~

F. Part 385.13(a) is amended to read "Generally, a motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the department of public safety on the internet at <http://www.dps.nm.org> or by telephone at (505) 827-0645."

G. Part 385.13(d) is amended to read "Penalties. If a proposed "unsatisfactory" safety rating becomes

final, the department of public safety will issue an order placing its intrastate operations out of service. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in Sections 66-2-9 NMSA 1978, 66-5-71 NMSA 1978, 66-5-58 NMSA 1978 and 66-8-7 NMSA 1978."

H. Part 385.14(a) is amended to read "A CMV owner or operator that has failed to pay civil penalties imposed by the taxation and revenue department, or has failed to abide by a payment plan, may be prohibited from operating CMVs in intrastate commerce."

I. Part 385.14(b) is amended to read "A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the taxation and revenue department, or has failed to abide by a payment plan, may be prohibited from operating in intrastate commerce, and its registration may be suspended under the provisions of section 66-2-9 NMSA 1978."

J. Part 385.15(c) is amended to read "The motor carrier must submit its request in writing to the Department of Public Safety, Motor Transportation Division Director, P.O. Box 1628 Santa Fe, NM 87504."

[F-] K. Part 390.5, Definitions, is amended to read:

(1) "Commercial motor vehicle" means any self propelled or towed vehicle ~~]; other than special mobile equipment,]~~ used on public highways in commerce to transport passengers or property when:

(a) the vehicle is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more whichever is greater; or the vehicle is operated only in intrastate commerce and has a gross vehicle weight rating, or gross combination weight rating or gross vehicle weight or gross combination weight of 26,001 or more pounds whichever is greater; or

(b) is designed or used to transport more than 8 passengers (including the driver); for compensation; or

(c) is designed or used to transport more than 15 passengers, (including the driver) and is not used to transport passengers for compensation; or

(d) is used in transporting material found by the secretary of transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the secretary under 49 CFR, subtitle B, Chapter I, subchapter C;

[~~(2) "Special mobile equipment" means a motor vehicle constructed from the ground up as machinery and not designed or~~

~~used for the transportation of persons or property. Such equipment is operated on the highway only incidental to its use off road. The mounting of off road equipment on a standard truck or other chassis does not qualify a vehicle for an exemption as special mobile equipment."~~

[~~(3)~~] (2) 390.19 is amended to add: "Intrastate carriers operating commercial motor vehicles are required to apply for a New Mexico safety identification number from the motor vehicle division, New Mexico taxation and revenue department beginning July 1, 2002. Intrastate vehicles designed or used to transport 9 to 15 passengers (including the driver) and school buses, provided that school buses shall be subject to the applicable school bus safety provision established by the state transportation director of the New Mexico department of education, are exempted from the application requirement for the New Mexico safety identification number."

[~~(4)~~] (3) 390.21 is amended to add: "Intrastate carriers operating commercial motor vehicles are required to mark their vehicles with the assigned New Mexico safety identification number, preceded by the letters USDOT and followed by the suffix NM [no later than January 1, 2003]."

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.10 NMAC - Rp 18 NMAC 2.3.10, 6-29-00; A, 7/31/02; A, 1/30/04; A, 07-16-07]

18.2.3.11 **QUALIFICATION OF DRIVERS:** The department of public safety hereby adopts Part 40 and Appendix A to Part 40 of Title 49 of the Code of Federal Regulations (49 CFR 40 - Procedures for Transportation Workplace Drug Testing Programs), Part 391 of Title 49 of the Code of Federal Regulations (49 CFR 391 - Qualification of Drivers), Part 382 of Title 49 of the Code of Federal Regulations (49 CFR 382 -Controlled Substances and Alcohol Use and Testing) and Appendices C (Written Examination for Drivers), D (Table of Disqualifying Drugs and Other Substances, Schedule I) and E (Table of Disqualifying Drugs and Other Substances, Schedules II through V) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations~~]. All provisions set forth in these parts as adopted are applicable to intrastate carriers with the following amendments:~~

A. Part 391.2(c) is amended to read: "Certain farm vehicle drivers. The rules in this part do not apply to a farm vehicle driver other than a farm vehicle driver who drives an articulated (combination) motor vehicle interstate that has a gross weight, including its load, of more than 10,000 pounds or drives an articulated motor vehicle intrastate that has a gross

weight, including its load, of 26,001 pounds or more.”

