

This rule was filed as 20 NMAC 4.3.

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

20.4.3.1 ISSUING AGENCY: Environmental Improvement Board.
[11/30/95, 12/31/98; 20.4.3.1 NMAC - Rn, 20 NMAC 4.3.I.101, Recompiled 11/27/01]

20.4.3.2 SCOPE: This Part applies to generators of hazardous waste and to owners and operators of hazardous waste treatment, storage and disposal facilities which receive imported hazardous waste.
[11/30/95, 12/31/98; 20.4.3.2 NMAC - Rn, 20 NMAC 4.3.I.102, Recompiled 11/27/01]

20.4.3.3 STATUTORY AUTHORITY: NMSA 1978, Section 74-4-4.2.J directs the board to provide a schedule of business fees for businesses engaged in regulated hazardous waste activity and a schedule of generation fees for businesses generating hazardous waste.
[11/30/95, 12/31/98; 20.4.3.3 NMAC - Rn, 20 NMAC 4.3.I.103, Recompiled 11/27/01]

20.4.3.4 DURATION: Permanent.
[11/30/95, 12/31/98; 20.4.3.4 NMAC - Rn, 20 NMAC 4.3.I.104, Recompiled 11/27/01]

20.4.3.5 EFFECTIVE DATE: November 30, 1995, unless a different date is cited at the end of a Section or Paragraph
[11/30/95, 12/31/98; 20.4.3.5 NMAC - Rn, 20 NMAC 4.3.I.105, Recompiled 11/27/01]

20.4.3.6 OBJECTIVE: The objective of Part 3 of Chapter 4 [20.4.3 NMAC] is to provide a schedule of annual fees for hazardous waste generators and treatment, storage and disposal facilities which receive imported hazardous waste. The annual fees collected will be deposited in the Hazardous Waste Fund to meet necessary expenses in the administration and operation of the state hazardous waste program.
[11/30/95, 12/31/98; 20.4.3.6 NMAC - Rn, 20 NMAC 4.3.I.106, Recompiled 11/27/01]

20.4.3.7 DEFINITIONS: Unless otherwise defined in this Part [20.4.3 NMAC], the words and phrases used in this Part [20.4.3 NMAC] have the same meanings as in 20 NMAC 4.1 [20.4.1 NMAC], Hazardous Waste Management. as used in this part [20.4.3 NMAC]

- A. "Act" means the New Mexico Hazardous Waste Act, NMSA 1978, 74-4-1 to 74-4-14;
- B. "annual business fee" means the hazardous waste business fee in Subpart IV of this Part [20.4.3.400 NMAC];
- C. "annual generation fee" means the hazardous waste generation fee in Subpart II of this Part [20.4.3.200 NMAC];
- D. "annual imported waste compensating fee" means the fee on imported hazardous waste in Subpart III of this Part [20.4.3.300 NMAC];
- E. "CFR" means the most recent Code of Federal Regulations adopted by reference at 20 NMAC 4.1[20.4.1 NMAC];
- F. "cleanup" means any activities associated with the removal or remediation of hazardous waste at a site, but does not include closure of a solid or hazardous waste management unit;
- G. "Department" means the New Mexico Environment Department;
- H. "generator" means a generator under 20 NMAC 4.1 [20.4.1 NMAC], Hazardous Waste Management, who is also either a large or small quantity generator under this part;
- I. "hazardous waste" means all waste or material regulated as hazardous waste under 20 NMAC 4.1 [20.4.1 NMAC], Hazardous Waste Management;
- J. "imported hazardous waste" means hazardous waste that was generated outside of the state of New Mexico, including waste generated outside the United States, and that has been transported into the state for treatment, storage for longer than 90 days, or disposal;
- K. "large quantity generator" means a generator who generates more than 1,000 kilograms (or 2,205 pounds) of hazardous waste during any month in the calendar year;

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

M. "recycled" means "used or reused" or "reclaimed" as those terms are defined in 40 CFR Section 261.1(c);

N. "Secretary" means the Secretary of Environment;

O. "site" means an "individual generation site" as defined in 40 CFR Section 260.10;

P. "small quantity generator" means a generator who is not a large quantity generator and who generates more than 100 kilograms (or 220 pounds) of hazardous waste during any month in the calendar year. [11/30/95, 12/31/98; 20.4.3.7 NMAC - Rn, 20 NMAC.4.3.I.107, Recompiled 11/27/01]

20.4.3.8 to 20.4.3.107 [RESERVED]

20.4.3.108 GENERAL PROVISIONS:

A Saving Clause: Amendment of these Fee Regulations shall not affect any administrative or judicial enforcement action pending on the effective date of this Part [20.4.3 NMAC].

