

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 4 HAZARDOUS WASTE
PART 3 HAZARDOUS WASTE FEES

20.4.3.1 ISSUING AGENCY: Environmental Improvement Board.
[20.4.3.1 - Rp. 20.4.3.1 NMAC, 3/5/2020]

20.4.3.2 SCOPE: This part applies to generators of hazardous waste, and to owners and operators of hazardous waste treatment, storage and disposal facilities which receive imported hazardous waste.
[20.4.3.2 - Rp. 20.4.3.2 NMAC, 3/5/2020]

20.4.3.3 STATUTORY AUTHORITY: Subsection J of Section 74-4-4.2 NMSA 1978, directs the board to provide a schedule of business fees for businesses engaged in regulated hazardous waste activity and a schedule of generation fees for businesses generating hazardous waste.
[20.4.3.3 - Rp. 20.4.3.3 NMAC, 3/5/2020]

20.4.3.4 DURATION: Permanent.
[20.4.3.4 - Rp. 20.4.3.4 NMAC, 3/5/2020]

20.4.3.5 EFFECTIVE DATE: March 5, 2020, unless a different date is cited at the end of a section or paragraph
[20.4.3.5 - Rp. 20.4.3.5 NMAC, 3/5/2020]

20.4.3.6 OBJECTIVE: The objective of this part is to provide a schedule of annual fees for hazardous waste generators and treatment, storage and disposal facilities which receive imported hazardous waste, as well as business fees for specific activities or events. The annual and business fees collected will be deposited in the hazardous waste fund to meet necessary expenses in the administration and operation of the state hazardous waste program.
[20.4.3.6 - Rp. 20.4.3.6 NMAC, 3/5/2020]

20.4.3.7 DEFINITIONS: Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in 20.4.1 NMAC, Hazardous Waste Management. As used in this part:

- A. “Act”** means the New Mexico Hazardous Waste Act, Sections 74-4-1 to 74-4-14 NMSA 1978;
- B. “Annual fee”** means the hazardous waste fee in 20.4.3.200 NMAC through 20.4.3.203 NMAC;
- C. “Annual imported waste compensating fee”** means the fee on imported hazardous waste in 20.4.3.300 NMAC through 20.4.3.302 NMAC;
- D. “Business fee”** means the fee designated for specific activities or events in 20.4.3.400 NMAC through 20.4.3.402 NMAC;
- E. “CFR”** means the most recent Code of Federal Regulations adopted by reference at 20.4.1 NMAC;
- F. “Compliance assistance visit for salvage yards”** means a pre-arranged inspection at a salvage yard in order for the salvage yard to acquire a New Mexico Motor Vehicle Division Auto Recycler’s license;
- G. “Cleanup”** means any activities associated with the removal or remediation of hazardous waste at a site, but does not include closure of a solid or hazardous waste management unit;
- H. “Department”** means the New Mexico environment department;
- I. “Episodic generator”** means a generator that has a planned or unplanned event that does not normally occur during generator operations, resulting in an increase in the generation of hazardous waste that exceeds the calendar month quantity limits for the generator’s usual category;
- J. “Emergency Environmental Protection Agency (“EPA”) identification number”** means a generator that meets the definition of a large quantity or small quantity generator due to an emergency and requires an EPA identification number to dispose of the hazardous waste;
- K. “Generator”** means a generator under 20.4.1 NMAC, Hazardous Waste Management, who is a large quantity generator, small quantity generator, or very small quantity generator of hazardous waste under this part;
- L. “Hazardous waste”** means all waste or material regulated as hazardous waste under 20.4.1 NMAC, Hazardous Waste Management;

M. “Imported hazardous waste” means hazardous waste that was generated outside of the state of New Mexico, including waste generated outside the United States, and that has been transported into the state for treatment, storage, or disposal;

