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**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 9 SOLID WASTE**  
**PART 1 SOLID WASTE MANAGEMENT**

**20.9.1.1 ISSUING AGENCY.** New Mexico Environmental Improvement Board. [20.9.1.1 NMAC - Rp, 20.9.1.1 NMAC, xx/xx/05]

**20.9.1.2 SCOPE.** This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste. [20.9.1.2 NMAC - Rp, 20.9.1.2 NMAC, xx/xx/05]

**20.9.1.3 STATUTORY AUTHORITY.** NMSA 1978, §§ 74-1-1 to 74-1-15, NMSA 1978, §§ 74-9-1 to 74-9-43, and NMSA 1978 §§74-13-1 to 74-13-20. [20.9.1.3 NMAC - Rp, 20.9.1.3 NMAC, xx/xx/05]

**20.9.1.4 DURATION.** Permanent. [20.9.1.4 NMAC - Rp, 20.9.1.4 NMAC, xx/xx/05]

**20.9.1.5 EFFECTIVE DATE.** , 2006, unless a later date is cited at the end of a section. [20.9.1.5 NMAC - Rp, 20.9.1.5 NMAC, xx/xx/05]

**20.9.1.6 OBJECTIVE.** The objective of Part 1 of Chapter 9 is to establish regulations in the following areas of solid waste management:

- A. general requirements and prohibited acts;
- B. facility permits and commercial hauler registrations;
- C. facility size, siting criteria, design criteria, and operations;
- D. closure and post-closure care;
- E. operator certification;
- F. special waste;
- G. nuisance abatement;
- H. facility ground water monitoring and corrective action; and [11-30-95]
- I. financial assurance. [20.9.1.6 NMAC - Rp, 20.9.1.6 NMAC, xx/xx/05]

**20.9.1.7 DEFINITIONS.** Whenever a term used in this part is defined in the Act, the term shall have the meaning given in the Act, unless otherwise defined in this part. As used in this part:

- A. Terms starting with the letter 'A' are defined as follows:
  - (1) "Act" means the Solid Waste Act, NMSA 1978, Sections 74-9-1, et seq.;

(2) "active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with 20.9.1.500-599 NMAC;

(3) "active portion" means that part of a facility that has received or is receiving wastes and that has not been closed in accordance with 20.9.1.500-599 NMAC;

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

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

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

(7) "aquifer" means a geologic formation, group of formations, or portions of a formation capable of yielding ground water to wells or springs. The uppermost aquifer is the aquifer nearest the natural ground surface including lower aquifers that are hydraulically interconnected with this aquifer;

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

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

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

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

(c) "Category II non-friable asbestos containing material" means any material, excluding Category I nonfriable asbestos containing material, containing more than 1 percent asbestos, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand; and

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

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

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

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

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

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

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

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

(1) "cell" means a confined area engineered for the disposal of solid waste;

(2) "certified operator" means any individual who meets the experience and training requirements of 20.9.1.600-699 NMAC, has successfully completed the testing requirement of the department, and has been issued a New Mexico certificate;

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

(4) "clean fill" means broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is uncontaminated, meaning the fill has not been mixed with any waste other than the foregoing and has not been subjected to any known spill or release of chemical contaminants, including petroleum product, nor treated to remediate such contamination; reinforcement materials which are an integral part, such as rebar, may be included as clean fill; clean fill must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste;

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

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

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

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

(9) "commission" means the New Mexico Water Quality Control Commission; [1-30-92]

(10) "commission regulations" means the regulations of the New Mexico Water Quality Control Commission, including 20.6.1 NMAC and 20.6.2 NMAC;

(11) "community," for purposes of preparation of a community impact assessment, means an area of human habitation within a 4 mile radius around a proposed landfill, transformation facility or existing landfill that is proposing a lateral or vertical expansion.

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

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

(14) "composting facility" means a facility, other than a transformation facility, that is capable of providing biological stabilization of organic material;

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

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

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

(1) "department" means the New Mexico Environment Department;

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

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

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

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

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

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

(1) "economically stressed household" means a household that reports less than \$20,000 per year household income based on the most recent actual United States census data.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) "ground water" means interstitial water which occurs in the earth's saturated zone and which is capable of entering a well in sufficient amounts to be utilized as a water supply

(5) "ground water scientist" means a scientist or engineer who has received a baccalaureate or post graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water

hydrology and related fields as may be demonstrated by state registration, professional certifications or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective action; [8-17-94]

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

- (1) "hauler" means any person transporting solid waste;
- (2) "hazardous constituent" means any constituent listed in 40 CFR 258 Appendix I or II or Subsection A of 20.6.2.3103 NMAC, and any potential toxic pollutant listed in 20.6.2.7 NMAC;
- (3) "hazardous waste" means a hazardous waste as defined in 40 CFR 261.3;
- (4) "hot waste" means any waste which is on fire or smoldering when delivered to the solid waste facility; [5-14-89; 1-30-92]
- (5) "household waste" means any solid waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas; [8-17-94]

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

- (1) "impact" means a present or future effect on the environment or the health of residents of a community;
- (2) "incineration" means the reduction of combustible solid wastes by burning in an enclosed device under conditions of controlled airflow and temperature;
- (3) "incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid waste, including, but not limited to, rotary kiln, fluidized bed, and liquid injection incinerators, but does not include air curtain incinerators or small animal crematoria;
- (4) "industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals, plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or commercial solid waste;
- (5) "infectious waste" means a solid waste that carries a probable risk of transmitting disease to humans or animals, and includes the following which shall be considered infectious waste:
  - (a) cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stock of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines except for residue in emptied containers; and culture dishes, assemblies and devices used to conduct diagnostic tests or to transfer, inoculate, and mix cultures;
  - (b) human pathological wastes, including tissues, organs, and body parts that are removed during surgery, autopsy, other medical procedures, or laboratory procedures, but not including hair, or nails;

- (c) human and body fluid waste, including:
  - (i) liquid waste human blood;
  - (ii) blood products;
  - (iii) items with human blood (caking, flaking, saturated or dripping);
  - (iv) items with human blood, including serum, plasma, and other blood components, which were used or intended for use in patient care, specimen testing, or the development of biological products or pharmaceuticals;
  - (v) intravenous bags that have been used for blood transfusions;
  - (vi) items, including dialysate, that have been in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers;
  - (vii) items contaminated by body fluids from persons at trauma scenes, during surgery, autopsy, other medical procedures, or laboratory procedures;
  - (viii) specimens of blood products, and their containers; and
  - (ix) other potentially infectious materials as defined by the U.S. department of labor occupational safety and health administration at 29 CFR 1910.1030(b), including the following body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;
- (d) contaminated animal carcasses, body parts, blood, blood products, secretions, excretions, and bedding of animals that were known to have been exposed to zoonotic infectious agents or non-zoonotic human pathogens, including during research (including research in veterinary schools and hospitals), production of biologicals, or testing of pharmaceuticals;
- (e) biological wastes and waste contaminated with bloody excretions, exudates, or secretions from:
  - (i) humans who are isolated to protect others from rare diseases such as viral hemorrhagic fevers (Ebola, Lassa, Marburg) or other emerging infectious diseases whose biological wastes and waste contaminated with bloody excretions, exudates, or secretions, are deemed infectious waste as described by advisory agencies such as the Center for Disease Control (CDC);
  - (ii) isolated animals known or suspected to be infected with rare diseases such as bovine spongiform encephalopathy (BSE) or other emerging infectious diseases identified by an advisory agency;
- (f) discarded sharps, used or unused (unless in original packaging), generated at a facility, that have, or are likely to have, come in contact with infectious agents while involved in human or animal patient care, treatment, or research, including hypodermic needles, syringes (with the attached needle), Pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, culture dishes, suture needles, slides, cover slips, and other broken or unbroken glass or plasticware, unless properly treated or otherwise specifically exempted;
- (g) infectious waste does not include:
  - (i) wastes generated in a household (except for infectious wastes generated by home health care professionals);
  - (ii) human corpses, remains, and anatomical parts that are intended for interment or incineration as specified in paragraph (4) and (5) of subsection E of 20.9.1.706 NMAC, or are donated and used for scientific or medical education, research, or treatment;
  - (iii) etiological agents being transported for purposes other than waste processing or disposal pursuant to the requirements of the United States Department of Transportation (49 CFR 171.1-190) and the New Mexico Department of Transportation and other applicable shipping requirements;

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

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

(vi) body excretions such as feces and secretions such as nasal discharges, saliva, sputum, sweat, tears, urine, and vomitus unless visibly contaminated with blood or waste from a person or animal as described in paragraph (e) of subsection I of 20.9.1.7 NMAC; or

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

J. Terms starting with the letter 'J' are defined as follows: [RESERVED]

K. Terms starting with the letter 'K' are defined as follows: [RESERVED]

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

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

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

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

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

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

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

(f) "municipal landfill";

(g) "construction and demolition landfill";

(h) "special waste landfill"; and

(i) "monofill"

[5-14-89; 1-30-92; 8-17-94]

(2) "lateral expansion" means a horizontal expansion of the permitted waste boundaries of a landfill; [8-17-94]

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

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

(5) "liner" means a continuous layer constructed of natural or man-made materials beneath and on the sides of a surface impoundment, landfill, or landfill cell, that restricts the downward and lateral movement of solid waste, gases or leachate;

(6) "liquid waste" means any waste material that is determined to contain free liquids, defined by the Paint Filter Liquids Test, described in "Test Methods for Evaluating Solid Waste" referenced in Paragraph (5) of Subsection C of 20.9.1.704 NMAC.

(7) "lithified earth material" means all rock, including metamorphic, igneous, and sedimentary; [8-17-94]

(8) "locked facility" means any solid waste facility which has permanently stopped receiving solid waste, but has not yet met the requirements of 20.9.1.500-599 NMAC;

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

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

(1) "manure" means an agricultural waste composed of excreta of animals, residual bedding materials, or other materials that have been used for sanitary or feeding purposes for such animals; [1-30-92]

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

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

(4) "modify" means:

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

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

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

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

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

(v) any change in the facility boundary; or

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

(b) "modify" does not include :

(i) routine maintenance, repair, or replacement;

(ii) an increase in the disposal rate or process rate, if such increase does not exceed the design capacity of the solid waste facility;

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

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

(v) substitution, addition, or elimination of a construction material or operational process that provides equivalent or greater environmental protection than the permitted design or process, if specifically approved in writing by the secretary under 20.9.1.110 NMAC;

(vi) installation of a gas collection and control system required by 40 CFR Part 60, Subparts Cc and www or 20.9.1.309 and 402 NMAC;

- (vii) a permit transfer approved pursuant to 20.9.1.216 NMAC;
- (viii) any approval granted under the provisions of 20.9.1.110 NMAC;
- (ix) temporary changes allowed by the secretary under Subsection C of 20.9.1.401 NMAC when there is an imminent danger to public health, welfare, or the environment;
- (x) changes to comply with an order of the secretary approving or withdrawing approval of an infectious waste treatment method under Paragraph (4) of Subsection F of 20.9.1.706 NMAC and Subsection G of 20.9.1.706 NMAC;
- (xi) changes to implement a remedy selected by the secretary under 20.9.1.809 NMAC;
- (xii) changes to implement interim measures ordered by the secretary under subsection F of 20.9.1.808 NMAC; or
- (xiii) addition of a type of solid waste (except for a special waste) if the type is within the definition of construction and demolition debris, and there will be no adverse effect on health and the environment, unless the permit or this Part specifically excludes the type of waste.

[1-30-92; 8-17-94]

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

(6) "mulch" means a protective covering spread and left upon the ground to reduce evaporation, maintain even soil temperature, prevent erosion, or control weeds; [1-30-92]

(7) "municipal landfill" means a discrete area of land or an excavation that receives municipal solid waste and that is not a land application unit, surface impoundment, injection well or waste pile as these terms are defined in 40 CFR 257.2; "municipal landfill" may include a landfill that is designed to receive other types of RCRA Subtitle D waste such as construction and demolition debris, conditionally exempt small quantity generator waste, industrial solid waste, and special wastes as defined in Paragraph (13) of Subsection S of this section;

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

N. Terms starting with the letter 'N' are defined as follows: [RESERVED]

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

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

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

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

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

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

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

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

- (1) "permitted waste boundary" means the outside boundary of the proposed cells over the expected life of a landfill as specified in the permit or registration;
- (2) "person" means any individual, partnership, company, corporation, firm, association, trust, estate, state or federal agency, government instrumentality or agency, institution, county, city, town, village, or municipal authority, or other legal entity however organized; [6-2-74; 5-14-89; 1-30-92]
- (3) "petroleum waste" means those liquids and sludges that are accumulated as a result of exploration or production activities regulated under the New Mexico Oil and Gas Act; [5-14-89; 8-17-94]
- (4) "poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a landfill; [8-17-94]
- (5) "practical quantitation limit" or "PQL" means the lowest concentration of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy under routine laboratory operating conditions;
- (6) "processing" means techniques to change the physical, chemical, biological, or pathological character or composition of solid waste, but does not include composting, transformation, grinding or chipping of yard refuse, compaction, or incineration;
- (7) "processing facility" means a facility where processing of solid waste occurs;
- (8) "putrescible" means organic material subject to decomposition by microorganisms; [1-30-92]
- (9) "pyrolysis" means the process whereby solid waste is thermally decomposed in an oxygen-deficient atmosphere; [1-30-92; 8-17-94]

Q. Terms starting with the letter 'Q' are defined as follows:

- (1) "quasi-judicial proceeding" means a public hearing held after notice reasonably calculated to reach people interested in the subject matter of the proceeding that affords all people with a significant interest in the proceeding (parties) an opportunity to present their views as well as to cross-examine other parties. Other interested individuals also have an opportunity to state their views. Testimony is taken under oath or affirmation and is included in a record of proceedings. The planning and zoning commission or the governing body of the local government is required to make its decision based upon the testimony and evidence contained in the record of the hearing.