(1) Reserved.

(2) Reserved

(3) The aggregate amount of the annual generation, imported waste compensating and business fees to be paid per person for any year based on this Part shall be limited to

(a) in the case of persons for whom the cumulative total of the sites at which they generate hazardous waste and the treatment, storage and disposal facilities they own or operate which receive imported hazardous waste located in the state is one, \$35,000;

(b) in the case of persons for whom the cumulative total of the sites at which they generate hazardous waste and the treatment, storage or disposal facilities they own or operate which receive imported hazardous waste located in the state is two, \$ 50,000; and

(c) in the case of persons for whom the cumulative total of the sites at which they generate hazardous waste and the treatment, storage or disposal facilities they own or operate which receive imported hazardous waste located in the state is three or more, \$65,000. These limits shall not apply to any late charges or penalties assessed under Section 600 of this Part [20.4.3.600 NMAC] or otherwise under the Act. These limits shall not apply to hazardous waste permit fees or any other fees which may be applicable to hazardous waste generators or facilities, other than the fees established pursuant to Subparts II, III and IV of this Part [20.4.3.200, 20.4.3.300 and 20.4.3.400 NMAC].

(4) For purposes of the limits set forth in subsection B [Paragraph (3) above] only

(a) the term "facility" shall not include a site created solely as a result of a discharge or cleanup of a discharge described in paragraph B.1 or B.2 of Section 201 [Subparagraphs (a) and (b), Paragraph (1), Subsection B. of 20.4.3.200 NMAC];

(b) a parent corporation and its wholly owned subsidiary corporations shall be a single person.

B. Fees cumulative; subject to limits:

(1) The fees provided for in this Part[20.4.3 NMAC] are cumulative, subject to the limits set forth in subsection B [Paragraph 2 below]

(2) The aggregate amount of the annual generation, imported waste compensating and business fees to be paid per person for any year based on this Part [20.4.3 NMAC] shall be limited to:

(a) in the case of persons for whom the cumulative total of the sites at which they generate hazardous waste and the treatment, storage and disposal facilities they own or operate which receive imported hazardous waste located in the state is one, \$35,000;

(b) in the case of persons for whom the cumulative total of the sites at which they generate hazardous waste and the treatment, storage of disposal facilities they own or operate which receive imported hazardous waste located in the state is to, \$50,000; and

(c) in the case of persons for whom the cumulative total of the sites at which they generate hazardous waste and the treatment, storage or disposal facilities they own or operate which receive imported hazardous waste located in the state is three or more, \$65,000. These limits shall not apply to any late charges or penalties assessed under Section of this Part [20.4.3.600 NMAC] or otherwise under the Act. These limits shall not apply to hazardous waste permit fees or any other fees which may be applicable to hazardous waste generators or facilities, other than the fees established pursuant to Subparts II, III and IV of this Part [Section 200, 300 and 400 of 20.4.3 NMAC].

(3) For purposes of the limits set forth in subsection B [Paragraph 2 , Subsection B. of this Section] only:

(a) the term "facility" shall not include a site created solely as a result of a discharge or cleanup of a discharge described in paragraph B.1 or B.2 of Section 201;, as defined in this Part [Subparagraph (b) or (c) ,Paragraph (2), Subsection B. of 20.4.3.200 NMAC]

(b) a parent corporation and its wholly owned subsidiary corporations shall be a single person.

(4) If the owner and the operator of a facility are separate persons, only one person is required to pay the fees due but both are liable in the event of noncompliance. Regardless of which person pays fees, the limits set forth in subsection B [Paragraph (2), Subsection B. of 20.4.3.108 NMAC], applicable to the owner and operator, shall be determined based on the characteristics of the operator.

C. Quantity calculation: In computing fees under Subparts II and III of this Part [Sections 200, and 300 of 20.4.3 NMAC], all quantities of hazardous waste exceeding a quantity specified therein shall be rounded to the next highest whole number.

D. Orphan waste: Nothing in this Part [20.4.3 NMAC] is intended to require the payment of annual hazardous waste fees on orphan hazardous waste or waste generated as a result of the cleanup of orphan hazardous waste. "Orphan hazardous waste" means hazardous waste for which a responsible party cannot be identified. The Department may collect any fees otherwise owed from the person responsible for the creation of the orphan hazardous waste, if later identified.