B. Part 391.11(b)(1) is amended to read: “Is at least 21 years old; or is 18 years old and drives only in intrastate commerce operating commercial vehicles that are not required to be placarded for hazardous materials.”

C. Part 391.49, Waiver of Certain Physical Defects, is amended to add: “(m) A person who is not physically qualified to drive under 391.41(b)(1) or (2) and who is not eligible for a waiver under the provisions of 391.49 (a) through 391.49(l) and who drives only intrastate, may apply for a waiver from the Director, Motor Vehicle Division, New Mexico Taxation and Revenue Department, P.O. Box 1028, Santa Fe, New Mexico, 87504-1028 under 18.19.5.33 NMAC.

~~D. Part 391.51(g) is amended to read: “Upon written request to, and with the approval of, the director, regional motor carrier safety office, for the region in which a motor carrier has its principal place of business, an interstate carrier may retain one or more of its drivers’ qualification files at a regional or terminal office. The addresses and jurisdictions of the directors of regional motor carrier safety offices are shown in Section 390.27 of this subchapter.”~~

[2-3-93; 11-17-93; 4-30-97; 18.2.3.11 NMAC - Rp 18 NMAC 2.3.11, 6-29-00; A, 1/30/04; A, 07-16-07]

18.2.3.12 **DRIVING OF MOTOR VEHICLES:** The department of public safety hereby adopts Part 392 of Title 49 of the Code of Federal Regulations (49 CFR 392 - Driving of Motor Vehicles)[7]. All provisions set forth in CFR 49 Part 392 as adopted are applicable to intrastate carriers, with no amendments.

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.11 NMAC - Rp 18 NMAC 2.3.11, 6-29-00; A, 07-16-07]

18.2.3.13 **PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION:** The department of public safety hereby adopts Part 393 of Title 49 of the Code of Federal Regulations (49 CFR 393 - Parts and Accessories Necessary for Safe Operation)[7]. All provisions set forth in CFR 49 Part 393 as adopted are applicable to intrastate carriers, with no amendments.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.13 NMAC - Rp 18 NMAC 2.3.13, 6-29-00; A, 07-16-07]

18.2.3.14 **HOURS OF SERVICE OF DRIVERS:** The department of public safety hereby adopts Part 395 of Title 49 of the Code of Federal Regulations (49 CFR 395 - Hours of Service of Drivers)[7].

All provisions set forth in CFR 49 Part 395 as adopted are applicable to intrastate carriers with the following amendments: Where the regulation refers to 100 air mile radius, and the transportation is intrastate, substitute 150 air mile radius.

~~[A. Part 395.1(e) is amended to read: “100/150 air mile radius driver. A driver is exempt from the requirements of Section 395.8 if:~~

~~(1) the driver operates in interstate commerce within a 100 air mile radius of the normal work reporting location or operates in intrastate commerce within a 150 air mile radius of the normal work reporting location;~~

~~(2) the driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;~~

~~(3) a property carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty; a passenger carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty;~~

~~(4) a property carrying commercial motor vehicle driver does not exceed 11 hours maximum driving time following 10 consecutive hours off duty; or a passenger carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and~~

~~(5) the motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:~~

~~(a) the time the driver reports for duty each day;~~

~~(b) the total number of hours the driver is on duty each day;~~

~~(c) the time the driver is released from duty each day; and~~

~~(d) the total time for the preceding 7 days in accordance with Section 395.8(j)(2) of this section for drivers used for the first time or intermittently.”~~

~~B. Part 395.1(g) is amended to read: “Retention of driver’s record of duty status. Upon written request to, and with the approval of, the regional director of motor carriers for the region in which the motor carrier has its principal place of business, an interstate motor carrier may forward and maintain such records at a regional or terminal office. The addresses and jurisdictions of the regional director of motor carriers offices are shown in Section 390.27 of this subchapter.”~~