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

- (1) "radioactive waste" means:
  - (a) high-level radioactive waste or spent nuclear fuel as defined in section 2 of the nuclear waste policy act of 1982 (42 U.S.C. 10101(12))
  - (b) transuranic waste as defined in section 11(ee) of the atomic energy act of 1954, 42 U.S.C. 2014(ee);
  - (c) waste source material as defined in section 11(z) of the atomic energy act of 1954, 42 U.S.C. 2014(z);
  - (d) waste special nuclear material as defined in section 11(aa) of the atomic energy act of 1954, 42 U.S.C. 2014(aa);
  - (e) waste by-product material as defined in section 11e of the atomic energy act of 1954, 42 U.S.C. 2014(e);

(f) material the nuclear regulatory commission, consistent with existing law, classifies as low level radioactive waste; and  
(g) waste radioactive material that requires licensure in accordance with the New Mexico radiation protection regulations, 20.3.3 NMAC.

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

(3) "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated, processed, reclaimed or composted and placed in use in the form of raw materials, products or densified-refuse-derived fuels;

(4) "recycling" means any process by which recyclable materials are collected, separated, processed, reclaimed or composted and reused or returned to use in the form of raw materials or products; [6-2-74; 5-14-89; 1-30-92]

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

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

(a) a solid waste facility permitted to construct, operate, or close pursuant to the Solid Waste Act, NMSA 1978, §§ 74-9-1, et. seq. and the Solid Waste Management Regulations, 20 NMAC 9.1, or pursuant to the laws or regulations of a neighboring state;

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

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

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

(7) "run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste facility; [1-30-92; 8-17-94]

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

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

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

(2) "scavenging" means the uncontrolled removal of solid waste from a solid waste facility;

(3) "secretary" means the secretary of the New Mexico Environment Department or her or his designee;

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

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

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

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

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

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

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

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

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

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

(e) cement kiln dust waste;

(f) sand and gravel;

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

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

(i) densified-refuse-derived fuel;

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

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

(l) radioactive waste;

(m) whole or processed scrap tires that are stored or used in compliance with provisions of the New Mexico Tire Recycling Regulations, 20.9.2 NMAC, and applicable law;

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

(o) compost; or

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

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

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

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

(b) a facility that is permitted pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, §§ 74-4-1 through 74-4-14, as amended;

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

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

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

(f) commercial scrap metal or auto salvage operations;

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

- (h) manufacturing facilities that use recyclable material in production of a new product;
  - (i) facilities designed and operated to dispose of sewage sludge on land, such as land application or land injection;
  - (j) landfarming of petroleum contaminated soils unless within a landfill, where "landfarming" is the remediation of petroleum contaminated soils on the land surface;
  - (k) any facility or location where clean fill material is accepted, stockpiled, or used, if the facility or location would not otherwise be classified as a solid waste facility;
  - (l) collection centers;
  - (m) a facility that uses tire-derived fuel for the purpose of extracting its stored energy; or
  - (n) air curtain incinerators.
- (12) "source separation" means the separation of recyclable or compostable materials from solid waste at the point of generation by the generator;
- (13) "special waste" means solid waste that has unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety, including:
- (a) treated formerly characteristic hazardous wastes (TFCH);
  - (b) packing house and killing plant offal;
  - (c) regulated asbestos waste;
  - (d) ash;
  - (e) infectious waste;
  - (f) sludge, except; sludge that is land applied under 40 CFR Part 503 as intermediate or final cover at a landfill and meets the requirements of Subpart B of 40 CFR Part 503;
  - (g) industrial solid waste that, unless specially handled or disposed, may harm the environment or endanger the public health or safety;
  - (h) spill of a chemical substance or commercial product that, unless specially handled or disposed, may harm the environment or endanger the public health or safety; and
  - (i) petroleum contaminated soils, that have a sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations of greater than 50 mg/kg, or benzene individually greater than 10 mg/kg, or a total petroleum hydrocarbon concentration of greater than 100 mg/kg;
- (14) "special waste landfill" means a landfill that receives one or more types of special wastes as defined in Paragraph 13 of Subsection S of this section.;
- (15) "stabilized" means, for composting, that the biological decomposition of the wastes has ceased or diminished to a level such that decomposition no longer poses a health, odor, or safety hazard and does not violate any provisions of these or other applicable regulations;
- (16) "storage" means the accumulation of solid waste for the purpose of transfer, processing or disposal;

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

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

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

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

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

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

U. Terms starting with the letter 'U' are defined as follows:

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

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

(1) "vadose zone" means earth material below the land surface and above ground water, or in between bodies of ground water; [1-30-92]

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

(3) "vulnerable area" means an area within a 4 mile radius from the geographic center of a facility or proposed facility, and:

(a) has a percentage of economically stressed households greater than the state percentage based on the most recent actual census bureau data within either a one square mile area or within the 4 mile radius surrounding the facility or proposed facility; and

(b) where the New Mexico portion has a population of 50 people or more within any square mile within the 4 mile radius; and

(c) has within it 3 or more regulated facilities.

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

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

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

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

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

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

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

- X. Terms starting with the letter 'X' are defined as follows: [RESERVED]
- Y. Terms starting with the letter 'Y' are defined as follows: [RESERVED]
- Z. Terms starting with the letter 'Z' are defined as follows: [RESERVED]

**20.9.1.8 - 20.9.1.104 [RESERVED]**

**20.9.1.105 GENERAL REQUIREMENTS**

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

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

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

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

[5-14-89; 1-30-92; 8-17-94]

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

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

E. All notifications to the department required by this Part shall be directed to the bureau chief of the solid waste bureau;

F. Soil, water, and special waste testing methods used to demonstrate compliance with the Act or this part shall conform with permit requirements or otherwise be specifically approved by the department prior to use.

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

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

(1) manage the material in a manner that does not create a public nuisance or potential safety hazard, or adversely impact the environment;

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

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

#### **20.9.1.106 REQUIREMENTS FOR PUBLIC ENTITIES.**

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

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

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

#### **20.9.1.107 PROHIBITED ACTS.**

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

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

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

(3) dispose of any solid waste in a place other than a solid waste facility that meets the requirements of this Part;

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

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

(6) modify permit conditions or modify a solid waste facility unless the facility has applied for and received permission from the Secretary for the modification pursuant to 20. 1.4 NMAC Permit Procedures - Environment Department;

(7) dispose of petroleum waste, sludge which that does not meet the analytical criteria of 20.9.1.709 NMAC, septage, domestic sewage, or treated domestic sewage at any solid waste facility;

(8) dispose of hazardous wastes which are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act, 42 USC 6901 et seq, at any solid waste facility, unless the facility is permitted for the disposal of hazardous wastes; [1-30-92]

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

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

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

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

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

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

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

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

(13) dispose of any material regulated under the Federal Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, except in a solid waste facility authorized to accept such waste or registered facility or operation; [8-17-94]

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

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

(16) violate a term or condition of a closure and post-closure care plan, a registration, or conditions contained in an approval of the department under 20.9.1.110 NMAC;

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

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

(19) dispose at a solid waste facility any type of non-hazardous material that is excluded from the definition of solid waste, unless permitted to do so, except that a landfill may dispose of non-hazardous excluded waste listed under the following paragraphs of Subsection S(9) of 20.9.1.7 NMAC unless prohibited from doing so in its permit; paragraphs (d) (agricultural), (f) (sand and gravel), (i) (densified refuse derived fuel), (m) (scrap tires), (n) (recyclable materials), (o) (compost), and (p) (materials, other than those that are regulated as hazardous, toxic or special waste, that are retained as evidence in a criminal proceeding and that are required to be destroyed or managed in accordance with a court or administrative order, and ash derived from such materials).

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

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

**20.9.1.108 EXEMPTIONS.** This part does not apply to:

A. disposal of solid waste by a homeowner, residential lessee or tenant, or agricultural enterprise, on the property she or he owns, rents or leases, if the waste was generated on that property, and the disposal by the homeowner, residential lessee or tenant, or agricultural enterprise of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of this part; [5-14-89; 1-30-92; 8-17-94; 11-30-95]

B. on-site disposal of domestic solid waste generated by a person residing and occupying that same property only if that property is located in a place where it is not feasible, as determined by the Department, to dispose of the solid waste in a permitted solid waste facility and the disposal of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of this part; or [5-14-89; 1-30-92; 8-17-94; 11-30-95]

C. disposal of construction and demolition debris or yard refuse by a person in possession of property if the material was generated on the property and if the disposal of the solid waste does not violate any provision of this part. [Exemptions were moved to 111]

**20.9.1.109 SOLID WASTE FACILITIES; ENTRY BY DEPARTMENT; AVAILABILITY OF RECORDS TO DEPARTMENT.** The secretary or any authorized representative, employee or agent of the department may enter, inspect, monitor, sample, or obtain records of a solid waste facility, or commercial hauler as provided in § 74-9-33 of the Act.

**20.9.1.110 SPECIFIC APPROVALS**

A. Where a specific approval or authorization for an alternative time period, test method or other requirement is allowed under this part:

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

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

(3) Any affected person who is dissatisfied with action taken by the department on a request for a specific approval or authorization may appeal to the secretary. The request must be made in writing to the secretary within fifteen (15) days after notice of the department's action has been issued. Unless an appeal is received by the secretary within fifteen (15) days after notice to the applicant of the department's action the decision of the department shall be final.

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

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

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

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

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

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

**20.9.111 WAIVERS FOR SMALL MUNICIPAL LANDFILLS.**

A. Owners or operators of new or existing municipal landfills that dispose of less than 20 tons of solid waste daily, based on an annual average, and do not accept any special waste other than regulated asbestos, may apply in the permit application or for a specific approval for a waiver from the design requirements of 20.9.1.306-308 NMAC and ground water monitoring requirements in 20.9.1.801-804 NMAC. To obtain a waiver, the owner or operator must demonstrate that:

(1) the groundwater protection standards for constituents listed or referenced in 20.9.1.813 NMAC will not be exceeded in the uppermost aquifer, and, for an existing landfill, there is no groundwater contamination attributable to the landfill;

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

(3) the landfill is located in an area that receives, on average, 25 inches or less annual precipitation. [8-17-94]

B. If a waiver is granted under this Section, then the secretary may require the owner or operator to submit a ground water monitoring system plan and ground water monitoring plan for approval, and to conduct periodic ground water and vadose zone monitoring, at any time during the active life or post-closure period to demonstrate the landfill is not contaminating ground water. The secretary may also require a ground water monitoring system plan and a ground water monitoring plan to be submitted in the application. If ground water contamination from the landfill is detected after a waiver has been granted under this Section, the waiver is revoked and the requirements of 20.9.1.306-308 NMAC and 20.9.1.801-804 NMAC shall thereafter apply.

**20.9.1.112- 20.9.1.199 [RESERVED.]**

**20.9.1.200 SOLID WASTE FACILITY PERMITS AND REGISTRATIONS.**

**20.9.1.201 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 20.9.1.501- 599 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 Act and this part;
- (2) comply with Permit Procedures - Environment Department, 20.1.4 NMAC;
- (3) contain information required by 74-9-21 of the 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; and
  - (d) a description of the prevailing winds, including a wind rose diagram;
  - (e) a demonstration of compliance with the siting criteria in 20.9.1.302-305 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;
  - (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 20.9.1.310 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;
    - (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; and

(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;

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

(h) a plan for complying with record keeping requirements in 20.9.1.409 as applicable;

(7) contain an emergency contingency plan that meets the requirements of 20.9.1.408 NMAC;

(8) contain a closure and post-closure care plan in compliance with 20.9.1.501 to 599.

(9) demonstrate the ability to comply with any applicable special waste requirements in 20.9.1.701 to

799.

(10) contain a proposed ground water monitoring system plan in compliance with 20.9.1.801 to 899, 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 the 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 20.9.1.901-999 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 determine if the proposed site is in a vulnerable area. Upon request, the department will confirm whether the proposed landfill, transformation facility or landfill proposing a lateral or vertical expansion is in the vulnerable area. If it 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:

(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 15 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 15 days following publication of the notice.