[11/30/95, 12/31/98; 20.4.3.108 NMAC - Rn, 20 NMAC.4.3.I.108-I.111, Recompiled 11/27/01]

20.4.3.109 to 20.4.3.199 [RESERVED]

20.4.3.200 GENERATION FEES:

A. Annual generation fees: Every generator shall pay hazardous waste generation fees to the Department annually, in accordance with the provisions of this Part [20.4.3 NMAC].

B. Fee schedule:

(1) Annual generation fees are set forth in the schedules below.

(a) A large quantity generator at a site shall pay:

(i) \$.01 per pound of hazardous waste generated at the site, except waste specified in paragraph 1.b of this Subsection A or in Subsection B of this section, during the previous calendar year; and

(ii) \$.01 per ton for: wastewater generated by an oil refinery if it is designated as hazardous waste solely because it exhibits a hazardous characteristic as defined in 40 CFR Part 261, Subpart C; and any other waste water if it is designated as hazardous waste solely because it exhibits a hazardous characteristic as defined in 40 CFR Part 261, Subpart C; generated at the site during the previous calendar year and subsequently rendered non-hazardous.

(b) A small quantity generator at a site shall pay the following fee based upon the average monthly amount of hazardous waste generated at the site, not including waste specified in subsection B of this section.[Paragraph (2), Subsection B. of this Section], during the previous calendar year:

Lbs/Month	Fee (Per Year)
1,001-2,205	\$250
501-1,000	\$100
1-500	\$ 35

(2) The annual generation fee shall not apply to the following:

(a) waste generated as a result of, or in connection with, an accidental discharge of a hazardous waste or of a material that when discharged becomes a hazardous waste, and any waste generated by the cleanup of such a discharge. The annual generation fee, however, must be paid by a person who accidentally discharges a hazardous waste, or a material that when discharged becomes a hazardous waste, if the person has not taken all actions reasonably necessary to prevent the discharge or has not taken all actions reasonably necessary to discontinue a discharge after they became aware of the discharge, and the Department may also collect the fee that, but for this paragraph, would be owed on waste generated by the cleanup of such discharge from such person;

(b) waste generated by the cleanup of any discharge of hazardous waste or a material that when discharged became a hazardous waste, if the discharge occurred prior to January 1, 1993, or if the waste was not discharged by the generator. The Department, however, may collect the fee that otherwise would be owed on waste that was not discharged by the generator from the person responsible for the discharge;

(c) waste generated as a result of, or in connection with, the closure of a solid or hazardous waste management unit that stopped receiving waste prior to January 1, 1993;

(d) waste that has been recycled (generators excluding recycled waste from their fee calculations shall document and demonstrate to the satisfaction of the Department that their waste was recycled); and

(e) waste upon which an annual generation fee has already been paid. In the event media or debris becomes a hazardous waste as a result of contamination by waste on which an annual generation fee has already been paid, the generator shall pay the fee due only on the newly generated waste.

(3) Any generator that was a large quantity generator at a site during the calendar year prior to the year in which the fee is to be paid must compute its annual generation fee for the site in accordance with paragraph A.1 [Subparagraph (a), Paragraph (1), Subsection B. of this Section]. Any generator that was a small quantity generator at a site during the calendar year prior to the year in which the fee is to be paid must calculate the average waste generated per month to determine the fee due under paragraph A.2 [Subparagraph (b), Paragraph (1), Subsection B. of this Section].

C. Fee Calculation:

(1) The annual generation fee shall be determined based on the amount of hazardous waste generated at a site during the calendar year prior to the year in which the fee is to be paid..

(2) Where no records of the amount of waste generated exist, the generator may estimate the amount, using reasonable efforts to estimate the amount accurately based on the best available information.

(3) Nothing herein is intended to affect the generator's obligations with respect to reporting or recordkeeping under other applicable laws and regulations.

(4) The total annual generation fees due are the cumulative total of the fees for all sites at which the person paying the fees generated hazardous waste during the calendar year prior to the year in which the fee is to be paid, subject to the limits set forth in Section 109 of this Part [20.4.3.108 NMAC].

D. Transfer of ownership/operations:

(1) If there is a transfer of ownership or operations, the generator at the site on the date the annual generation fee is due under Section 500 is liable for payment of the entire fee due in full.

(2) The transferor must report the waste generated during the calendar year in which the transfer takes place but prior to transfer to the Department, on a form obtained from the Department. This report shall be submitted to the Department at the time of transfer.