N. “Large quantity generator” means a generator who generates more than 1,000 kilograms (or more than 2,204 pounds) of hazardous waste during any month in the calendar year; or a generator who generates more than 1 kilogram (or more than 2.2 pounds) of acutely toxic or “p-listed” hazardous waste in any month in the calendar year; or a generator that accumulates more than 6,000 kilograms (or more than 13,227 pounds) of hazardous waste on site in any month in the calendar year;

O. “Person” means any individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

P. “Recycled” means “used or reused” or “reclaimed” as those terms are defined in 40 CFR, Part 261.1(c);

Q. “Secretary” means the secretary of environment;

R. “Site” means an “individual generation site” as defined in 40 CFR, Part 260.10;

S. “Small quantity generator” means a generator who generates more than 100 kilograms (or more than 220 pounds) but less than 1,000 kilograms (or less than 2,204 pounds) of hazardous waste during any month in the calendar year; or a generator that accumulates more than 1,000 kilograms (or more than 2,204 pounds) of hazardous waste on site in any month in the calendar year;

T. “Very small quantity generator” means a generator who generates less than 100 kilograms (or less than 220 pounds) in any month in the calendar year and never accumulates more than 1,000 kilograms (or more than 2,204 pounds) of hazardous waste on site in any month in the calendar year.
[20.4.3.7 - Rp. 20.4.3.7 NMAC, 3/5/2020]

20.4.3.8 - 20.4.3.107 [RESERVED]

20.4.3.108 SAVING CLAUSE: Amendment of these fee regulations shall not affect any administrative or judicial enforcement action pending on the effective date of this part.
[20.4.3.108 - Rp. 20.4.3.108 NMAC, 3/5/2020]

20.4.3.109 [RESERVED]
[Repealed, 3/5/2020]

20.4.3.110 [RESERVED]
[Repealed, 3/5/2020]

20.4.3.111 ORPHAN WASTE: Nothing in this part is intended to require the payment of annual hazardous waste fees on orphan hazardous waste or waste generated as a result of the cleanup of orphan hazardous waste. “Orphan hazardous waste” means hazardous waste for which a responsible party cannot be identified. The department may collect any fees otherwise owed from the person responsible for the creation of the orphan hazardous waste, if later identified.

[20.4.3.109 - Rp. 20.4.3.109 NMAC, 3/5/2020]

20.4.3.112 - 20.4.3.199 [RESERVED]

20.4.3.200 ANNUAL FEES: Based on activities as defined in 20.4.3.7 NMAC, facilities shall pay fees to the department annually, in accordance with the provisions of this part.
[20.4.3.200 - Rp. 20.4.3.200 NMAC, 3/5/2020]

20.4.3.201 FEE SCHEDULE: Annual fees are set forth below:

A. Very small quantity generator: \$100;

B. Small quantity generator: \$500;

C. Large quantity generators that generate 100,000 pounds or less of hazardous waste annually: \$5,000;

D. Large quantity generators that generate more than 100,000 pounds but less than 400,000 pounds of hazardous waste annually: \$10,000;

E. Large quantity generators that generate 400,000 pounds or more of hazardous waste: \$20,000.
[20.4.3.201 - Rp. 20.4.3.201 NMAC, 3/5/2020]

20.4.3.202 FEE CALCULATION:

A. Nothing herein is intended to affect the generator's obligations with respect to reporting or record keeping under other applicable laws and regulations.

B. The total annual fees due are the cumulative total of the fees for all sites engaged in activities as defined in 20.4.3.7 NMAC during the calendar year prior to the year in which the fee is to be paid, subject to the limits set forth in 20.4.3.109 NMAC;

C. Beginning January 1 following the effective date of these fee regulations, the fees listed in 20.4.3.401 NMAC shall be adjusted annually to account for inflation. The amounts shall be adjusted by the percentage of the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The amount of change in the fee shall be rounded to the nearest one dollar (\$1.00).