[2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.14 NMAC - Rp 18 NMAC 2.3.14, 6-29-00; A, 1/30/04; A, 07-16-07]

18.2.3.15 **INSPECTION, REPAIR AND MAINTENANCE:** The

department of public safety hereby adopts Part 396 of Title 49 of the Code of Federal Regulations (49 CFR 396 - Inspection, Repair, and Maintenance) and Appendix G (Minimum Periodic Inspection Standards) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations. All provisions set forth in these parts as adopted are applicable to intrastate carriers with the following amendments:

A. Part 396.9(a) *Personnel authorized to perform inspections* is amended to add: “If the persons have successfully completed approved training, have met minimum performance standards and have been certified and approved by the director of the division, all personnel of the motor transportation division, police officers and any other state inspectors are authorized to enter upon and perform inspections of motor carriers’ vehicles in operation.”

B. Part 396.9(b) *Prescribed inspection report* is amended to add: “The driver-vehicle inspection form, MTD-10987 and MTD-10988 or computer-generated facsimile, shall be used to record results of motor vehicle inspections conducted by personnel of the motor transportation division of the department of public safety, police officers or other state inspectors authorized to perform inspections by the director of the motor transportation division.”

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.15 NMAC - Rp 18 NMAC 2.3.15, 6-29-00; A, 07-16-07]

18.2.3.16 **TRANSPORTATION OF HAZARDOUS MATERIALS - DRIVING AND PARKING RULES:** The department of public safety hereby adopts Part 397 of Title 49 of the Code of Federal Regulations (49 CFR 397 - Transportation of Hazardous Materials; Driving and Parking Rules)[7]. All provisions set forth in CFR 49 Part 397 as adopted are applicable to intrastate carriers, with no amendments.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.16 NMAC - Rp 18 NMAC 2.3.16, 6-29-00; A, 07-16-07]

18.2.3.17 **ADOPTION OF FEDERAL HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS:** The department of public safety hereby adopts Parts 107, 171, 172, 173, 177, 178 and 180 of Title 49 of the Code of Federal Regulations (49 CFR 107 - Hazardous Materials Program Procedures, 49 CFR 171 - General Information, Regulations and Definitions, 49 CFR 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications Requirements and Emergency Response Information Requirements, 49 CFR 173 - Shippers - General Requirements for Shipments and Packaging, 49 CFR 177 -

Carriage by Public Highway, 49 CFR 178 - Specifications for Packagings and 49 CFR 180 - Continuing Qualification and Maintenance of Packagings). [~~with the following ADDITION to Section 173.33: Section 173.33(a)(4) "Cargo tanks" having a water capacity of 3,000 gallons or less, placed into service prior to April 1, 1995, operated by a solely intrastate motor carrier and used to transport Hazard Class 3 petroleum products do not have to meet the cargo tank specification requirements of 49 CFR 173.33(a)(1), 49 CFR 178.340 and 49 CFR 178.341 when operated under a valid permit issued by the motor transportation division of the department of public safety. This provision will expire April 1, 2005.~~] All provisions set forth in these parts as adopted are applicable to intrastate carriers. [2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.17 NMAC - Rp 18 NMAC 2.3.17, 6-29-00; A, 7/31/02; A, 07-16-07]

HISTORY of 18.2.3 NMAC:

Pre-NMAC History:

TRD 65-3/1990, Regulations Pertaining to the Motor Carrier Safety Act, Sections 65-3-1 through 65-3-13, 6-15-90.

TRD Rule MCS-93, Regulations Pertaining to the Motor Carrier Safety Act, Sections 65-3-1 through 65-3-13, 2/3/93.

History of the Repealed Material:

18 NMAC 2.3, Motor Carrier Safety - Repealed, 6-29-00.

NEW MEXICO WATER QUALITY CONTROL COMMISSION

Explanatory paragraph: This is an amendment to 20.6.4 NMAC, Sections 7 and 8, effective August 1, 2007. The purpose of the amendment is to allow temporary and short-term degradation in outstanding national resource waters under limited circumstances. The amendment includes the insertion of one new definition into the list of alphabetized definitions in 20.6.4.7 NMAC. The other definitions remain unchanged, except for assigning new letters to the subsections following the new definition.