(2) Community residents shall have 30 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, or if existing issues need additional consideration. 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 4 mile radius around the proposed facility or existing facility that is proposing a horizontal or vertical expansion:

- (1) Description of:
  - (a) purpose and need for the project
  - (b) site location and description;
  - (c) land use;
  - (d) known existing and documented proposed regulated facilities within the vulnerable area;
  - (e) other existing development and documented planned development in the vulnerable area;
  - (f) historic and cultural resources;
  - (g) visual and scenic resources;
  - (h) climatology, meteorology, and air quality, including odors and dust;
- (2) Socioeconomic profile and environmental justice:
  - (a) population, demographic profile, education, age and language;
  - (b) occupational profile and household income;
- (3) noise;
- (4) transportation;
  - (a) local roads and highways;
  - (b) railroads;
  - (c) other transportation issues;
  - (d) access to facility;
  - (e) air quality, including odors and dust;
  - (f) noise;
  - (g) traffic;
- (5) Public and occupational health and safety issues;
- (6) positive and negative socioeconomic impacts:
  - (a) local employment;

- (b) community services;
  - (c) revenue to local funds;
  - (d) property values;
  - (e) property taxes;
  - (f) cost effective disposal of community solid waste;
  - (g) other quality of life concerns raised at public meetings;
- (7) 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:
- (a) land use in the area;
  - (b) historical and cultural resources;
  - (c) visual and scenic resources;
  - (d) air quality, including odors and dust;
  - (e) socioeconomics and environmental justice;
    - (i) population, demographic profile, education, age and language;
    - (ii) occupational profile and household income;
  - (f) transportation;
  - (g) unavoidable adverse environmental impacts;
  - (h) analysis of short-term, intermediate term and long term effects of the proposed facility;
- (8) summary of mitigation measures for any expected adverse impacts; these measures may include but are not limited to:
- (a) historical and cultural resources impact mitigation measures;
  - (b) visual and scenic resource impact mitigation measures;
  - (c) air quality impact mitigation measures, including for odors and dust;
  - (d) socioeconomic and environmental justice impacts mitigation measures;
  - (e) noise impact mitigation measures;
  - (f) transportation impact mitigation measures;
  - (g) public and occupational health impacts mitigation measures;
- (9) consultation, coordination and public involvement:
- (a) agencies and local governments consulted;
  - (b) public involvement;
  - (c) responsive summary;
  - (d) 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 and will not result in an unreasonable concentration of regulated facilities in the vulnerable area that is or may be impacted by the issuance of the permit sought.

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 this Part, and unless otherwise specified by this Part, 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 four 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.

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

**20.9.1.202 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 20.9.1.802 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 20.9.1.802 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 20.9.1.201:

(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 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 20.9.1.813 NMAC, flow

direction, gradient and velocity unless the application includes a petition for suspension of ground water monitoring requirements in accordance with Subsection E of 20.9.1.802 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 i;

(9) a groundwater monitoring plan in conformance with 20.9.1.803 NMAC;

(10) plans and specifications for ground water monitoring systems in accordance with 20.9.1.802 NMAC;

(11) plans and specifications for liner and leachate collection systems in accordance with 20.9.1.306 NMAC and 20.9.1.308 NMAC; and

(12) plans and specifications for landfill gas monitoring and management programs in accordance with 20.9.1.309 NMAC.

(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 20.9.1.704 NMAC;

(2) disposition procedures for incoming special wastes;

(3) procedures for notifying the department in the event wastes either fail the tests listed in 20.9.1.704 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 20.9.1.712 NMAC;
- (5) emergency and mitigation measures in case of a spill or leak; and
- (6) a description of procedures to meet applicable requirements in 20.9.1.705-710 NMAC.

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

**20.9.1.203 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR CONSTRUCTION AND DEMOLITION LANDFILLS**

A. Any person seeking a permit for a construction and demolition landfill shall submit the following information in addition to that required under 20.9.1.201:

- (1) site plans and cross-sections of the proposed facility, drawn to scale, indicating the location of:
  - (a) the tipping areas;
  - (b) fencing and gates;
  - (c) entrances, exits and access roads;
  - (d) locations of buildings within 500 feet of the facility;
  - (e) public water supply wells and private wells within 1000 feet of the facility; and.
  - (f) borrow and fill areas;
- (2) frequency of construction and demolition debris disposal; and
- (3) if recycling operations are conducted, the method of diversion and storage of the recyclable materials and the frequency of collection for reuse from the facility, method of transport and destination. The recycling operation shall comply with 20.9.1.222.

**20.9.1.204 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 20.9.1.201 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.

**20.9.1.205 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 20.9.1.201 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. [8-17-94]

C. Within thirty 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.

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

A. 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 20.9.1.201 NMAC: [1-30-92; 8-17-94]

- (1) a list of the types of wastes to be accepted and the anticipated sources of such wastes; [1-30-92]
- (2) 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; [1-30-92]
- (3) a description of the method of handling, including, but not limited to, disposal, processing, or transformation; [1-30-92]
- (4) a general disposal management plan, in accordance with 20.9.1.703 NMAC, for each type of special wastes proposed to be accepted at the facility; and
- (5) emergency and mitigation measures in case of a spill or leak.

**20.9.1.207 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 20.9.1.201.

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;
  - (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 a demonstration that the owner or operator will be in compliance with 40 CFR 503, and 20.6.2 NMAC.
- H. a demonstration that a groundwater discharge permit has been applied for, if applicable.

**20.9.1.208 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 20.9.1.201 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.

#### **20.9.1.209 PERMITTING PROCEDURES.**

A. The permitting procedures in 20.9.1.201-218 NMAC supplement the permitting requirements in the 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 §74-9-24 A of the 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.

#### **20.9.1.210 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 20.9.1.201 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.

#### **20.9.1.211 PERMIT ISSUANCE.**

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

B. The Secretary shall consider the information in the community impact assessment and any demonstrations made pursuant to Subsection E of 20.9.1.201 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 this part and the Act.

#### **20.9.1.212 PERMIT DENIAL OR REVOCATION.**

A. In addition to the causes for denial or revocation listed in §74-9-24 A and B and 20.9.1.211 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 this part, or any requirement of the 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 this part; 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.

**20.9.1.213 EFFECT OF PERMIT.**

A. Any terms or conditions of the permit shall be enforceable to the same extent as a regulation of the board. [from 200 L(9) NMAC; 20 NMAC 212 I]

B. The existence of a permit issued under this part shall not constitute a defense to a violation of this part or the Act. [from 200 L (11); 20 NMAC 212 K]

**20.9.1.214 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, this part, and the 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, this part and the 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.

**20.9.1.215 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 this part that pertain to such a modification.

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

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

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

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

(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.

#### **20.9.1.216 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 thirty 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 20.9.1.900-999 NMAC;

(d) information required by section 74-9-21 of the 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 ten 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 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 20.9.1.900-999 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 20.9.1.900-999 NMAC;

(d) information required by section 74-9-21 of the 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 ten 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, and

(g) proof of public notice of the proposed change in permittee;

(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 20.9.1.900-999 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.

#### **20.9.1.217 PERMIT REVIEW.**

No later than 60 days before a permit review is required by § 74-9-24 of the 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 § 74-9-24.B of the Act; and
- H. proof of public notice of the review provided in accordance with § 74-9-22 of the Act and this Part.

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#### **20.9.1.218 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 § 74-9-24.B of the Act;
- (8) compliance demonstrations under Subsection A of 20.9.1.302 NMAC; and
- (9) proof of public notice of the renewal application provided in accordance with § 74-9-22 of the Act.

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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, this part, the 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 20.9.1.210 NMAC. The Secretary may issue an order for the revocation of the existing permit if the provisions in Subsection B of 20.9.1.210 are not met.

**20.9.1.219 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.

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

A. The owner or operator of the following facilities shall file an application for a registration at least 30 days prior to any operations and every 5 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 2 years after the effective date of these regulations, whichever occurs first. Facilities covered by this section that do not timely file a complete application for registration are hereby deemed unpermitted solid waste facilities, and the owner or operator may be subject to penalties, permit requirements and nuisance abatement orders. Facilities required to register are:

- (1) recycling facilities that accept only source separated recyclable materials;
- (2) composting facilities that accept only source separated compostable materials;
- (3) collection centers;
- (4) small animal crematoria; and
- (5) air curtain incinerators.

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

C. Registration is not required for collection facilities that are part of a commercial hauler operation, that have an operational rate of less than 240 cubic yards per day monthly average, and that do not serve the general public, but such facilities shall be included in the registration of the commercial hauler under Paragraph (10) of Subsection A of 20.9.1.224.

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;

E. a description of means that will be used to prevent the facility from becoming a public nuisance, including:

- (1) signs to indicate the location of the site, the hours of operation, emergency telephone numbers, delivery instructions, and that fires and scavenging are prohibited;
- (2) storage containers that are leak-proof and manufactured of non-biodegradable material;
- (3) means to control litter and prevent and extinguish fires;
- (4) conducting any recycling operations in a safe and sanitary manner;
- (5) storing any recyclable materials in a manner that does not create a nuisance, harbor vectors, or create a public health hazard;
- (6) providing sufficient unloading areas to meet peak demands;
- (7) for convenience 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;
- (8) for convenience centers, confining unloading of solid waste to as small an area as possible;
- (9) for convenience centers, removal of solid waste from the center as the end of the operating day unless otherwise approved in the registration;
- (10) a means of controlling access to the facility;
- (11) a means of controlling and mitigating noise and odors;
- (12) 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;
- (13) for composting facilities that accept sewage sludge, a plan showing testing methods and procedures for compliance with 40 CFR 503, and a demonstration that the owner or operator will be in compliance with 40 CFR 503, and 20.6.2 NMAC;
- (14) for composting facilities, a demonstration that a groundwater discharge permit has been applied for, if applicable;
- (6) for air curtain incinerators, a copy of the air quality permit, registration or notice of intent filed with the air quality bureau;
- (7) for air curtain incinerators, a designation of the intended recipient of ash waste; and
- (8) any additional information requested by the secretary.

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F. An owner or operator shall update its registration to reflect any material change in its operations. The Owner or operator shall comply with the terms of its approved registration.

G. The owner or operator of a facility required to be registered under this section shall comply with the terms of its approved registration. 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 Act.

H. 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.

I. The owner or operator of a recycling facility, composting facility, collection center, small animal crematorium or an air curtain incinerator shall not create a public nuisance. Failure to comply with the terms of the registration may be deemed a public nuisance. If the secretary determines, based on the information submitted with the registration or based upon any other information that the facility will be or has become a public nuisance, or that a facility covered by this section is in violation of the Act or this part, he 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 Act or this part, 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.

J. 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.

K. 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.

L. 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 20.9.2 NMAC.

**20.9.1.221 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 20.9.1.220 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; and
- (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.
- (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 20.9.1.223 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 20.9.1.900 - 906, 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 20.9.1.902 NMAC. If the records are insufficient to make this demonstration, or the records are not produced at the request of the department, storage of the materials are hereby deemed illegal disposal of solid waste and the facility is hereby deemed to be an unpermitted solid waste facility and the owner or operator may be subject to penalties, permitting requirements and nuisance abatement orders.

**20.9.1.222 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 20.9.1.220 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 20.9.1.902.

C. If the operating procedures and records are insufficient to make the demonstrations in Subsection B of this Section, or the records are not produced at the request of the department, storage of the materials are hereby deemed illegal disposal of solid waste and the facility is hereby deemed an unpermitted solid waste facility and the owner or operator may be subject to penalties, permitting requirements and nuisance abatement orders.

D. The owner operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average per calendar year of recyclable material shall submit a nuisance abatement plan detailing how it will comply with 20.9.1.223 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 20.9.1.902 - 906, in order to assure sufficient funds in the event that the secretary requires abatement of a nuisance at the facility. The financial assurance mechanism must be approved by the secretary prior to the operation of the facility.

F. The owner or operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average of recyclable material shall have a certified operator or representative present at all times while the facility is operational.

**20.9.1.223 REQUIREMENTS FOR FACILITIES REQUIRED TO SUBMIT NUISANCE ABATEMENT PLANS.** Owners or operators of composting facilities that accept greater than 25 tons per day annual average of compostable material or greater than 5 tons per day of what would otherwise be special waste, and recycling facilities that accept greater than 25 tons per day annual average of recyclable materials shall comply with the following requirements when ordered by the secretary for the purpose of abating a nuisance:

- A. cleanup and disposal of all recyclable or compostable material;
- B. cleanup and disposal of all end product from the composting or recycling facility; and

C. cleanup and disposal of all fugitive trash, solid waste, or other materials creating a nuisance at the facility.

**20.9.1.224 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;

(i) the size and type of all storage and collection facilities to be used;

(ii) 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) 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.

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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.

**20.9.1.225 COMMERCIAL HAULER REGISTRATION PROCEDURES.**

A. The registration procedures in 20.9.1.223-229 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.

**20.9.1.226 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 this part and the Act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

C. The terms and conditions of a registration shall be specifically identified by the secretary.

**20.9.1.227 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:

- (1) the applicant or owner or operator has:
  - (a) knowingly misrepresented a material fact in the application, or at any time after issuance of the

registration;

(b) refused to disclose or failed to disclose the information required under the provisions of this part or the Act;

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

(d) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States; or

(e) violated a term or condition of the registration, any requirement of this part, or any requirement of the 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.

**20.9.1.228 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 this part shall not constitute a defense to a violation of this part or the Act.

**20.9.1.229 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 20.9.1.222, 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, this part, 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.

**20.9.1.230 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.

**20.9.1.231 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, § 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 Act or this part.

**20.9.1.232 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 2 truck or fewer and hauls no special waste, and shall be \$300 if the hauler registers 3 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."

**20.9.1.233 - 20.9.1.299 [RESERVED.]**

**20.9.1.300 MAXIMUM SIZE; SITING CRITERIA; DESIGN CRITERIA.**

**20.9.1.301 MAXIMUM SIZE.** The secretary shall not issue a permit for any solid waste facility larger than five hundred acres.