[20.4.3.202 - Rp. 20.4.3.202 NMAC, 3/5/2020]

20.4.3.203 TRANSFER OF OWNERSHIP/OPERATIONS: The transferor must report the waste generated during the calendar year in which the transfer takes place on a form obtained from the department. This report and payment shall be submitted to the department at the time of transfer.

[20.4.3.203 - Rp. 20.4.3.203 NMAC, 3/5/2020]

20.4.3.204 - 20.4.3.299 [RESERVED]

20.4.3.300 IMPORTED WASTE COMPENSATING FEES: ANNUAL IMPORTED WASTE

COMPENSATING FEES: For waste that is generated out-of-state, but treated, stored, or disposed of in New Mexico, an annual imported waste compensating fee shall be paid in lieu of the fee provided for in 20.4.3.200 NMAC through 20.4.3.203 NMAC. The owner or operator of the facility first receiving the imported hazardous waste shall pay to the department annually one cent (\$0.01) per pound of hazardous waste managed in New Mexico, in accordance with the provisions of this part.

[20.4.3.300 - Rp. 20.4.3.300 NMAC, 3/5/2020]

20.4.3.301 FEE SCHEDULE: The annual fee and the exclusions applicable thereto shall apply to imported hazardous waste to the same extent as if the waste had been generated within the state. For purposes of determining the volume of waste and the fees due, all imported hazardous waste received by a facility, during the calendar year prior to the year in which the fee is to be paid, shall be considered to have been received from a single source.

[20.4.3.301 - Rp. 20.4.3.301 NMAC, 3/5/2020]

20.4.3.302 TRANSFER OF OWNERSHIP/OPERATIONS:

A. If there is a transfer of ownership or operations, the owner or operator of the facility on the date an imported waste compensating fee is due under 20.4.3.500 NMAC is liable for payment of that fee in full.

B. The transferor must report the imported waste received during the calendar year in which the transfer takes place to the department, on a form obtained from the department. This report shall be submitted to the department at the time of transfer.

C. At the time of transfer, the transferor must also provide a copy of the above report to the person who will be liable for the fee based on the waste reported. In addition to the report, the transferor must provide to that person any manifests prepared on the waste reported, or copies thereof, and any other information used to prepare the report. Manifests and other information need not be sent to the department under this section, unless requested by the department.

[20.4.3.302 - Rp. 20.4.3.302 NMAC, 3/5/2020]

20.4.3.303 - 2.4.3.399 [RESERVED]

20.4.3.400 BUSINESS FEES: Business fees shall be paid for each of the events outlined in 20.4.3.401 NMAC.

[20.4.3.400 - Rp. 20.4.3.400 NMAC, 3/5/2020]

20.4.3.401 FEE SCHEDULE: Business fees are set forth in the schedules below and due at time of request.

- A.** Episodic generators, for each planned or unplanned event: \$500;
- B.** Generators or co-generators requesting temporary or emergency EPA identification number: \$100;
- C.** Salvage yards, for each compliance assistance visit requested: \$100;
- D.** Generators notifying of 40 CFR 262 Subpart K activities: \$100;
- E.** Generators notifying of 40 CFR 250.10 (hazardous secondary materials activities): \$100;

[20.4.3.401 - Rp. 20.4.3.401 NMAC, 3/5/2020]

20.4.3.402 FEE CALCULATION:

- A.** The business fee shall be paid in full if applicable during any part of the calendar year.
- B.** The business fees are due for all sites engaged in activities as defined in 20.4.3.7 NMAC during the calendar year prior to the year in which the fees are to be paid, subject to the limits set forth in 20.4.3.109 NMAC.
- C.** Beginning January 1 following the effective date of these fee regulations, the fees listed in 20.4.3.401 NMAC shall be adjusted annually to account for inflation. The amounts shall be adjusted by the percentage of the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The amount of change in the fee shall be rounded to the nearest one dollar (\$1.00).