20.6.4.7 DEFINITIONS:

Terms defined in the New Mexico Water Quality Act, but not defined in this part will have the meaning given in the Water Quality Act.

...

S. "Designated management agency" means an agency as defined by 40 CFR Section 130.9(d).

[20.6.4.7 NMAC - Rp 20 NMAC 6.1.1007, 10-12-00; A, 7-19-01; A, 05-23-05; A, 07-

17-05; A, 08-01-07]

20.6.4.8 ANTIDegradation POLICY AND IMPLEMENTATION PLAN:

A. Antidegradation Policy: This antidegradation policy applies to all surface waters of the state.

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected in all surface waters of the state.

(2) Where the quality of a surface water of the state exceeds levels necessary to support the propagation of fish, shellfish, and wildlife, and recreation in and on the water, that quality shall be maintained and protected unless the commission finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic and social development in the area in which the water is located. In allowing such degradation or lower water quality, the state shall assure water quality adequate to protect existing uses fully. Further, the state shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable BMPs for nonpoint source control. Additionally, the state shall encourage the use of watershed planning as a further means to protect surface waters of the state.

(3) No degradation shall be allowed in [high quality] waters designated by the commission as outstanding national resource waters (ONRWs), except as provided in Subparagraphs (a) through (e) of this paragraph.

(a) Temporary and short-term degradation of water quality shall be allowed only when such degradation can be shown to result in restoration or maintenance of the chemical, physical or biological integrity of the ONRW and is consistent with the objectives in 20.6.4.6 NMAC and with the purposes for which the commission designated the ONRW.

(b) Temporary and short-term degradation of water quality that complies with Subparagraph (a) of this paragraph shall be limited to the shortest possible time and last no longer than 12 months, unless approved by the commission.

(c) Temporary and short-term degradation shall only be approved on a case-by-case basis by the commission, the department or a designated management agency as appropriate. Temporary and short-term degradation resulting from applications under 20.6.4.16 NMAC shall be considered and may be approved by the commission. All other temporary and short-

term degradation shall be considered and may be approved by the department or by a designated management agency pursuant to a commission-approved memorandum of agreement between the department and the designated management agency. In approving temporary and short-term degradation, the commission, the department or the designated management agency shall consider and minimize the frequency and cumulative effects of such degradation. The approval of temporary and short-term degradation shall not result in permanent degradation of water quality in the ONRW or in water quality lower than necessary to protect existing uses in the ONRW and shall not alter the essential character or special use that makes the water an ONRW.

(d) In implementing activities that may result in temporary and short-term degradation of water quality, all practical means of minimizing such temporary and short-term degradation shall be utilized.

(e) Preexisting land-use activities allowed by federal or state law prior to designation as an ONRW, and controlled by best management practices (BMPs), shall be allowed to continue so long as there are no new or increased discharges resulting from the activity after designation of the ONRW.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy and implementing method shall be consistent with Section 316 of the federal Clean Water Act.

(5) In implementing this section, the commission through the appropriate regional offices of the United States environmental protection agency will keep the administrator advised and provided with such information concerning the surface waters of the state as he or she will need to discharge his or her responsibilities under the federal Clean Water Act.

B. Implementation Plan:

The department, acting under authority delegated by the commission, implements the water quality standards, including the antidegradation policy, by describing specific methods and procedures in the continuing planning process and by establishing and maintaining controls on the discharge of pollutants to surface waters of the state. The steps summarized in the following paragraphs, which may not all be applicable in every water pollution control action, list the implementation activities of the department. These implementation activities are supplemented by detailed antidegradation review procedures developed under the state's continuing planning process. The department:

(1) obtains information pertinent to the impact of the effluent on the receiving water and advises the prospective discharg-

er of requirements for obtaining a permit to discharge;