**20.9.1.302 SITING CRITERIA FOR MUNICIPAL, OR SPECIAL WASTE, CONSTRUCTION AND DEMOLITION LANDFILLS, AND MONOFILLS.**

A. No municipal, construction and demolition, or special waste landfill or monofill shall be located where, on the date the initial permit application is filed with the department, any portion of the proposed disposal area is:

- (1) in a flood plains, within 500 feet of a wetlands, or within 200 feet of a watercourse unless the watercourse has been altered pursuant to an approval from the Army Corps of Engineers or other appropriate authority;
- (2) where the top of the uppermost aquifer will be closer than 100 feet to the bottom of the fill, or for construction and demolition landfills that do not accept more than 25 tons per day annual average, where the top of the uppermost aquifer will be closer than 50 feet to the bottom of the fill;
- (3) where new, abandoned, or exploration subsurface mines registered with the New Mexico Department of Energy, Minerals and Natural Resources a may pose a risk of subsidence or instability;
- (4) within 200 feet of a fault that has had a displacement within Holocene time (i.e., the past 11,000 years), unless the owner or operator demonstrates to the secretary that an alternative setback of less than 200 feet will prevent damage to the structural integrity of the facility and will be protective of public health, welfare and the environment;
- (5) within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, §§ 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, §§ 18-8-1 to 18-8-8;
- (6) within 1,000 feet of a public water supply well or a private drinking water supply well with a sustainable yield of 100 gallons per minute or more, unless the well was constructed after the landfill was established;
- (7) within 350 feet of a public water supply well or private well with a maximum sustainable yield of less than 100 gallons per minute, unless the well was constructed after the landfill began operations or the well was installed by the landfill owner or operator for operational use;
- (8) within the distance to airports set by the Federal Aviation Administration unless the landfill owner or operator demonstrates that the Federal Aviation Administration does not object to construction and operation of the landfill at the proposed site;
- (9) within 50 feet of the facility property boundaries nor within 500 feet of a permanent residence, school, hospital, institution or church, unless the such permanent residence, school, hospital, institution or church was constructed after the permit application for land use or zoning has been established for the proposed facility or the landfill began operations;
- (10) in an active alluvial fan (i.e., areas being currently aggraded by either permanent or intermittent streams);
- (11) within areas that will result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in either 50 CFR Part 17 or the latest version of the Handbook of Species Endangered in New Mexico;

(12) within seismic impact zones, unless the owner or operator demonstrates that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site; or

(13) within an unstable area, unless the owner or operator demonstrates that engineering measures have been incorporated into the landfill design to ensure that the integrity of the structural components of the landfill will not be disrupted.

[1-30-92; 8-17-94; 11-30-95]

B. Category 3 landfills that cannot make the demonstration specified in Paragraph (1) of Subsection A of this section pertaining to floodplains or Paragraph (8) of Subsection A of this section pertaining to airports, or Paragraph (13) of Subsection A of this section, pertaining to unstable areas, shall close in accordance with the closure and post-closure provisions in 20.9.1.500-599 NMAC.

**20.9.1.303 SITING CRITERIA FOR COMPOSTING FACILITIES THAT ACCEPT SOLID WASTE**

A. No composting facility that accepts solid waste shall be located:

(1) in a floodplains, within 500 feet of a wetland, or within 200 feet of a watercourse, unless the watercourse has been altered pursuant to an approval from the Army Corps of Engineers or other appropriate authority; or

(2) within 500 feet of any permanent residence, school, hospital, institution or church in existence at the time the permit application for the facility is filed..

[1-30-92]

**20.9.1.304 SITING CRITERIA FOR TRANSFORMATION FACILITIES.**

A. No transformation facility shall be located:

(1) in a floodplain, within 500 feet of a wetland, or within 200 feet of a watercourse unless the watercourse has been altered pursuant to an approval from the Army Corps of Engineers or other appropriate authority;

(2) where new, abandoned or exploration subsurface mines may pose a risk of subsidence, instability, or ground water contamination;

(3) within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8;

(4) within 150 feet of the facility property boundaries; nor

(5) within an unstable area, unless the owner or operator demonstrates that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted.

B. No transformation facility having a throughput capacity of less than 1,000 pounds per hour shall be located within one mile of any residence, institution, school, church, hospital or other transformation facility in existence on the date the initial permit application is filed with the department. [1-30-92]

C. No transformation facility having a throughput capacity of 1,000 pounds per hour or greater shall be located within three miles of any residence, institution, school, church, hospital or other transformation facility in existence on the date the permit initial application is filed with the department.

**20.9.1.305 SITING CRITERIA FOR TRANSFER STATIONS AND PROCESSING FACILITIES.**No transfer station or processing facility initially permitted after the effective date of these regulations shall be located in the following areas:

A. a floodplain, a watercourse, or a wetland, except:

(1) a transfer station property boundary may extend into or cross a floodplain, watercourse, or wetland if those areas will not be impacted by structures or activities of the facility; and

(2) engineering structures designed to prevent impacts to or from a floodplain, watercourse, or wetland may be constructed subject to prior approval of the secretary;

B. within 250 feet of a permanent residence, institution, school, church, or hospital, that existed at the time the transfer station permit application was submitted, unless the applicant demonstrates that a shorter distance has been affirmatively approved by the local government;

C. within an unstable area, except where the owner or operator demonstrates that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted or unless otherwise approved by the secretary.

D. within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, §§ 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, §§ 18-8-1 to 18-8-8.

**20.9.1.306 DESIGN CRITERIA FOR MUNICIPAL LANDFILLS, SPECIAL WASTE LANDFILLS AND MONOFILLS.**

A. Except as specified in Section 20.9.1.111 NMAC and Subsection C of this Section, all new municipal and special waste landfills and lateral expansions to existing municipal and special waste landfills shall provide a containment layer beneath the solid waste which is constructed:

(1) with a composite liner consisting of two components;

(a) the upper component shall consist of a minimum 30-mil flexible or a 60-mil high density polyethylene (HDPE) geomembrane liner or equivalent material. The geomembrane component shall be installed in direct and uniform contact with the lower component; and

(b) the lower component shall consist of a geosynthetic clay liner (GCL) or a minimum 24-inch thick layer of compacted soil having a saturated hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second throughout its thickness. The soil must be free of particles greater than one inch in any dimension; or

(2) with an alternative liner in accordance with a design, which provides protection equivalent to the composite liner defined in Paragraph (1) of this subsection.

B. When approving an alternative liner design under this section, the secretary shall consider at least the following factors:

(1) the climatic factors of the area; and

(2) the volume and physical and chemical characteristics of the leachate.

C. Asbestos waste monofills and scrap tire monofills may be exempted from the design criteria in this section if the owner or operator demonstrates to the secretary in the permit application that the waste will not generate

leachate which poses a threat to ground water quality, but shall still comply with Subparagraph (h) of Paragraph (1) of Subsection A of 20.9.1.502 NMAC.

D. Scrap tire monofills shall be designed with trenches not to exceed a maximum depth of 15 feet, a maximum width of 50 feet, and a maximum length of 100 feet. A distance of 40 feet shall be maintained between trenches. Trenches shall be filled to original grade.

E. The design and construction of all liners shall conform to the following criteria:

(1) general requirements:

(a) all liners must be able to withstand the projected loading stresses and disturbances from overlying waste, waste cover materials, and equipment operation;

(b) all liners shall incorporate a leachate collection system that meets the requirements of 20.9.1.308 NMAC; and

(c) all liners must be constructed with a minimum two percent slope to promote positive drainage and facilitate leachate collection;

(2) requirements for geosynthetic components:

(a) geosynthetic components of a liner system must be compatible with the waste to be contained. They must be able to resist chemical attack from the waste or leachate. This shall be demonstrated by means of manufacturer's test reports, or laboratory analyses;

(b) any geosynthetic materials installed on slopes greater than 25 percent, or on any slope where waste is projected to be more than 100 feet deep, must be designed to withstand the calculated tensile forces acting upon the geosynthetic materials. The design must consider the maximum friction angle of the geosynthetic with regard to any soil-geosynthetic or geosynthetic-geosynthetic interface and must ensure that overall slope stability is maintained; and

(c) field seams in geosynthetic material shall be oriented parallel to the line of maximum slope, i.e., oriented along, not across the slope. The number of field seams in corners and irregular shaped areas shall be minimized. There shall be no horizontal seam within five feet of the toe of the slope.;

(3) requirements for the soil component of all liners:

(a) the bottom geosynthetic layer, shall be placed on a prepared subgrade consisting of, at a minimum, of a 6-inch layer of in-situ soil or select fill compacted to 90percent Standard Proctor Density;

(b) the surface of the soil upon which a geosynthetic liner will be installed must be free of stones greater than 1/2-inch in any dimension, organic matter, local irregularities, protrusions, loose soil, and any abrupt changes in grade that could damage the geosynthetic liner; and

(c) the soil component of the composite liner defined in Subparagraph (b) of Paragraph (1) of Subsection A of this Section shall be compacted to a minimum of 90 percent Standard Proctor Density and shall have the following physical characteristics unless otherwise specifically approved by the department:

(i) Plasticity Index greater than 10 percent;

(ii) Liquid Limit between 25 percent and 50 percent;

(iii) portion of material passing the No. 200 sieve (0.074 mm and less fraction) greater than 40 percent (by weight); and

(iv) clay content greater than 18 percent (by weight);

(4) all liners shall have a top protective cover of at least two feet of granular soil or other material specifically approved by the department. The protective cover shall, in addition to providing physical protection for the liner, facilitate the collection of leachate in the leachate collection system. Materials used to construct the protective cover must ensure the hydraulic leachate head on the liner does not exceeds one foot. The soil material shall be free of any organic matter and have the following physical characteristics unless otherwise specifically approved by the secretary:

(a) portion of material passing the No. 200 sieve (0.074 mm and less fraction) no greater than 5percent by weight; and

(b) Uniformity Coefficient (Cu) less than 6 where Cu is defined as D60/D10.

[8-17-94]

**20.9.1.307 TESTING AND QUALITY CONTROL FOR LINERS AND FINAL COVERS. [8-17-94]**

A. All testing of geosynthetic and soil materials shall be performed in accordance with applicable American Society of Testing Materials (ASTM) standards.

B. The construction and installation of all liners and final covers shall be done in accordance with a quality control plan approved in the permit. All testing and evaluation of liners shall be certified by a professional engineer licensed in New Mexico and experienced in liner installation, and shall be completed prior to the placement of the protective cover. All field testing of liners and final covers shall be the responsibility of an individual experienced in liner or cover installation and soils or geotextile engineering, as appropriate. The quality control plan shall:

(1) define the procedures required for obtaining samples and testing and reporting the test results for the installation of the liner and final cover; and

(2) describe and illustrate to operating personnel all necessary procedures for maintaining the integrity of the liner, leachate collection systems, and final cover;

(3) for the soil component, prescribe the following minimum frequency of testing for the soil component of all liners and final covers, unless otherwise specifically approved by the department:

(a) soil from the borrow source shall be tested as follows:

(i) grain size shall be tested once every 1,000 cubic yards;

(ii) Atterberg Limits shall be tested once every 5,000 cubic yards;

(iii) Proctor compaction moisture-density curve conformance shall be tested once every 5,000 cubic yards; and

(iv) laboratory permeability shall be tested once every 5,000 cubic yards; and

b) during construction of the liner or cover, the soil shall be tested as follows:

(i) density and moisture content tested by nuclear desiometer shall be tested four times per acre per lift;

(ii) laboratory or in-situ permeability shall be tested once per 2 acres and laboratory samples shall be undisturbed or recompacted to the site-specific field conditions;

(iii) total thickness (by survey) shall be tested once per acre (on grid);

(4) for the protective cover component of liners, when used to facilitate leachate drainage, prescribe the following minimum frequency of testing of the granular drainage layer, unless specifically approved by the department:

(a) grain size of the soil shall be tested once every 1,500 cubic yards; and

(b) total thickness of the drainage layer shall be tested five times per acre;

(5) for the geomembrane component of all liners and final covers as defined in Subsection A of 20.9.1.306 NMAC and Subsection A of 20.9.1.502 NMAC, all testing, both shop and field, shall be as recommended by the manufacturer unless otherwise specifically approved by the department. The minimum frequency of taking seam samples for destructive testing shall be one per 500 feet of seam length, with a portion of each test sample tested in the field and another in the laboratory. Seam samples shall be tested for peel adhesion and bonded seam strength. Non-destructive testing shall be performed for all seams, seam repairs, and liner repairs.

[8-17-94]

#### **20.9.1.308 LEACHATE COLLECTION SYSTEMS FOR LANDFILLS.**

A. Except as specified in Section 20.9.1.111 NMAC and Subsection C of 20.9.1.306 NMAC, all new municipal and special waste landfills and lateral expansions shall include a leachate collection system, which shall be designed by a professional engineer licensed to practice in New Mexico, and which shall incorporate a piping collection network comprised of perforated pipe having a minimum diameter of 6 inches and a minimum wall thickness of schedule 80 PVC or equivalent and shall be designed and constructed to:

(1) maintain less than a one-foot depth of leachate on the liner;

(2) maintain a minimum of two percent slope throughout the system, within the lined landfill cell; an alternate slope may be specifically approved by the secretary for leachate conveyance piping outside the disposal cell footprint;

(3) withstand chemical attack from waste and leachate; and

(4) withstand the loads, stresses, and disturbances from overlying waste, waste cover materials, and equipment operation.