[20.4.3.402 - Rp. 20.4.3.402 NMAC, 3/5/2020]

20.4.3.403 - 20.4.3.499 [RESERVED]

20.4.3.500 DUE DATES: The annual fees for which this part provides are due and payable on August 1 of each year.

[20.4.3.500 - Rp. 20.4.3.500 NMAC, 3/5/2020]

20.4.3.501 MANNER OF PAYMENT: The person paying fees under this part shall complete a fee report form obtained from the department, and submit the report to the department, together with any documentation requested by the department. The report shall include a certification of the truthfulness of all of the matters and facts contained in the report, as provided in 20.4.3.502 NMAC. All fees shall be paid to NMED by certified check or money order payable to the New Mexico Environment Department or the Hazardous Waste Bureau, by electronic funds transfer (with prior notice to NMED), or by other methods deemed acceptable by NMED. Cash payments are not an acceptable method of payment. All payments must include the name, address, and contact information for the facility and must be addressed to the New Mexico Environment Department – Hazardous Waste Bureau.

[20.4.3.501 - Rp. 20.4.3.501 NMAC, 3/5/2020]

20.4.3.502 CERTIFICATE: The certification required by 20.4.3.501 NMAC shall be made on oath or affirmation in accordance with Sections 14-13-1 and 14-13-2 NMSA 1978, by the chief executive officer or his designee in the case of a corporation, the managing partner in the case of a partnership, the proprietor in the case of a sole proprietorship, or the official with authority to execute the certification in the case of a government entity.

[20.4.3.502 - Rp. 20.4.3.502 NMAC, 3/5/2020]

20.4.3.503 - 20.4.3.599 [RESERVED]

20.4.3.600 LATE CHARGES; ENFORCEMENT: LATE CHARGES: If any fee for which this part provides is not paid in full when due, the person owing the fee shall pay a billing charge of one hundred dollars (\$100), plus late charges in the amount of an additional one percent of all fees owed for every month or part of a month in which the fees remain unpaid beyond the due date. Billing and late charges shall be considered hazardous waste fees for deposit in the hazardous waste fund, pursuant to Section 74-4-4.5 NMSA 1978, and are independent of any penalties assessed under the act.

[20.4.3.600 - Rp. 20.4.3.600 NMAC, 3/5/2020]

20.4.3.601 VERIFICATION BY THE DEPARTMENT:

- A.** The department may at any time verify the accuracy of reports submitted and amounts paid pursuant to this part. It may use any relevant information for verification purposes, including, but not limited to, the biennial reports submitted pursuant to 20.4.1 NMAC, Hazardous Waste Management, or 40 CFR, Parts 262.41,

264.75 or 265.75, and any manifests prepared for waste shipments. Persons who are subject to this part shall make these and other records relating to the waste generated, manifested or managed available to the department upon request.

B. If the department determines that a fee report submitted pursuant to 20.4.3.501 NMAC does not accurately state the quantity of waste generated, the quantity of imported hazardous waste treated, stored or disposed of, or the fees owed, it shall notify the person submitting the report of the discrepancy and may recalculate the annual fee based on the department's determination.

C. Before assessing a recalculated fee, the department shall send notice of its determination and its intent to reassess the fee to the person who had submitted the report. That person shall have 30 days from the date of the notice to provide the department with any documentation to rebut the determination. Once the department has reviewed any documentation submitted, it will send notice of fee assessment to the person owing a fee. Any amounts that the department determines were due, together with the billing and late charges on the amounts due and unpaid, shall be paid within 60 days of the date of the notice of fee assessment.

[20.4.3.601 - Rp. 20.4.3.601 NMAC, 3/5/2020]

20.4.3.602 ADMINISTRATIVE APPEAL:

A. A notice of fee assessment issued under Subsection C of 20.4.3.601 NMAC may be appealed by filing a written request for hearing with the hearing clerk designated by the secretary within thirty days of the date of the notice. The written request shall be accompanied by a copy of the fee assessment being contested and shall set forth the grounds upon which the appellant disagrees with the assessment.