(2) reviews the adequacy of existing data and conducts a water quality survey of the receiving water in accordance with an annually reviewed, ranked priority list of surface waters of the state requiring total maximum daily loads pursuant to Section 303(d) of the federal Clean Water Act;

(3) assesses the probable impact of the effluent on the receiving water relative to its attainable or designated uses and numeric and narrative criteria;

(4) requires the highest and best degree of wastewater treatment practicable and commensurate with protecting and maintaining the designated uses and existing water quality of surface waters of the state;

(5) develops water quality based effluent limitations and comments on technology based effluent limitations, as appropriate, for inclusion in any federal permit issued to a discharger pursuant to Section 402 of the federal Clean Water Act;

(6) requires that these effluent limitations be included in any such permit as a condition for state certification pursuant to Section 401 of the federal Clean Water Act;

(7) coordinates its water pollution control activities with other constituent agencies of the commission, and with local, state and federal agencies, as appropriate;

(8) develops and pursues inspection and enforcement programs to ensure that dischargers comply with state regulations and standards, and complements EPA's enforcement of federal permits;

(9) ensures that the provisions for public participation required by the New Mexico Water Quality Act and the federal Clean Water Act are followed;

(10) provides continuing technical training for wastewater treatment facility operators through the utility operators training and certification programs;

(11) provides funds to assist the construction of publicly owned wastewater treatment facilities through the wastewater construction program authorized by Section 601 of the federal Clean Water Act, and through funds appropriated by the New Mexico legislature;

(12) conducts water quality surveillance of the surface waters of the state to assess the effectiveness of water pollution controls, determines whether water quality standards are being attained, and proposes amendments to improve water quality standards;

(13) encourages, in conjunction with other state agencies, implementation of the best management practices set forth in the New Mexico statewide water quality management plan and the nonpoint source management program, such implementation

shall not be mandatory except as provided by federal or state law;

(14) evaluates the effectiveness of BMPs selected to prevent, reduce or abate sources of water pollutants;

(15) develops procedures for assessing use attainment as required by 20.6.4.15 NMAC and establishing site-specific standards; and

(16) develops list of surface waters of the state not attaining designated uses, pursuant to Sections 305(b) and 303(d) of the federal Clean Water Act. [20.6.4.8 NMAC - Rp 20 NMAC 6.1.1101, 10-12-00; A, 05-23-05; A, 08-01-07]

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

This is an amendment to 11.3.400 NMAC, Sections 1, 415, 417 and 426, effective July 16, 2007.

11.3.400.1 ISSUING AGENCY:

~~[NM Department of Labor, Employment Security Division, P.O. Box 1928 Albuquerque, NM 87103]~~ New Mexico Department of Workforce Solutions, Workforce Transition Services Division.

[07-15-98; 11.3.400.1 NMAC - Rn & A, 11 NMAC 3.400.1, 09-01-2001; A, 01-01-2003; A, 07-16-2007]

[Address: Post Office Box 1928, Albuquerque, N.M. 87103]

11.3.400.415 EXPERIENCE RATING OF EMPLOYERS:

This rule shall govern the experience rating provisions of NMSA 1978 Section 51-1-11.

A. DEFINITIONS: For purposes of 11.3.400.415 NMAC, the following definitions shall apply:

(1) The "total assets in the fund" means all contributions collected, except those contributions collected pursuant to contribution schedule B of NMSA 1978, Section 51-1-11, all payments in lieu of contributions collected or due from non-profit organizations or governmental units and accounts receivable for federal shareable benefits for periods through the computation date of June 30.

(2) "Last annual payrolls" means the total payrolls as reported by all employers subject to contributions for the twelve-month period ending December 31 prior to the computation date except that, for rate year 2004, "last annual payrolls" means total payrolls as reported by all employers subject to contributions for the twelve-month period ending December 31, 2000.

(3) The ~~["reserve"]~~ "employer reserve" for each employer shall be the excess of employer's total contributions paid less total benefit charges computed as

a percentage of the employer's "average payroll" reported for contributions. The "employer reserve" total contributions for each employer shall not include payments made pursuant to contribution schedule B of NMSA 1978, Section 51-1-11. Each ~~[employer's reserve]~~ "employer reserve" account percentage ~~[("excess reserve ratio")]~~ shall be rounded to the nearest one-tenth of one percent.