B. Any geosynthetic materials such as geonets and geotextiles, if used as components of the leachate collection system, must have a hydraulic conductivity, transmissivity and chemical and physical qualities that will not be adversely affected by waste placement, equipment, operation, or leachate generation. These geosynthetics, if used and operating in conjunction with the soil protective cover for the liner as described in Paragraph (4) of Subsection E of 20.9.1.306 NMAC, must have a hydraulic conductivity and transmissivity designed to ensure the hydraulic head on the liner never exceeds one foot.

C. A written leachate management plan shall be submitted for approval by the secretary. The plan shall describe anticipated amounts of leachate, duration of generation and final disposal options for the leachate and shall include:

- (1) a description of the means of analysis; and
- (2) a description of the type of treatment and proposed disposal method.

[8-17-94]

D. Leachate storage and collection ponds shall be designed to meet the requirements of 20.9.1.306 NMAC. A pond may be designed to maintain greater than one foot of leachate, provided it is equipped with a double, composite liner as specified in 20.9.1.306 NMAC, or an alternative design providing equivalent protection and approved in the permit.

#### **20.9.1.309 LANDFILL GAS CONTROL SYSTEMS**

A. Owners and operators of landfills who install a landfill gas control system in order to conform with the requirements of Subsection B of 20.9.1.402 NMAC shall submit a description of the physical and chemical characteristics of expected condensates or residues that are generated and a plan for their disposal. The disposal plan shall be submitted with a permit application or as a request for a specific approval. In addition, if the gas control system is not subject to the Air Quality Control Act, NMSA § 74-2-1, et seq., the owner or operator shall include the following information in its submission:

- (1) the design of the system, indicating the location and design of vents, barriers, collection piping and manifolds and other control measures that will be installed;
  - (2) if gas recovery is proposed, the design of the proposed gas recovery system and the major on-site components of the system including storage, transportation, processing, treatment or disposal measures required in the management of the generated gases, condensates or other residues.
- [8-17-94; 11-30-95]

B. If a gas processing system is proposed, it shall be designed:

- (1) so that it will not interfere with activities on the site or required control measures; and
  - (2) so that it will not create a nuisance, endanger or cause harm to persons or property.
- [8-17-94; 11-30-95]

C. If a gas disposal system is proposed, it shall be designed:

- (1) so that it will not interfere with activities on the site or required control measures;
  - (2) so that it will not create a nuisance, endanger or cause harm to persons or property; and
  - (3) with active forced ventilation, using vents located at least one foot above the landfill surface at the location of each gas vent.
- [8-17-94; 11-30-95]

#### **20.9.1.310 RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS.**

A. The secretary may issue a research, development, and demonstration permit in conjunction with a new solid waste facility permit for a municipal or special waste landfill, or as a permit modification for an already permitted municipal or special waste landfill, under the following conditions:

- (1) the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria:
  - (a) the run-on control systems required by Subsection E of 20.9.1.402 NMAC; and

(b) the liquids restrictions in Paragraph (9) of Subsection A of 20.9.1.107 and 20.9.1.709 NMAC;

(2) the landfill has a leachate collection system designed and constructed to maintain less than a one foot depth of leachate on the liner; and

(3) the landfill is not operating under an exemption set forth in Section 20.9.1.111 NMAC.

B. The following requirements shall apply to any landfill that is issued a research, development, and demonstration permit under Subsection A of this section:

(1) the liquids to be used at the landfill shall be pre-approved by the Department in accordance with Paragraph (9) of Subsection A of 20.9.1.107 NMAC and 20.9.1.709 NMAC;

(2) the landfill shall install a landfill gas collection and control system in accordance with emission control requirements as specified in 40 CFR Part 60; and

(3) the fluids to be used at the landfill shall be pre-approved by the department.

C. The secretary may issue a research, development, and demonstration permit for a permitted landfill for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of Subparagraph (b) and (c) of Paragraph (1) of Subsection A of 20.9.1.502 NMAC or Subparagraph (a) of Paragraph (2) of Subsection A of 20.9.1.502 NMAC provided the landfill owner or operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of ground water or surface water, or cause leachate depth on the liner to exceed one foot.

D. Any permit issued under Subsection C of this section shall include terms and conditions at least as protective as the criteria for municipal solid waste landfills to assure protection of human health and the environment. Such permits shall:

(1) provide for the construction and operation of such facilities as necessary, for not longer than two and one-half years, unless renewed as provided in Subsection F of this section;

(2) provide that the landfill must receive only those types and quantities of municipal solid waste and non-hazardous wastes which the secretary deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the secretary with respect to the operation of the facility;

(4) require the owner or operator of a landfill permitted under this section to submit an annual report to the secretary showing whether and to what extent the site is progressing in attaining project goals. The report shall also include a summary of all monitoring and testing results, as well as any other operating information specified by the secretary in the permit; and

(5) require compliance with all criteria in this part, except as permitted under this section.

E. The secretary may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the secretary determines that imminent danger exists to human health or the environment. The owner or operator may appeal the secretary's order by filing a request for hearing within 30 days of the date of the secretary's order. The appeal shall be conducted in accordance with the procedures in 20.1.5 NMAC, Adjudicatory Procedures- Environment Department.

F. Any permit issued under this section shall not exceed two and one-half years and each renewal of a permit shall not exceed two and one-half years.

(1) The total term for a permit for a project including renewals shall not exceed twelve years; and

(2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other information requested by the secretary.

**20.9.1.311 - 20.9.1.399 [RESERVED.]**

**20.9.1.400 SOLID WASTE FACILITY OPERATING REQUIREMENTS**

**20.9.1.401 GENERAL OPERATING REQUIREMENTS FOR ALL SOLID WASTE FACILITIES**

A. Owners and operators of each solid waste facility shall:

(1) operate the facility in a manner that does not cause a public nuisance or create a potential hazard to public health, welfare or the environment;

(2) control and mitigate odor and litter;

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

B. Owners and operators of a solid waste facility shall:

(1) have a certified operator or representative present at all times while the facility is operational;

(2) implement a plan approved by the secretary to inspect loads to detect and prevent the disposal of unauthorized waste, including:

(a) inspection frequency;

(b) inspection personnel;

(c) method of inspection; and

(d) a training program for the facility employees in the identification of unauthorized waste, including hazardous waste, hot waste, and PCB's;

(3) maintain a written operating record in compliance with 20.9.1.409.

(4) notify the department both orally and in writing within 24 hours of an occurrence of a spill, fire, flood, explosion, mass movement of waste, or similar event;

(5) upon discovery of the receipt of unauthorized waste:

(a) notify the department, the hauler, and the generator in writing within 24 48 hours;

(b) restrict the area from public access and from facility personnel; and

(c) assure proper cleanup, transport and disposal of the waste.;

(6) ensure that copies of contingency plans are readily accessible to employees on duty; and

(7) train employees when hired and at least annually thereafter on when and how to implement contingency plans and document in the operating record that such training has been conducted.  
[1-30-92; 8-17-94]

C. The secretary may order temporary changes in operation or facility design in emergency situations when the secretary determines there is an imminent danger to public health, welfare or the environment.

D. If recyclable materials such as used oil, antifreeze, paint, or similar materials are diverted from the waste stream at a solid waste facility, the materials shall be stored for no longer than twelve months and shall be maintained in a covered area, not exposed to the weather, with secondary containment.

**20.9.1.402 ADDITIONAL MUNICIPAL, SPECIAL WASTE, AND MONOFILL LANDFILL OPERATING REQUIREMENTS.** All municipal and special waste landfill owners and operators shall:

A. utilize the principles of sanitary engineering to:

(1) confine the working face to the smallest practical area;

(2) compact the solid waste to the smallest practical volume;

(3) minimize exposure of landfill employees and the public to animal carcasses and offal, and immediately cover such wastes when they are received.

B. prevent the generation and lateral migration of methane such that:

(1) the concentration of methane generated by the facility does not exceed 25percent of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(2) the concentration of methane does not exceed the LEL at the facility property boundary.;  
[1-30-92; 8-17-94]

C. implement a routine methane monitoring program to ensure that the requirements of Paragraphs (1) and (2) of Subsection B of this section are met.:

(1) the type and frequency of monitoring shall be determined based on the following conditions:

(a) soil conditions;

(b) the hydrogeologic conditions surrounding the facility;

(c) the hydraulic conditions surrounding the facility; and

(d) the location of facility structures and property lines;

(2) the minimum frequency of monitoring shall be quarterly, except that landfills that receive less than 20 tons per day annual average, or closed prior to October 9, 1993, or monofills may be permitted for less frequent monitoring, provided on-site measurements indicate methane levels are consistently less than 25 percent of the LEL for methane; and

(3) if methane gas levels exceed the limits specified in Paragraphs (1) and (2) of Subsection B of this section, the owner or operator shall:

(a) immediately take all necessary steps to ensure protection of public health, welfare and the environment and notify the secretary;

(b) within seven days of detection, record the methane levels detected and a description of the steps taken to protect public health, welfare and the environment; and

(c) within 60 days of detection, implement a remediation plan approved by the secretary for the methane releases, and notify the secretary that the plan has been implemented. The plan shall describe the nature and extent of the problem and proposed remedy;  
[1-30-92; 8-17-94]

D. prevent unauthorized access by the public and entry by large animals to the active portion of the landfill through the use of fences, gates, locks, or other means; [1-30-92; 8-17-94]

E. control run-on water onto the site and run-off water from the site, such that:

(1) the run-on control system shall prevent flow onto the active portion of the landfill during the peak discharge from a 24-hour, 25-year storm;

(2) the run-off control system from the active portion of the landfill collects and controls at least the water volume resulting from a 24-hour, 25-year storm; and

(3) run-off from the active portion of the landfill shall not be allowed to discharge any pollutant to the waters of the state or United States that violates any requirements of the New Mexico Water Quality Act, commission regulations and standards or the Federal Clean Water Act;  
[8-17-94]

F. prohibit scavenging;

G. provide adequate means to prevent and extinguish fires;

H. direct the deposit of hot waste at a specific location at the facility which is remote from the operating area. The hot waste shall be immediately spread out for cooling and extinguished if on fire. The hot waste shall not be mixed with the regular solid waste stream until it reaches a temperature that will not support combustion;

I. provide and maintain access roads at the facility site, such that traffic can enter and exit the site safely, will flow smoothly, and will not be interrupted by inclement weather;

J. provide sufficient unloading areas to meet demands of peak periods;

K. measure leachate head on the liner and sump pump as necessary, and except as otherwise allowed in Paragraph (9) of Subsection A of 20.9.1.107 NMAC, Section 20.9.1.111 NMAC and Subsection C of 20.9.1.306 NMAC, collect and treat leachate by a method approved by the secretary and maintain records on a quarterly basis of leachate generation and treatment;

L. control litter, disease vectors, dust and odors;

M. Notify the department prior to installing exploratory borings for the purpose of waste characterization or mapping or removing waste for routine maintenance on gas collection and control or venting systems, unless the event involves less than 120 cubic yards of solid waste; [1-30-92]

N. cover the active face with a six-inch layer of earth or permitted alternate daily cover at the conclusion of each day's operation or more often as conditions may dictate, except that for landfills that receive less than 20 tons of waste per day annual average or monofills, the permit may allow alternate frequencies to the daily cover requirements. When permitting a reduced frequency, the secretary shall:

- (1) consider the unique characteristics of small communities;
- (2) consider climatic and hydrogeologic conditions;
- (3) consider measures to prevent vector harborage and animal intrusion; and
- (4) determine that the approved frequency will be protective of human health and the environment.

O. provide intermediate cover which shall be:

- (1) at least one foot thick;
- (2) placed on all areas of a landfill that have not received waste for 60 days or longer, or have not reached final elevation;
- (3) stabilized with vegetation on any areas that have been inactive for more than two years; and
- (4) constructed and maintained to prevent erosion and infiltration.; and

P. if diversion of recyclable materials is conducted:

- (1) perform the diversion in a sanitary manner, with storage confined to an area remote from the operating area of the landfill, and in a manner which does not interfere with or delay the operation of the landfill or create a nuisance, litter problem, vector harborage, or public health hazard;
- (2) remove all recyclable materials from the facility in a timely manner such that the area does not become a permanent storage area.; and
- (3) store recyclables in such a manner that the area is clean, materials are separated by type, and the potential for contamination is minimized.

Q. Owners or operators of municipal or special waste landfills permitted after the effective date of these regulations to accept 25,000 tons per year or more, shall, prior to commencing operations, install scales at the landfill and weigh incoming waste.

R. Owners or operators of municipal or special waste landfills permitted or registered before the effective date of these regulations to accept 25,000 tons per year or more, shall no later than five years after the effective date of these regulations, install scales at the landfill and weigh incoming waste.

S. Owners and operators of scrap tire monofills shall accept no solid waste for disposal other than baled scrap tires.

T. A landfill permitted as a special waste landfill may accept municipal waste and construction and demolition waste if approved in its permit.