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

[11/30/95, 12/31/98; 20.4.3.200 NMAC - Rn, 20 NMAC 4.3.II.200-II.203, Recompiled 11/27/01]

20.4.3.201 to 20.4.3.299 [RESERVED]

20.4.3.300 IMPORTED WASTE COMPENSATING FEES:

A. Annual imported waste compensating fees: For waste that is generated out-of-state but treated, stored, or disposed of in New Mexico, an annual imported waste compensating fee shall be paid in lieu of the generation fee provided for in Subpart II of this Part [20.4.3.200 NMAC]. The owner or operator of the treatment, storage or disposal facility first receiving the imported hazardous waste shall pay the fee to the Department annually, in accordance with the provisions of this Part [20.4.3 NMAC].

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

C. Transfer of Ownership/operations:

(1) If there is a transfer of ownership or operations, the owner or operator of the facility on the date an imported waste compensating fee is due under Section 500 is liable for payment of that fee in full.

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

(3) At the time of transfer, the transferor must also provide a copy of the above report to the person who will be liable for the fee based on the waste reported. In addition to the report, the transferor must provide to

that person any manifests prepared on the waste reported, or copies thereof, and any other information used to prepare the report. Manifests and other information need not be sent to the Department under this section, unless requested by the Department.

[11/30/95; 20.4.3.300 NMAC - Rn, 20 NMAC.4.3.III.300-III.302, Recompiled 11/27/01]

20.4.3.301 to 2.4.3.399 [RESERVED]

20.4.3.400 BUSINESS FEES:

A. Annual business fees: Every generator shall pay hazardous waste business fees to the Department annually, in accordance with the provisions of this Part [20.4.3 NMAC].

B. Fee schedule: Annual business fees are set forth in the schedules below. Generation at Individual Generation Site (per site):

- (1) Small Quantity Generator: \$200;
- (2) Large Quantity Generator: \$2,500.

C. Fee Calculation:

(1) The annual business fee shall be the cumulative total of the fees for all sites at which the person generated hazardous waste during the calendar year prior to the year in which the fee is to be paid, subject to the limits set forth in Section 109 of this Part [20.4.3.108 NMAC].

(2) A site created solely as a result of a discharge or cleanup of a discharge described in paragraph B.1 or B.2 of Section 201 [Subparagraph (a) or (b), Paragraph (2), Subsection B. of 20.4.3.200 NMAC] shall not be considered a site for purposes of the annual business fee.

(3) The annual business fee shall be paid in full if the person generated hazardous waste at the site during any part of the calendar year.

(4) A generator shall pay the fee for large quantity generators unless it can demonstrate that it was a small quantity generator.

(5) The generator at the site on the date the annual business fee is due under Section 500 [20.4.3.500 NMAC] is liable for payment of that fee in full. Payments will not be refunded because of a transfer of ownership or operations to a new owner or operator.

(6) Reserved.

(7) Reserved.

[11/30/95, 12/31/98; 20.4.3.400 NMAC - Rn, 20 NMAC.4.3.IV.400-IV.402, Recompiled 11/27/01]

20.4.3.401 to 20.4.3.499 [RESERVED]

20.4.3.500 DUE DATES AND MANNER OF PAYMENT:

A. Due Dates: The annual fees for which this Part [20.4.3 NMAC] provides are due and payable on August 1 of each year.

B. Manner of payment: The person paying fees under this Part [20.4.3 NMAC] shall complete a fee report form, obtained from the Department, and submit the report, together with any documentation requested by the Department and a check, cashier's check or money order for the fees owed, to the Department in accordance with the instructions set forth on the report form. The report shall include a certification of the truthfulness of all of the matters and facts contained in the report, as provided in Section 502 [Subsection B. of 20.4.3.500 NMAC].

C. Certification: The certification required by Section 501 [Subsection A of 20.4.3.500 NMAC] shall be made on oath or affirmation in accordance with NMSA 1978, Section 14-13-1 and 14-13-2 by the chief executive officer or his designee in the case of a corporation, the managing partner in the case of a partnership, the proprietor in the case of a sole proprietorship, or the official with authority to execute the certification in the case of a government entity.

[11/30/95; 20.4.3.500 NMAC - Rn, 20 NMAC.4.3.V.500-V.502, Recompiled 11/27/01]

20.4.3.501 to 20.4.3.599 [RESERVED]

20.4.3.600 LATE CHARGES; ENFORCEMENT:

A. Late charges: If any fee for which this Part [20.4.3. NMAC] provides is not paid in full when due, the person owing the fee shall pay a billing charge of \$100, plus late charges in the amount of an additional one percent (1%) of all fees owed for every month or part of a month in which the fees remain unpaid beyond the due

date. Billing and late charges shall be considered hazardous waste fees for deposit in the Hazardous Waste Fund pursuant to NMSA 1978, 74-4-4.5 and are independent of any penalties assessed under the Act.