(4) Payments made pursuant to contribution schedule B of NMSA 1978, Section 51-1-11 are not reportable for Federal Unemployment Tax Act (FUTA) tax credit purposes and are not considered in the calculation to determine the "employer reserve."

B. ELIGIBILITY OF EMPLOYER'S ACCOUNT FOR COMPUTED RATE BASED ON BENEFIT EXPERIENCE. For purposes of the interpretation and application of NMSA 1978 Section 51-1-11E, no employer's experience rating account shall be deemed to have been chargeable with benefits throughout the preceding thirty-six consecutive calendar month period ending on a computation date as defined in NMSA 1978 Section 51-1-11H(3)(d), unless as of such computation date, the department finds that the employer paid wages in employment during any part of the first calendar quarter of the three and one-half year period ending on such computation date and that the payment of such wages was not interrupted for nine or more consecutive calendar quarters, or by termination of coverage under NMSA 1978 Section 51-1-18; provided, all quarterly wage and contribution reports received by the department by July 31 following the computation date will be considered in computing the rate for the succeeding calendar year.

C. The amendment to Paragraph (2) of Subsection A of 11.3.400.415 NMAC, "except that, for rate year 2004, "last annual payrolls" means total payrolls as reported by all employers subject to contributions for the twelve-month period ending December 31, 2000" is adopted as an emergency measure to implement legislative changes enacted by the New Mexico legislature in 2003. The emergency provision will remain in place indefinitely, but its effect will be for the calendar years 2003 and 2004. Notice and hearing on the promulgation of the emergency measure shall occur after the enactment as required by Sections 201 and 205 of 11.3.200 NMAC in that the amended rule shall be published on the department's website within seven days of the effective date and in the next available publication of the New Mexico register.

[07-15-98; 11.3.400.415 NMAC - Rn & A, 11 NMAC 3.400.415, 09-01-2001; A, 01-01-2003; A, 08-27-2003; A, 07-16-2007]

11.3.400.417 EXPERIENCE HISTORY TRANSFERS:**A. TOTAL EXPERIENCE HISTORY TRANSFERS:**

(1) **ACQUISITION OF ALL EMPLOYING ENTERPRISES:** A total experience history transfer is available to a successor enterprise only in the situation where the successor has acquired all of the predecessor's business enterprise and, where the predecessor, immediately after the business transfer as defined in 11.3.400.416 NMAC, ceases operating the same enterprise except for liquidation purposes.

(a) In the sale of a business enterprise, the phrase "all assets" includes the transfer of a favorable experience history.

(b) In the sale of a business enterprise, the phrase assumption of "all liabilities" includes an unfavorable experience history and any unpaid contributions.

(2) **NOTIFICATION BY SUCCESSOR:** A successor who has acquired all of the predecessor's employing enterprises shall notify the department of such acquisition, in writing, on or before the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition of the employing enterprise or enterprises. Upon receipt of such notification, the department shall furnish a statement of account to the predecessor and the successor, if the predecessor is delinquent in either submitting wage and contribution reports or the payment of contributions.

(a) A successor who has acquired all of the predecessor's employing enterprises shall notify the department of such acquisition, in writing, on or before the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition of the employing enterprise or enterprises.

(b) If the successor employer fails to notify the department on or before the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition, when the department receives actual notice of the transfer, the department shall effect the transfer and shall impose a penalty of \$50.00 upon the successor.

(c) ~~[Only transfers for which a notice of transfer was received by the department within four years will be processed by the department.]~~ Notice of the transfer must be ~~[given within four years]~~ received by the department during the calendar year of the transaction transferring the employing enterprises, [or within four years of the actual date of transfer of control and operation of the employing]

(3) **LIQUIDATION WAGES:** Liquidation wages reported by the predecessor and contributions paid by the prede-

cessor for liquidation wages shall be credited to the successor's account for experience rating purposes.