[8-17-94]

**20.9.1.403 ADDITIONAL CONSTRUCTION AND DEMOLITION LANDFILL OPERATING REQUIREMENTS.** All construction and demolition landfill owners and operators shall:

A. minimize the on-site population of disease vectors through the periodic application of cover material or other techniques as appropriate so as to protect public health, welfare and the environment;

B. apply and compact soil or apply other suitable material over disposed construction and demolition debris at the end of each operating day or at such frequencies and in such a manner as to reduce the risk of fire and impede vectors' access to the waste;

C. prevent the generation and lateral migration of methane such that:

(1) the concentration of methane generated by the facility does not exceed 25 percent of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(2) the concentration of methane does not exceed the LEL at the property boundary.

D. limit public access so as to not expose the public to potential health and safety hazards at the facility.

**20.9.1.404 ADDITIONAL TRANSFER STATION OPERATING REQUIREMENTS.** Owners and operators of transfer stations shall:

A. accept special wastes only when specifically authorized to do so by a permit;

B. use containers for storage of solid waste that are leak-proof and manufactured of non-biodegradable material;

C. provide adequate means to control litter and prevent and extinguish fires;

D. conduct any recycling operations in a safe and sanitary manner, confined to an area remote from the tipping area, and in a manner that does not interfere with transfer operations;

E. store recyclable materials in a manner that does not create a nuisance, harbor vectors, or create a public health hazard, and remove recyclable materials in a timely manner.;

F. provide sufficient unloading areas to meet demands of peak periods;

G. provide adequate off-street parking facilities for transfer vehicles;

H. not park collection or transfer vehicles containing putrescible materials on public streets or roads except under emergency conditions;

J. remove solid waste from the station at the end of the operating day unless otherwise approved in the permit; and

K. Provide separate storage areas for bulky wastes, such as brush, white goods, appliances, and scrap tires, and remove the bulky wastes at a frequency approved in the permit.

**20.9.1.405 ADDITIONAL TRANSFORMATION FACILITY OPERATION OPERATING REQUIREMENTS.**

Owners and operators of transformation facilities shall:

A. control dust in the unloading and charging areas in such a manner as to prevent explosions and fugitive dust emissions;

B. maintain appropriate fire-fighting equipment in the charging and storage areas and elsewhere as needed;

C. conduct any recycling operations in a sanitary manner, which does not interfere with transformation operations and remove all recyclable materials, in a timely manner or store them so as not to create a nuisance, vector harborage, or public health hazard;

D. provide sufficient unloading areas to meet demands of peak periods;

E. provide sufficient training for all new employees so that equipment may be operated according to design specifications, and conduct review training annually;

F. prominently post key operational procedures;

G. store any special wastes generated by the transformation facility shall be in covered buildings, in covered leak-proof containers, or in tanks, which shall be labeled with a description of the contents and the date the wastes were placed in storage;

H. provide audible signals to alert operating personnel of critical operating unit malfunctions;

I. provide sampling points of each process stream that do not interfere with normal facility operation ;

J. if a facility is permitted to handle special wastes, provide separate areas for storage while the special wastes await processing or transport;

[1-30-92; 8-17-94]

K. store special wastes in a manner to assure that they are protected from weather elements and fire and to assure that incompatible wastes are kept separate; and

L. establish an ash testing program prior to start-up of the transformation facility. Representative samples of both fly ash and bottom ash shall be tested in accordance with 20.9.1.704 NMAC. Test methods, the number of tests, detection limits, and parameters to be tested shall be approved in the permit or registration. Frequency of testing shall be one sample per month taken within 5 days of the beginning of the month, unless an alternate test frequency is specifically approved by the department based on a demonstration that the ash is homogenous. [1-30-92; 8-17-94]

**20.9.1.406 ADDITIONAL OPERATING REQUIREMENTS FOR RECYCLING FACILITIES THAT ACCEPT SOLID WASTE AND PROCESSING FACILITIES.** Owners and operators of recycling facilities that accept solid waste and processing facilities shall:

A. prominently post key operational procedures;

B. store any special wastes:

(1) in separate, clearly marked areas;

(2) in covered buildings; and

(3) in covered leak-proof containers, or in tanks labeled with a description of the contents and the date the wastes were placed in storage;

C. provide audible signals to alert operating personnel of critical operating unit malfunctions;

- D. provide sampling points of each process stream that do not interfere with normal facility operation;
- E. provide for periodic wash-down or other cleanup of the facility and dispose of any waste waters in accordance with all applicable state and federal regulations;  
[1-30-92; 8-17-94]
- F. store waste residues by means that prevent the material and containers from falling, leaking, blowing, and exposure to the weather;
- G. store all materials that are physically or chemically incompatible shall be stored in separate areas;
- H. provide storage capacity for any special waste by-products generated during the initial start-up characterization period;. [1-30-92]
- I. store any material containers that have the potential of discharging any oils, polychlorinated biphenyls (PCB's), battery acid, battery alkalines, or other liquids in a restricted area identified by signs on a covered, substance-compatible, bermed containment pad; and
- J. include a schedule and contacts for removal of stored wastes in the operations and maintenance manual.

**20.9.1.407 COMMERCIAL HAULER OPERATING REQUIREMENTS**

A. Commercial haulers shall:

- (1) collect and transport waste so as to prevent environmental, safety, and public health or welfare hazards and nuisances;
- (2) utilize equipment that is designed, constructed and operated so as to be leak-proof and protective of human health and safety and the environment;
- (3) cover or enclose the waste to prevent littering during transportation;
- (4) keep collection and transportation equipment in a clean condition through the use of sufficient washings and cleanouts;
- (5) only transport waste to a facility that is permitted or registered under this part or that is authorized by another government; provided that this is not to be construed to limit initial sorting of solid waste on site;
- (6) immediately clean up any solid waste spilled during collection or hauling operations;
- (7) conspicuously label all solid waste collection vehicles with the company, municipality, or county department name.
- (8) conspicuously label all solid waste collection vehicles with the Environment Department registration number.
- (9) take reasonable measures to assure that unauthorized wastes are not accepted.
- (10) if hauling special waste, carry a contingency plan and clean-up kit as approved pursuant to Paragraphs (3) and (4) of Subsection B of 20.9.1.224 NMAC.  
[8-17-94]

B. Commercial haulers shall provide prior notification to the department, in writing, of any major changes in collection operations or disposal facility being used. A major change includes an addition of a type of waste, a change in ownership, a change in location and a change in the disposal facility being used. In the case of emergency, where prior notice cannot be given, written notice shall be given within 48 hours after the change.

C. All infectious waste commercial haulers shall comply with the following transportation requirements:

(1) infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle compartment unless all of the waste has been treated as infectious waste in accordance with 20.9.1.706 NMAC;

(2) employers of persons loading or unloading containers of infectious waste shall assure that employees wear appropriate personal protective equipment and shall conform with 29 CFR 1910.132 and shall have available for inspection a certification that the required workplace hazard assessment has been performed;

(3) surfaces of transport vehicles contaminated by infectious waste shall be decontaminated;

(4) vehicles transporting infectious waste shall be identified on each side of the vehicle with the name or trademark of the commercial hauler, the Environment Department registration number, and a biohazard symbol;

(5) each vehicle or container used for shipping infectious waste shall be so designed and constructed, and its contents limited so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment;

(6) any vehicle or container used for shipping infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation;

(7) no person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by this section;

(8) all generator storage containers shall be labeled with the generator's name, the city of origin, and date of collection;

(9) periods of storage and transportation of infectious waste by commercial haulers shall be limited to seven days prior to disposal or treatment unless the waste is refrigerated at or below 45 degrees Fahrenheit. The total period of storage and transportation shall not exceed 45 days unless specifically approved by the secretary; and

(10) all accidents, spills, releases, or other similar incidents with the potential to adversely impact public health or welfare or the environment shall be immediately reported to the New Mexico Emergency Response Center. [8-17-94]

D. Commercial haulers shall maintain an operating record documenting activities for at least the preceding three year period. The operating record shall include:

(1) type and weight or volume of solid waste hauled;

(2) state, county, and municipality in which the solid waste originated; and

(3) solid waste facilities utilized.

**20.9.1.408 CONTINGENCY PLAN FOR EMERGENCIES. [1-30-92;]**

A. 20.9.1.408 NMAC applies to owners and operators of all solid waste facilities except as otherwise provided. [1-30-92]

B. The owner or operator shall maintain a current contingency plan at each solid waste facility. The contingency plan shall be designed to minimize hazards to public health, welfare or the environment from fires, explosions, or any release of contaminants or hazardous constituents to air, soil, surface water or ground water.

C. A copy of the contingency plan shall be kept at the facility and copies shall be provided to the emergency response authority of the local emergency management center.

D. The provisions of the contingency plan shall be carried out immediately whenever there is a fire, explosion, or release of contaminants or hazardous constituents which could pose an immediate or imminent threat to public health, welfare or the environment.

E. The contingency plan shall be amended immediately, if necessary, whenever:

- (1) the facility permit is renewed or modified;
- (2) the plan fails in an emergency;
- (3) the facility's design, operations, maintenance, or other circumstances change in a way that increases the potential for fires, explosions, or releases of hazardous constituents, or necessitate changes to the planned emergency response;
- (4) the list of emergency coordinators changes; or
- (5) the list of emergency equipment changes.

F. The contingency plan for emergencies shall, if applicable:

- (1) describe the actions facility personnel should take in response to fires, explosions, or releases of contaminants or hazardous constituents to air, soil, surface water, or ground water;
- (2) describe arrangements with local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services;
- (3) list the name(s) and telephone numbers of the emergency coordinator(s). If more than one person is listed, one must be named as the primary emergency coordinator;
- (4) include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment), along with the location, physical description, and a summary of the capabilities of each item;
- (5) include an evacuation plan for facility personnel which describes signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked by fire or releases of wastes;
- (6) include an evaluation of potential contaminants, potential media contaminated, and procedures for investigation, containment, and correction or remediation;
- (7) indicate when the contingency plan must be amended;
- (8) instruct the emergency coordinator or his designee, in case of an imminent or actual emergency situation, to immediately:

(a) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(b) notify appropriate state and local agencies with designated response roles if their assistance is needed;

(9) instruct the emergency coordinator, whenever there is a release, fire, or explosion, to as quickly as possible identify the nature, source, amount, and extent of any release by means of observation, review of facility records or manifests, or if necessary, by chemical analysis;

(10) instruct the emergency coordinator to assess possible hazards to public health, welfare or the environment that may result from the release, fire, or explosion;

(11) instruct the emergency coordinator to provide for monitoring for leaks, pressure buildup, gas generation or rupture in valves, pipes, or equipment, if appropriate;

(12) instruct the emergency coordinator to provide for appropriate treatment, storage, or disposal of recovered waste, or any other material that results from a release, fire, or explosion at a facility, after the emergency situation is under control; and

(13) instruct the emergency coordinator to ensure that waste which may be incompatible with the released material is not treated, stored, or disposed until cleanup procedures are complete.  
[1-30-92; 8-17-94]

**20.9.1.409 RECORD KEEPING AND ANNUAL REPORTS. [5-14-89]**

A. Owners and operators of solid waste facilities shall make and maintain an operating record during the active life of the facility, for each day that operations, monitoring, or closure occurs, including:

(1) the type (including special waste) and weight or volume of each load of solid waste received;

(2) the country (if other than the United States) state, county, and municipality in which the solid waste originated (i.e. the origin);

(3) the business name of any commercial hauler of solid waste for each load of the solid waste if it can be reasonably obtained;

(4) type and weight or volume of non-solid waste materials, as referenced in paragraph (9) of subsection S of 20.9.1.7 NMAC, received;

(6) a record of load inspections, including:

(a) date and time of inspection;

(b) business name of the commercial hauler and driver name;

(c) vehicle license number and description;

(d) origin of the waste; and

(e) any pertinent observations made during the inspection;

(7) a description of solid waste or special waste handling problems or emergency disposal activities;

- (8) a record of deviations from the approved design or operational plans;
- (9) for a transfer station, the origin of and destination of the solid waste if transported out of state;
- (10) all monitoring and testing results;
- (11) plans for operations, contingencies, detection and identification of unauthorized waste, and any other plans required by this part;
- (12) documentation of the implementation of required plans;
- (13) copies of special waste manifests required under 20.9.1.712 NMAC;
- (14) copies of certificates of processing, transformation, or disposal of special wastes required under 20.9.1.713 NMAC;
- (15) financial assurance information, including a copy of the current standby trust document, current estimates for closure, post-closure care, Phase I and Phase II assessments and a copy of the financial assurance mechanism being utilized;
- (16) a complete and current copy of the facility permit, final order issuing the permit, and any approvals granted by the secretary under this part;
- (17) a daily log of construction activities; and
- (18) for landfills, any demonstration made to the secretary under Paragraphs (12) and (13) of Subsection A of 20.9.1.302 NMAC regarding seismic impact areas and unstable areas; and [5-14-89; 1-30-92; 8-17-94]

B. A copy of the operating record for the current month and the previous twelve months, at a minimum, shall be kept on site, unless the facility no longer accepts solid waste, after which time it shall be kept in a place where it can be made available to the department.