B. Verification by the department:

(1) The Department may at any time verify the accuracy of reports submitted and amounts paid pursuant to this Part [20.4.3 NMAC]. It may use any relevant information for verification purposes, including but not limited to the biennial reports submitted pursuant to the 20 NMAC 4.1 [20.4.1 NMAC], Hazardous Waste Management, or 40 CFR Section 262.41, 264.75 or 265.75, and any manifests prepared for waste shipments. Persons who are subject to this Part [20.4.3 NMAC] shall make these and other records relating to the waste generated, manifested or managed available to the Department upon request.

(2) If the Department determines that a fee report submitted pursuant to Section 501 [Subsection B. of 20.4.3.500 NMAC] does not accurately state the quantity of waste generated, the quantity of imported hazardous waste treated, stored or disposed of, or the fees owed, it shall notify the person submitting the report of the discrepancy and may recalculate the annual fee based on the Department's determination.

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

C. Administrative Appeal:

(1) A notice of fee assessment issued under Section 601.C [Paragraph (3), Subsection B. of 20.4.3.600 NMAC] may be appealed by filing a written request for hearing with the Hearing Clerk designated by the Secretary within 30 days of the date of the notice. The written request shall be accompanied by a copy of the fee assessment being contested and shall set forth the grounds upon which the appellant disagrees with the assessment.

(2) Except as otherwise provided, notice of docketing and hearing officer assignment, motions, prehearing procedures and discovery, and hearing and post-hearing procedures shall be governed by 20 NMAC 1.5 [20.1.5 NMAC], Adjudicatory Procedures - Environment Department. The hearing officer shall schedule the hearing for no later than ninety (90) days after service of the Notice of Docketing.

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

D. Failure to Submit Reports or Pay Fees:

(1) Failure to complete or submit a report in the manner required by Section 501 [Subsection B. of 20.4.3.500 NMAC], or to pay fees in full when due, may result in enforcement proceedings under the Act. Enforcement actions may include but are not limited to the revocation or suspension of any permit issued by the Department pursuant to the Act to the person failing to complete or submit the fee report or pay the fees as required.

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

[11/30/95, 12/31/98; 20.4.3.600 NMAC - Rn, 20 NMAC.4.3.VI.600-VI.603 VI, Recompiled 11/27/01]

20.4.3.601 to 20.4.3.699 [RESERVED]

20.4.3.700 RECORDS AND RECORDKEEPING:

A. Recordkeeping Required: All persons subject to this Part [20.4.3 NMAC] are required to retain the documentation necessary to support their fee calculations, including all records used as a basis for the calculations.

B. Retention Records: The records required by Section 700 [20.4.3.700 NMAC], together with copies of any fee reports submitted under these regulations, shall be retained for three (3) years from the date of payment of the fees to which the records and reports apply. The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity. [11/30/95; 20.4.3.700 NMAC - Rn, 20 NMAC.4.3.VII.700-VII.701, Recompiled 11/27/01]

20.4.3.701 to 20.4.3.799 [RESERVED]

20.4.3.800 MISCELLANEOUS PROVISIONS:

A. Deposit in the Hazardous Waste Fund: All fees collected pursuant to this Part shall be transmitted to the State Treasurer for credit to the Hazardous Waste Fund and used for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.

B. Annual Report: Within ninety (90) days of the end of each state fiscal year, the Department shall prepare and submit to the Environmental Improvement Board a report describing the funds received pursuant to these regulations and the activities performed with the use of these funds. This report shall be made available to members of the public upon request. The Department may charge a fee for copies to cover its costs in printing or duplicating the report.

C. Compliance with other regulations: Compliance with this Part [20.4.3 NMAC] does not relieve a person of the obligation to comply with other applicable state and federal regulations.

D. Construction: This Part [20.4.3 NMAC] shall be liberally construed to effectuate the purpose of the Act.

E. Severability: If any provision or application of this Part [20.4.3 NMAC] is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[11/30/95; 20.4.3.800 NMAC - Rn, 20 NMAC.4.3.VIII.800-VIII.804, Recompiled 11/27/01]

20.4.3.801 to 20.4.3.899 [RESERVED]

HISTORY OF 20.4.3 NMAC:

Pre-NMAC regulatory filing history. This part [20.4.3.NMAC] is derived in part from material previously filed with the state records center and archives under Annual Hazardous Waste Fee Regulations, EIB/AHWFR-1, filed January 19, 1994.

History of Repealed Material: [RESERVED]