(4) **WRITTEN DETERMINATION TO SUCCESSOR AND PREDECESSOR:** The department shall issue a written determination to the successor and predecessor approving or disapproving the total history transfer. All such determinations shall be subject to the provisions of 11.3.500.512 NMAC governing appeals of contribution or tax determinations.

(a) Failure to timely dispute or appeal a determination approving a transfer without good cause will deprive the predecessor of the previous favorable experience history.

(b) Failure to timely notify the department or dispute or appeal a denial of the transfer of a favorable experience transfer without good cause will deprive the successor business of the opportunity for the transfer of the favorable experience history transfer.

(5) **Predecessor resumes or continues in business:** If the predecessor owner operates a new or different business enterprise upon or after the business transfer, the predecessor shall be assigned a new account number and a standard rate in accordance with the provisions of NMSA 1978 Section 51-1-11E.

B. OUT-OF-STATE EXPERIENCE HISTORY TRANSFERS, PROCEDURE:

(1) An employing enterprise moving a business into New Mexico; the "out-of-state entity" may seek a transfer of the enterprise's experience history from the predecessor state.

(2) At any time during the application process, until the close of the 15 day appeal period after determination, the employing enterprise may withdraw its application for an out-of-state history transfer and accept New Mexico rate for new businesses.

(3) Upon making application for an out-of-state experience rate transfer, the employing enterprise will temporarily be issued a standard rate in accordance with the provisions of NMSA 1978 Section 51-1-11E until the out-of-state experience history transfer is completed.

(4) The initial registration must specify that the employing enterprise seeks an out-of-state experience history transfer. No retroactive requests will be entertained.

(5) The initial registration and application must be made within 30 days of commencing business within the state of New Mexico.

(6) To be eligible for the out-of-state transfer, the employing enterprise must have been in operation for at least three full calendar years in the predecessor state.

(7) The out-of-state employing

enterprise must physically close its operation in entirety in the predecessor state and complete all liquidation within six months of opening the New Mexico operation.

(8) The business enterprise opened in New Mexico must be of the same type and nature as the enterprise operated in the predecessor state.

(9) If the entity owning the business enterprise maintains other businesses in the predecessor state, only the experience history attributable to the enterprise actually relocated to New Mexico may be transferred.

(10) Within 20 days of submitting the application for an out-of-state experience history transfer, the employing enterprise shall submit a full and complete account history for at least the immediate three calendar years. This history must include:

(a) the number of workers laid off at the time the out-of-state entity closed its operation in the predecessor state;

(b) the nature of the business being transferred including a statement demonstrating that the out-of-state enterprise and the proposed New Mexico enterprise are of the same nature and type;

(c) copies of the periodic wage reports submitted to the predecessor state for at least three full calendar years plus the current year immediately preceding the transfer application.

(11) The account history must be validated, certified and exemplified by the monitoring agency of the predecessor state where the wages were reported; it shall include certified copies of tax rate notices from the predecessor state for each of the last four years in which the employing enterprise was in business in the predecessor state.

(12) The account history shall include benefits paid and charged or non-charged and be based on wages paid prior to the transfer. The charges and non-charges shall be transferred to the New Mexico account history.

(13) The out-of-state employing enterprise must provide documentation, verified by counterpart agency in the predecessor state, comparable to the New Mexico department of labor, that the employing enterprise has no taxes, interest, penalties or other fees due.

(14) When transferring from a non-reserve ratio state, the out-of-state employing enterprise transferring must provide entire history record.

(15) From the department's approved list, the employing enterprise shall engage an independent accounting firm to convert the transferred history into the factors used to measure experience in New Mexico.

(16) The transferred and convert-

ed experience history may be accepted by the department but is subject to audit by the department either before the transfer is approved or up to one year after the transfer is approved.

(17) To be eligible for a reduced rate, a employing enterprise must have been in operation for at least four complete calendar years plus the current year. If an out-of-state employing enterprise applying for a transfer has been in operation for at least three, but not four full calendar years, in the predecessor state, the record from the predecessor state may be transferred, but a reduced rate will not be available until the employing enterprise has been in business for four full calendar years, combining the time in business in the predecessor state and in New Mexico.