C. Owners and operators of solid waste facilities shall make and maintain an operating record during the post-closure period of the facility for each day that monitoring, corrective action, or other post-closure activity occurs, including:

- (1) a record of any deviations from the approved post-closure care plan;
- (2) all monitoring and testing results;
- (3) documentation of the implementation of required plans and any exceptions to those plans;
- (4) financial assurance information, including current estimates for closure, post-closure care, Phase I and Phase II assessments and a copy of the financial assurance mechanism being utilized;
- (5) a complete and current copy of the facility permit, final order issuing the permit, and any approvals granted by the secretary under this part; and
- (6) any other information specifically required by the secretary.

D. Owners or operators of solid waste facilities shall submit an annual report to the department for each facility or operation, within 45 days from the end of each calendar year, describing the operations of the past year. The reports must be certified as true and accurate by the owner or operator and shall include:

- (1) the type and weight or volume of waste materials received each month and the country (if other than the U.S.), state, county, and municipality in which the waste originated;
- (2) the type and weight or volume of solid waste received from each commercial hauler that delivered waste to the facility;
- (3) for a landfill, a description of the capacity used in the previous year and the remaining capacity;
- (4) for a landfill, a description of the acreage used for disposal, the acreage seeded, the acreage where vegetation is permanently established and a description of the progress in implementing the closure plan;
- (5) the weight or volume of each type of special waste received at the solid waste facility in the previous year;
- (6) a summary of all monitoring results (not including the results required under 202.9.1.803 NMAC);
- (7) written notice to the secretary if any change in operation has occurred that will reduce the active life of the facility by 25 percent or more;
- (8) type and weight or volume of materials recycled during the year;
- (9) final disposition of materials not stored or recycled;
- (10) amount of leachate generated and treated or recirculated;
- (11) an annual financial assurance certification on forms supplied by the department;
- (12) the latitude and longitude of the geographical center of the existing or proposed facility (as approved by the department) in NAD-83 or equivalent; and
- (13) any other information requested by the secretary.

E. All records and plans required by this part shall be furnished upon request and made available at all reasonable times for inspection by the secretary. [1-30-92; 11-30-95]

F. Operating records and copies of annual reports for solid waste facilities shall be retained by the owner or operator through the post-closure period.

**20.9.1.410 - 20.9.1.499 [RESERVED.]**

**20.9.1.500 CLOSURE AND POST-CLOSURE REQUIREMENTS:**

**20.9.1.501 GENERAL REQUIREMENTS FOR CLOSURE AND POST CLOSURE CARE. [8-17-94]**

A. Closure and post-closure care plans are required of all solid waste facilities that operated on or after May 14, 1989. The owner or operator of a solid waste facility that has closed but not submitted a closure and post-closure care plan shall submit such a plan within 180 days of the effective date of these regulations. The submitted plan shall meet the requirements of 20.9.1.501 - 599.

B. The owner or operator of the solid waste facility shall prepare a written closure and post-closure care plan that describes the steps necessary for closure and post-closure care of the solid waste facility and any anticipated future uses of the property following closure.

C. Closure and post-closure care plans are required in the application for a permit or permit modification. One initial copy of the plan and two copies of the completed plan shall be submitted to the department.

D. The owner or operator of the solid waste facility shall notify the secretary in writing of the intent to close at least 90 days before closure occurs and shall notify the secretary in writing within 14 days after becoming a locked facility.

E. Closure and post-closure care plans for new solid waste facilities and modifications to existing facilities shall be approved as part of the facility permit.

F. All closure and post-closure care plans shall be approved by the secretary and may be subject to conditions.

G. Closure and post-closure care plans for existing non-permitted landfills that seek to close rather than continue to operate, shall be submitted for approval by the secretary within one year after the effective date of this part. The closure and post-closure care plan shall meet the requirements of 20.9.1.500 - 599. After determining that the plan is complete, the secretary shall provide public notice of the plan in a newspaper of general circulation in the county where the facility is located. A non-adjudicatory hearing will be held if significant public interest warrants it. Approved closure and post-closure plans for unpermitted category 2 and 3 landfills shall be enforceable as a permit or regulation for purposes of this Part and the Act. Any landfill that operates after the effective date of these regulations shall have a closure and post-closure care plan approved as part of the permit, or shall seek approval of a closure and post-closure care plan.

H. Responses to the secretary's requests for additional information concerning a proposed closure and post-closure care plan shall be made within 90 days of receipt of such a request. The secretary may extend the response time for good cause.

I. Post-closure inspection and maintenance shall not be required of the facility if the owner or operator demonstrates to the secretary that all solid waste has been removed, requirements of the closure plan have been met, and following the removal of such wastes, a demonstration is made that the soil and ground water have not been contaminated.

J. All landfills, regardless of category, except construction and demolition debris landfills, which close after October 9, 1991, shall comply with the final cover requirements contained in 20.9.1.502 NMAC in addition to other closure requirements in effect at the time of closure.

K. The length of the post-closure care period may be decreased by the secretary if the owner or operator demonstrates that the reduced period is sufficient to protect public health, welfare, and the environment, or it may be increased by the secretary if the secretary determines that a longer period is necessary to protect health, welfare, and the environment. The time period for application of the provisions for financial assurance as defined in 20.9.1.900-999 NMAC shall be coincident with the time period of the post-closure care period. Any reduction or extension of the post-closure care period as described in this section shall be accompanied by an identical reduction or extension of the financial assurance provisions.

L. The owner or operator shall submit a closure report to the department within 60 days after closure completion. The report shall include:

(1) a summary of closure activities: and

(2) a certification by a New Mexico registered professional engineer that the closure of the solid waste facility has been completed and all conditions of the approved closure plan have been satisfied.

M. The active life of the facility terminates, and post-closure care begins, upon written verification by the department that the facility has been closed in accordance with the closure plan approved by the secretary.

N. The owner or operator shall submit a post-closure report to the department within 60 days after the post-closure period expires. The report shall include:

(1) a summary of post-closure activities; and

(2) a certification by a New Mexico registered professional engineer that the post-closure requirements, and if applicable, any corrective action requirements have been completed and all conditions of the approved post-closure care plan have been satisfied.

O. The post-closure care period for the facility terminates upon written verification by the secretary that the requirements of the approved post-closure care plan have been satisfied. If the secretary does not issue a verification, he shall notify the owner or operator in writing that the activities required under 20.9.1.500-599 NMAC and 20.9.1.800-899 NMAC have not been conducted satisfactorily, and specify the reasons for such determination.

P. The secretary may require the owner or operator to amend the post-closure care plan if he believes that the present or future implementation of the plan may cause a threat to human health or the environment.

**20.9.1.502 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR MUNICIPAL AND SPECIAL WASTE LANDFILLS, AND MONOFILLS.**

A. Owners and operators of municipal landfills and special waste landfills shall begin closure within 30 days after the landfill receives the final receipt of waste or within 30 days after approval of the closure and post-closure care plan, whichever is later.

(1) Owners and operators shall install a final cover system which consists of the following:

(a) for municipal and special waste landfills (except monofills) that are not lined and which never received more than 7,300 tons of waste (i.e., an average of 20 tons or less per day annual average) during any calendar year, an infiltration layer comprised of a minimum of 18 inches of earthen material having a saturated hydraulic conductivity no greater than  $1 \times 10^{-5}$  cm/sec;

(b) for municipal landfills which exceed the tonnage requirements of Subparagraph (a) of this paragraph and for all special waste landfills (other than monofills), an infiltration layer comprised of a minimum of 18 inches of earthen material having a saturated hydraulic conductivity less than or equal to the saturated hydraulic conductivity of any bottom liner system or natural subsoils present, or a saturated hydraulic conductivity no greater than  $1 \times 10^{-5}$  cm/sec., whichever provides for less infiltration;

(c) a layer for minimizing erosion consisting of a minimum of 6 inches of earthen material that is capable of sustaining native plant growth;

(d) any necessary gas vents provided they are sealed to assure no water infiltration;

(e) finished grades over filled areas which shall not exceed 25 percent (four feet horizontal to one foot vertical), or be less than 5 percent for new landfills and lateral expansions permitted for construction, operation, and closure after the effective date of these regulations or 2 percent for all other landfills;

(f) run-off controls designed for a peak discharge of a 24-hour, 25-year storm; and

(g) cover material compacted to no less than 75 percent and no more than 85 percent Standard Proctor Density unless otherwise approved in the permit, closure plan or by specific approval;

(h) for closure of a cell containing only regulated asbestos waste or scrap tires, the owner or operator shall cover with 30 inches of compacted native soils and 6 inches topsoil on top of the 30-inch cover, to provide a 36-inch final cover to the original grade and implement measures where necessary to control erosion and rodent intrusion.

(2) The secretary may permit an alternative final cover design that includes:

(a) an infiltration layer that achieves an equivalent reduction in infiltration as specified in Subparagraph (a) or (b) of Paragraph (1) of this subsection, as applicable; and

(b) an erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in Subparagraph (c) of Paragraph (1) of this subsection;

(c) for landfills that stopped accepting waste prior to the effective date of this part, finished grades different from those specified in Subparagraph (e) of Paragraph (1) of this subsection, provided a demonstration is made that the alternate grades will prevent erosion and will provide equivalent reduction in infiltration; and

(d) for landfills accepting waste after the effective date of this part and lateral expansions permitted after the effective date of this part, finished grades different than those specified in Subparagraph (e) of Paragraph (1) of this subsection, provided no grade is greater than 33 percent and a demonstration is made in the closure plan or permit or modification application that the alternate grades will prevent erosion and will provide equivalent reduction in infiltration.

(3) The written closure plan, at a minimum, shall include the following information:

(a) a schedule for completion of all activities necessary to meet the closure criteria specified in this part;

(b) a report that includes:

(i) a description of the local geology;

(ii) a description of the hydrogeology of the landfill site, including maps and cross-sections illustrating subsurface features;

(iii) well locations, depths to ground water, and, if available, ground water quality, flow direction and gradient shown on a topographic map; and

(iv) a description of the landfill, including: a) the date operations commenced and the date of final receipt of waste; b) the types of waste accepted at the landfill; c) the total volume of waste disposed; d) a topographic map that shows the size and dimensions of fill areas; e) a topographic map that shows structures, drainages, and water wells in the area of the landfill; and f) a topographic map that shows methane monitoring points and methane concentrations along the landfill property boundary and within structures located on landfill property;

(c) a description of the final cover and its placement, including:

(i) thickness and saturated hydraulic conductivity;

(ii) source of the cover material;

(iii) a construction quality assurance/construction quality control plan for placement of the final cover that meets the requirements of 20.9.1.307 NMAC;

(iv) equipment that will be utilized to apply the final cover and ensure it is adequately compacted to obtain the appropriate Proctor Density; and

(v) a topographic map that shows final contours that meet the requirements of Subparagraph (e) of Paragraph (1) of this subsection;

(d) a vegetation plan, including:

(i) the seeding method to obtain proper growth density; and

(ii) species of vegetation to be planted, including grasses or local seed mix as recommended for the area by the Natural Resources Conservation Service for permanent soil stabilization and to minimize wind and water erosion; and

(e) a plan to prevent unauthorized access by the public and entry by large animals to the landfill through the use of fences, gates, locks, or other means;

(f) a plan to remove structures, unless otherwise approved by the secretary;

(g) a description of the signs indicating that the site is a closed landfill and no dumping is permitted. All signs shall include the name and telephone number of the landfill owner;

(h) a post-closure care plan, including:

(i) a monitoring and repair plan that describes methods to be used to ensure cover integrity, including but not limited to settlement, ponding, water erosion, wind erosion, and inadequate drainage, to ensure the final cover meets the slope requirements of 20.9.1.502 NMAC, and to maintain adequate vegetation during the post-closure period;

(ii) a methane monitoring plan in compliance with Subsections B and C of 20.9.1.402;

(iii) a ground water monitoring plan; and

(iv) a leachate collection system plan, if applicable.

(4) prior to beginning closure of a landfill, the owner or operator shall notify the secretary that a notice of the intent to close the landfill has been placed in the operating record;

(5) the owner or operator shall complete closure activities in accordance with the closure plan within 180 days following the beginning of closure, unless otherwise approved in the closure plan. Extensions of the closure period may be granted by the secretary if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and has taken and will continue to take all steps necessary to prevent threats to public health, welfare and the environment;

(6) upon completion of closure, a detailed description of the location of areas of waste disposal at the facility, including a plat signed by a registered surveyor, shall be filed with the appropriate county land recording agent. The description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the secretary. The description shall perpetually notify any potential purchaser of the property that:

- (a) the land has been used as a landfill facility;
- (b) its use is restricted as described in the post-closure care plan; and

(7) the owner or operator may request permission from the secretary to file a revised description if all wastes are removed from the facility.  
[1-30-92; 8-17-94]

B. Landfill owners or operators shall submit reports of monitoring performance and data to the secretary within 45 days after the end of each calendar year.

C. The post-closure care period for a landfill shall be thirty years.

D. The owner or operator may amend the post-closure care plan, provided the amendment is not a permit modification, by submitting a request to the secretary at least thirty days prior to the proposed change. No proposed amendment shall be effective unless first approved in writing by the secretary.

E. The secretary may require the owner or operator to modify or amend the post-closure care plan if the secretary determines that the present or future implementation of the plan may cause a threat to public health, welfare and or the environment.