B. Except as otherwise provided, notice of docketing and hearing officer assignment, motions, pre-hearing procedures and discovery, and hearing and post-hearing procedures shall be governed by 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. The hearing officer shall schedule the hearing for no later than 90 days after service of the notice of docketing.

C. The department shall not seek collection of the fee or take enforcement action on the fee assessment until the secretary has issued a decision on the appeal. Late charges on the amount assessed shall continue to accrue and shall be payable if the assessment is upheld or upheld with modifications. If the assessment is modified on appeal, late charges shall be calculated based on the assessment as modified.

[20.4.3.602 - Rp. 20.4.3.602 NMAC, 3/5/2020]

20.4.3.603 FAILURE TO SUBMIT REPORTS OR PAY FEES:

A. Failure to complete or submit a report in the manner required by 20.4.3.501 NMAC, or to pay fees in full when due, may result in enforcement proceedings under the act. Enforcement actions may include, but are not limited to, the revocation or suspension of any permit issued by the department pursuant to the act to the person failing to complete or submit the fee report or pay the fees as required.

B. Any person who knowingly omits material information from or makes any false statement or representation in a fee report may be subject to criminal penalties under the act.

[20.4.3.603 - Rp. 20.4.3.603 NMAC, 3/5/2020]

20.4.3.604 - 20.4.3.699 [RESERVED]

20.4.3.700 RECORDS AND RECORD KEEPING: RECORDKEEPING REQUIRED: All persons subject to this part are required to retain the documentation necessary to support their fee calculations, including all records used as a basis for the calculations.

[20.4.3.700 - Rp. 20.4.3.700 NMAC, 3/5/2020]

20.4.3.701 RETENTION RECORDS: The records required by 20.4.3.700 NMAC, together with copies of any fee reports submitted under these regulations, shall be retained for three years from the date of payment of the fees to which the records and reports apply. The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

[20.4.3.701 - Rp. 20.4.3.701 NMAC, 3/5/2020]

20.4.3.702 - 20.4.3.799 [RESERVED]

20.4.3.800 MISCELLANEOUS PROVISIONS: DEPOSIT IN THE HAZARDOUS WASTE FUND:

All fees collected pursuant to this part shall be transmitted to the state treasurer for credit to the hazardous waste

fund, and used for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.
[20.4.3.800 - Rp. 20.4.3.800 NMAC, 3/5/2020]

20.4.3.801 ANNUAL REPORT: Within 90 days of the end of each state fiscal year, the department shall prepare and submit to the environmental improvement board a report describing the funds received pursuant to these regulations and the activities performed with the use of these funds. This report shall be made available to members of the public upon request. The department may charge a fee for copies to cover its costs in printing or duplicating the report.
[20.4.3.801 - Rp. 20.4.3.801 NMAC, 3/5/2020]

20.4.3.802 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this part does not relieve a person of the obligation to comply with other applicable state and federal regulations.
[20.4.3.802 - Rp. 20.4.3.802 NMAC, 3/5/2020]

20.4.3.803 CONSTRUCTION: This part shall be liberally construed to effectuate the purpose of the act.
[20.4.3.803 - Rp. 20.4.3.803 NMAC, 3/5/2020]

20.4.3.804 SEVERABILITY: If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.
[20.4.3.804 - Rp. 20.4.3.804 NMAC, 3/5/2020]

20.4.3.805 - 20.4.3.899 [RESERVED]

HISTORY OF 20.4.3 NMAC:

Pre-NMAC Regulatory Filing History: This part is derived in part from material previously filed with the State Records Center and Archives under Annual Hazardous Waste Fee Regulations, EIB/AHWFR-1, filed January 19, 1994.

History of Repealed Material:

20.4.3 NMAC - Hazardous Waste Fees, filed 1/19/1994 was repealed and replaced by 20.4.3 NMAC - Hazardous Waste Fees, effective 3/5/2020.