(18) Notification to the other state and treatment of account history: Upon acceptance of the transfer application, the department will notify its counterpart agency in the predecessor state of the acceptance of the transfer application.

(19) Upon approval of the experience history transfer, the employing entity's contribution rate will be adjusted retroactively to the appropriate rate.

(20) After receiving notification of the approved transfer, the employing enterprise must submit an updated status report in the form designated by the department within 30 days.

(21) The provisions of this subsection apply to all out-of-state transfer requests filed on or after January 1, 2004.

C. PARTIAL EXPERIENCE HISTORY TRANSFERS:

(1) NOTIFICATION BY SUCCESSOR AND SUBMISSION OF JOINT APPLICATION FORM: A successor entity acquiring one or more, but less than all of the employing enterprises of a predecessor entity, shall notify the department of such acquisition, in writing, on or before the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition of the employing enterprise. Upon receipt of such notification, the department shall furnish the prescribed application form. The application shall be endorsed by the predecessor. The endorsed application and quarterly wage and contribution reports for each calendar quarter involved in the transfer must be filed with the department within thirty days from the date of delivery or mailing of the application by the department. Upon a showing of good cause, the assistant unemployment insurance bureau chief for the tax section may extend the due date for the filing of the endorsed application and quarterly wage and contribution reports for an additional thirty days provided that the request for an extension of time is filed in writing on or before the regular due date.

Information with respect to the predecessor and successor employing enterprises necessary to a department determination of the existence of all of the facts requisite to department approval or disapproval shall be given as prescribed by such forms or as requested by the department. Employers shall have the right to a seated interview at the local workforce development center or the state office where they will be provided assistance as necessary to complete the application.

(2) WRITTEN DETERMINATION TO SUCCESSOR: The department shall issue a written determination to the successor approving or disapproving the partial history transfer. All determinations disapproving the partial history transfer shall be subject to the provisions of 11.3.500.512 NMAC governing appeals of contribution or tax determinations.

D. DETERMINATION OF CONTRIBUTION RATES AFTER TOTAL OR PARTIAL EXPERIENCE HISTORY TRANSFER: For the period from the effective date of the transfer to the following January 1, the rate shall be determined as follows:

(1) If the successor is a liable employer and rated for the calendar year on the effective date of the transfer, there will be no change in rate determined for the successor's account as a result of the transfer.

(2) If the successor is a liable employer and has not been rated during the calendar year in which the transfer occurred, the rate shall be computed from the successor's prior history combined with the acquired total or partial history.

(3) If the successor is not a liable employer on the effective date and a new account is established:

(a) the rate of the predecessor or combined predecessors will apply to the new account in the case of a total experience transfer; and

(b) a rate based on experience of the separate schedule of employment and related benefits charged will apply to the new account in the case of a partial experience transfer.

(4) A new rate based on experience of the remaining schedule of employment and related benefits charged will apply to the predecessor account from the effective date of the transfer to current year in the case of a partial experience transfer.

E. CHARGING OF BENEFITS AFTER TRANSFER: Benefits paid subsequent to the effective date of a partial or total experience history transfer shall be charged to the successor's account if the base period wages were transferred to the successor.

[07-15-98; 11.3.400.417 NMAC - Rn, 11 NMAC 3.400.417, 09-1-2001; A, 07-01-2003; A, 07-16-2007]

11.3.400.426 APPLICATION OF UNDERPAYMENTS: In the event an employing unit fails to submit payment in an amount sufficient to satisfy the total amount of outstanding debt for any current or past-due contributions, interest or penalty, the amount of the underpayment shall be applied in the following order: first, to any contributions due pursuant to contribution schedule A and contributions schedules zero (0) through six (6) of NMSA 1978, Section 51-1-11; second, to any contributions due pursuant to contribution schedule B of NMSA 1978, Section 51-1-11; third, to any interest due, and fourth, to any penalties due.

[11.3.400.426 NMAC - N, 07-16-2007]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES**2007**

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Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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