

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 recyclables, 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) socioeconomics 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 properties, 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, 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;
- (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 modify 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.

20.9.3.23 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.

20.9.3.24 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;

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 AND LAW ENFORCEMENT PHARMACEUTICAL 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;
- (5) air curtain incinerators; and
- (6) law enforcement pharmaceutical 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, an air curtain incinerator, or a law enforcement pharmaceutical 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 violation 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.

L. The owners or operators of law enforcement pharmaceutical incinerators shall utilize one of the following types of incinerators:

- (1) a high temperature incinerator such as cement kilns (furnaces that operate in the range of 1000° C - 2000° C) used for the destruction of hazardous waste;
- (2) a two-chamber incinerator that operates at a minimum temperature of 850° C, with a combustion time of at least two seconds in the second chamber; or
- (3) an alternative incinerator at least as protective as any of the incinerators as described in paragraphs (1) and (2) of this subsection and approved by the department.

M. The owners and operators of law enforcement pharmaceutical incinerators shall retain on file incinerator specifications, including an operation and maintenance manual, temperatures reached, controls, retention time, pollution control equipment, maintenance requirements, and process efficiency.

N. The owners and operators of law enforcement pharmaceutical incinerators shall retain on file a plan that addresses the storage, transport, and disposal of the incinerator ash and encapsulated pharmaceutical waste. Owners and operators of law enforcement pharmaceutical incinerators may store ash for up to 12 months before disposal.

O. The design and operation of a law enforcement pharmaceutical incinerator shall conform to all applicable codes and standards including, but not limited to, the American national standards institute, local zoning, and the building code requirements for the city, county or municipality in which the facility is located.

P. Plastic containers, infectious waste, and syringes and needles shall not be burned in a law enforcement pharmaceutical incinerator.

Q. The owners and operators of law enforcement pharmaceutical incinerators shall submit a summary describing the household pharmaceutical waste collections to the department within 7 calendar days of a limited-duration event or 45 days from the end of each calendar year for an on-going program. The reports shall include:

- (1) the weight or volume of household pharmaceutical wastes received during the limited-duration event or program year;
- (2) the weight or volume of household pharmaceutical wastes received during the limited-duration event or program year by disposal method, including incineration or disposal at a permitted landfill, processing facility or hazardous waste facility, and the weight or volume of ash generated and disposed of; and
- (3) final disposal destinations of any household pharmaceutical wastes and ash disposed of off-site.

[20.9.3.27 NMAC - Rp, 20 NMAC 9.1.II.213, 08/02/07; A, 07/30/11]

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 contained 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 specified 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 Subsection E of 20.9.3.28 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.

E. Owners and 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 shall comply with the following requirements when ordered by the secretary for the purpose of abating nuisance:

- (1) cleanup and disposal of all compostable material;
- (2) cleanup and disposal of all end product from the composting facility; and
- (3) cleanup and disposal of all fugitive trash, solid waste, or other materials creating a nuisance at the

facility.

[20.9.3.28 NMAC - N, 08/02/07; A, 07/30/11]

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 successive 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 Subsection G of 20.9.3.29 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.

G. Owners and operators of 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 nuisance:

- (1) cleanup and disposal of all recyclable material;
- (2) cleanup and disposal of all end product from the recycling facility; and
- (3) cleanup and disposal of all fugitive trash, solid waste, or other materials creating a nuisance at the

facility.

[20.9.3.29 NMAC - N, 08/02/07; A, 07/30/11]

20.9.3.30 PERMIT BY RULE REQUIREMENTS FOR LAW ENFORCEMENT HOUSEHOLD PHARMACEUTICAL TAKE-BACK PROGRAMS.

A. Any law enforcement household pharmaceutical take-back program that collects, stores, processes, transports or disposes of household pharmaceutical waste must comply with the following requirements:

- (1) the law enforcement household pharmaceutical take-back program must maintain a registration with the New Mexico board of pharmacy;
- (2) antineoplastic drugs should be handled, segregated and disposed of as hazardous waste under 40 CFR 261, Subparts C and D, and not as solid waste;
- (3) Resource Conservation and Recovery Act (RCRA) P and U-listed hazardous pharmaceutical wastes, and D-list chemicals that cause a waste to exhibit toxicity characteristics when present above the maximum concentration level (e.g., arsenic D004, barium D005) should be disposed of at a permitted hazardous waste disposal facility, and not as solid wastes;
- (4) collected household pharmaceutical waste shall not be disposed of by placing in drains, toilets, storm water drains, surface waters, on the ground, or in an unpermitted solid waste landfill;
- (5) household pharmaceutical waste may not be incinerated within the state with other waste materials, construction and demolition debris, or special wastes;
- (6) law enforcement household pharmaceutical waste collection events must retain an operating plan on file that contains the following:
 - (a) a description of how household pharmaceutical waste will be disposed of using a method found in Paragraph (7) of Subsection A of 20.9.3.30 NMAC;
 - (b) a description of the specific screening and acceptance criteria that ensure that only authorized household pharmaceutical waste is accepted and disposed of;
 - (c) the hours of operation and dates of law enforcement household pharmaceutical take-back program collection events, and details of any drop-box programs using secure bins outside the normal hour of operation;
 - (d) procedures for response to emergency situations, including equipment break downs, to ensure that stored household pharmaceutical waste, ash and encapsulated household pharmaceutical waste will be removed from the facility in a timely manner to avoid nuisances or hazards; and
 - (e) a hazard communication, health and safety plan for law enforcement household pharmaceutical take-back program personnel that includes safety procedures and the proper use of personal protective equipment;
- (7) collected household pharmaceutical waste may only be disposed of in the approved methods listed below:
 - (a) at a registered high-temperature incinerator (furnaces that operate in the range of 1000°C - 2000°C) used for the destruction of hazardous waste, such as cement kilns;
 - (b) at a permitted infectious or medical waste processing facility;
 - (c) at a registered two-chamber incinerator that operates at a minimum temperature of 850° C, with a combustion time of at least two seconds in the second chamber;
 - (d) at a permitted landfill after the household pharmaceutical waste has been encapsulated in a plastic drum filled with a hardening medium such as PPC cement or a cement/lime mixture;
 - (e) at a transformation facility permitted to accept pharmaceutical waste; or
 - (f) an alternate disposal method at least as protective as any of the methods described in subparagraphs (a) through (e) of this paragraph and approved by the department.

B. The department must be notified both orally and in writing within 24 hours of an occurrence of a spill, fire, flood, explosion or similar incident at a law enforcement household pharmaceutical take-back program collection event.
 [20.9.3.30 NMAC - N, 08/02/07; 20.9.3.30 NMAC - Repealed, 07/30/11; 20.9.3.30 NMAC - N, 07/30/11]

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.