**20.9.1.503 CONSTRUCTION AND DEMOLITION LANDFILL CLOSURE AND POST-CLOSURE REQUIREMENTS. [8-17-94]**

A. Owners and operators of construction and demolition landfills shall comply with the following closure requirements.

(1) A final cover of not less than 24 inches of approved material shall be placed over the entire surface of each portion of the final lift starting no later than 30 days and completed within 60 days after the known final receipt of waste. The final cover shall consist of a compacted layer of not less than 18 inches of approved material and a layer for minimizing erosion of not less than 6 inches of approved material that is capable of sustaining native plant growth.

(2) The finished grades over filled areas shall not exceed 25 percent (four feet horizontal to one foot vertical), or be less than 5 percent for landfills permitted after the effective date of these regulations or 2 percent for all other landfills. The slope shall be sufficient to prevent the ponding of water and the erosion of the cover material. For existing landfills, the secretary may approve slopes which exceed 25 percent grade provided the owner demonstrates there is no practicable alternative and the steeper slopes can be permanently stabilized to prevent erosion.

(3) The owner or operator shall provide a plan showing the final contours and vegetation in relationship to the surrounding land, the description of final use of the land with drawings as appropriate, and a description of vegetation to provide permanent soil stabilization.

(4) Upon completion of closure, a detailed description of the location of areas of waste disposal at the site, including a plat signed by a registered surveyor, shall be filed with the appropriate county land recording agency. The description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the secretary. The description shall perpetually notify any potential purchaser of the property that:

- (a) the land has been used as a landfill; and
- (b) its use is restricted as described in the post-closure care plan.

(5) The owner or operator may request permission from the secretary to file a revised description if all wastes are removed from the facility.

B. Post-closure care for construction and demolition landfills shall be for a period of 30 years and includes control of erosion, maintenance of cover, top slopes, side slopes, drainage, and vegetation. The owner or operator of a construction and demolition landfill shall conduct post-closure care inspections:

- (1) at least once a year for the first three years; and
- (2) at least once every three years, thereafter.

[8-17-94]

**20.9.1.504 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR COMPOSTING FACILITIES THAT ACCEPT SOLID WASTE.**

A. Within 30 days of closure, composting facility owners or operators shall:

- (1) remove all windrows and in-vessel compost material on the compost facility's real property;
- (2) remove or vegetate compacted compost material that may be left on the land;
- (3) drain ponds or leachate collection systems, back fill, and assure removed contents are properly disposed;
- (4) provide cover if necessary; and
- (5) if required in the approved closure plan, remove buildings, fences, roads, and equipment, clean up the site, and conduct tests on the soils for contamination.

B. Composting facility owners or operators shall:

- (1) maintain ground water monitoring, if required to detect possible migration of contaminants; and
- (2) inspect and maintain any cover material.

C. Post-closure inspection and maintenance shall not be required if the facility owner or operator demonstrates that all requirements of closure have been met and there is no evidence of contamination.

**20.9.1.505 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR OTHER SOLID WASTE FACILITIES.**

A. Owners or operators of solid waste facilities other than landfills shall comply with the following requirements:

- (1) cleanup of the area;
- (2) dismantling and removal of any improvements related to solid waste handling or disposal, if required in the approved closure plan, such as:
  - (a) removal of buildings;
  - (b) removal of fences;
  - (c) removal of roads; and

- (d) removal of equipment;
  - (3) testing of soils and ground water for contamination, if required in the approved closure plan; and
  - (4) all other conditions of the permit.
- [1-30-92; 8-17-94]

B. Post-closure inspection and maintenance may be waived upon written approval of the secretary, if the facility owner or operator demonstrates to the department that all requirements of closure have been met and there is no evidence of contamination.

**20.9.1.506 - 20.9.1.599 [RESERVED.]**

**20.9.1.600 OPERATOR CERTIFICATION.** 20.9.1.601 NMAC through 20.9.1.699 NMAC applies to all certified operators of solid waste facilities and owners and operators of landfills and transformation facilities.

**20.9.1.601 GENERAL PROVISIONS. [1-30-92]**

A. Owners and operators of landfills and transformation facilities shall require the managers of those facilities to attend, at least once every three years, a training program offered by the department or department certified training program on the subject of environmental justice.

B. To become a certified operator an individual shall:

(1) complete a certification training course offered by the department or its designated agent, or equivalent training approved by the department;

(2) pass an examination approved by the department.;

(3) have at least one year of experience in the operation of a facility of the same type as that for which certification is sought;

[1-30-92; 8-17-94]

(4) file an application with the department on a form provided by the department

(5) meet the requirements of the Parental Responsibility Act, NMSA 1978, §§ 40-5A-1 to 40-5A-13 (1998 Cum. Supp.);

(6) for operators of municipal waste incinerators, also meet the training requirements of New Mexico Municipal Waste Combustion Regulations, 20.2.62 NMAC; and

(7) for operators of biomedical waste incinerators, also meet the training requirements of New Mexico Biomedical Waste Combustion Regulations, 20.2.63 NMAC.

[1-30-92; 8-17-94]

C. Operator certification is valid for three years from date of issuance.

D. The department may certify an operator with alternate training. Alternate training shall be equivalent to or more extensive than the department's course work, and shall be approved by the department. It shall be the applicant's responsibility to submit any documentation the department may require to evaluate the equivalency of alternate training.

E. A person holding certification in a particular facility type may operate any facility of that type.

**20.9.1.602 OPERATOR CERTIFICATION TRAINING COURSES.**

A. All operator certification training courses, with the exception of the transformation facility operator training course, will be offered by the department or other approved authority at least once every twelve months.

B. All operator certification training courses shall, at a minimum, address:

- (1) composition of wastes;
- (2) facility design;
- (3) facility staffing and operations;
- (4) transportation requirements;
- (5) traffic flow control;
- (6) environmental monitoring;
- (7) handling of special wastes;
- (8) identification of unauthorized wastes, including hot waste, hazardous wastes and materials, and PCB's;
- (9) environmental health and safety;
- (10) waste diversion;
- (11) applicable laws and regulations;
- (12) the permitting process;
- (13) documentation, including manifests, operating records, and reports; and
- (14) pollution prevention;
- (15) environmental justice.

C. In addition to the requirements of Subsection B of this section, the landfill operator training course shall address:

- (1) interpretation and use of engineering plans;
- (2) surveying techniques;
- (3) waste decomposition ;
- (4) basic geology and hydrology.
- (5) landfill gas generation and control;
- (6) leachate generation and control;
- (7) landfill cover systems;
- (8) closure and post-closure care;
- (9) vector control; and
- (10) odor control.

D. In addition to the requirements of Subsection B of this section, the recycling facility operator training course shall address:

- (1) equipment operation and technology;
- (2) materials flow;
- (3) quality control; and
- (4) distribution and marketing;.

E. In addition to the requirements of Subsection B of this section, the transformation facility operator training course shall address:

- (1) theory of combustion;
- (2) basic chemistry;
- (3) basic thermodynamics;

- (4) equipment operation and technology;
- (5) air pollution control technology;
- (6) ash handling and disposal;
- (7) control room operation;
- (8) continuous emissions monitors and their calibration;
- (9) efficacy testing;
- (10) waste decomposition; and
- (11) waste flow .

F. In addition to the requirements of Subsection B of this section, the composting facility operator training course shall address:

- (1) basic microbiology;
- (2) basic chemistry;
- (3) waste decomposition;
- (4) compost end use, distribution and marketing;
- (5) composting equipment operations, care and maintenance;
- (6) composting processing methods and techniques;
- (7) quality control;
- (8) yard waste and food waste collection systems;
- (9) sludge handling;
- (10) odor control; and
- (11) vector control.

G. In addition to the requirements of Subsection B of this section, the transfer station operator training course shall address:

- (1) controls and operations;
- (2) equipment operation and technology;
- (3) waste flow;
- (4) vehicle operations and safety;
- (5) large waste item handling;
- (6) odor control; and
- (7) vector control.

**20.9.1.603 EXAMINATION.**

A. A written examination shall be administered at the conclusion of each training course. Certification requires a score of at least 70 percent on the examination.

B. Results of the examination shall be forwarded to the trainee within 60 days after the date of the examination. A certificate shall be forwarded to the trainee within 60 days after the trainee provides documentation that he has met all the applicable requirements of Subsection B of 20.9.1.601 NMAC.

**20.9.1.604 RECIPROCITY.** The department may issue certificates without examination to applicants who hold valid certificates or licenses issued by any state, territory, or foreign jurisdiction, provided, the department determines the requirements for such certification are equivalent to those set forth in Subsection B of 20.9.1.601-603 NMAC.

**20.9.1.605 RECERTIFICATION.** [1-30-92]

A. To maintain certification, certified operators shall apply for recertification at least 30 days prior to the expiration date of their certification.

B. Recertification shall be obtained by making application to the department and successfully completing:

- (1) an operator certification training course offered by the department or its designated agent;
- (2) an alternate training course which has been approved by the department; or
- (3) 24 hours of course work which has been approved by the department.

**20.9.1.606 SUSPENSION OR REVOCATION OF CERTIFICATION.**

A. An operator's certification may be suspended or revoked by the secretary for:

- (1) failure to comply with the terms or conditions of a solid waste facility permit or a facility registration;
- (2) fraud, deceit or submission of inaccurate qualification information;
- (3) violation of the Act or this part by the certified operator; or
- (4) failure to comply with the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13 (1998 Cum. Supp.).

B. Suspension and revocation proceedings shall be conducted in accordance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to 61-1-33; 20.1.5 NMAC and if applicable, 20.1.7 NMAC.

**20.9.1.607 - 20.9.1.699 [RESERVED.]**

**20.9.1.700 SPECIAL WASTE REQUIREMENTS**

**20.9.1.701 GENERAL.** The generator of a special waste shall assure that the special waste is disposed of in a solid waste facility permitted to accept the special waste or treated at a permitted facility prior to disposal to render it a non-special waste.

**20.9.1.702 RESTRICTIONS. [1-30-92]**

A. No solid waste facility shall accept special waste unless the facility owner or operator has been issued a permit to accept that type of special waste for disposal, transfer, processing, or transformation. [1-30-92]

B. No person may incinerate infectious waste except in an infectious waste incinerator permitted under this Part.

C. A haulers of special waste shall not deliver special waste to any place or person except to a facility that has been issued a permit to accept that type of special waste for disposal, transfer, processing or transformation.

**20.9.1.703 GENERAL REQUIREMENTS FOR SPECIAL WASTE.**

A. Any person who stores a special waste shall assure that the special waste is stored at designated special waste storage areas meeting the requirements of 20.9.1.700-799 NMAC.

B. No person who stores special waste shall store the waste for longer than 90 days from the date the waste is placed in storage awaiting transportation, processing, or final disposal, unless otherwise approved by the department, except no person other than the generator shall store infectious waste for over 7 days without refrigeration at or below 45 degrees Fahrenheit.

C. A generator of special waste shall assure that all containers of special waste when deemed full and placed in storage are clearly labeled or marked, indicating the name and address of the generator, contents, date placed in storage and potential health, safety, and environmental hazards associated with the waste.

D. A generator of special waste shall assure that all containers of special waste that are prepared for transportation are clearly labeled or marked, indicating the name and address of the generator, contents, and potential health, safety, and environmental hazards associated with the waste.

E. A hauler of special waste shall assure that all containers of special waste are clearly labeled or marked prior to transportation, indicating the name and address of the generator, contents, date transported, and potential health, safety, and environmental hazards associated with the waste.

F. Any generator or hauler of special waste shall assure that a manifest in accordance with 20.9.1.712 NMAC accompanies each load of special waste originating in or to be disposed in New Mexico;

G. A hauler of special waste shall carry an appropriate clean-up kit in each vehicle used for hauling.

**20.9.1.704 REQUIRED ANALYSIS. [1-30-92]**

A. The generator of a special waste shall document the physical and chemical characteristics of all special wastes for storage, transportation or disposal, by means of:

(1) records of the results of analyses performed in accordance with this section as applicable; or

(2) detailed descriptions of the generator's knowledge of specific wastes, including process, source and chemical and physical properties;

(3) or both.

B. All laboratory analyses shall be performed by a laboratory that follows U.S. EPA quality assurance and quality control procedures in accordance with U.S. EPA approved analytical methods or such other methods acceptable to the department.

C. Representative sample(s) shall be analyzed in conformance with the following parameters as appropriate:

(1) ignitability characteristic as defined in 40 CFR Part 261;

(2) corrosivity characteristic as defined in 40 CFR Part 261;

(3) reactivity characteristic as defined in 40 CFR Part 261;

(4) toxicity characteristic as defined by U.S. EPA Test Method 1311: Toxicity Characteristic Leaching Procedure (TCLP);

(5) Paint Filter Liquids Test as defined by U.S. EPA Test Method 9095;

(6) additional parameters as identified by the department;

(7) RCRA Subtitle C listed wastes as defined in 40 CFR Part 261; and

(8) Toxic Substance Control Act (TSCA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), or other applicable statutes.

[1-30-92; 8-17-94; 11-30-95]

**20.9.1.705 ASBESTOS WASTE. [1-30-92]**

A. The generator of asbestos waste shall prevent public access to asbestos wastes at the point of generation. Haulers of asbestos waste shall prevent public access to asbestos waste during transportation.

B. Generators of asbestos waste shall determine whether the asbestos waste is regulated asbestos waste. If it is not regulated asbestos waste, and it is to be disposed as non-regulated asbestos waste, the generator shall assure that the asbestos waste is handled in a manner to prevent the asbestos waste from becoming regulated asbestos waste. The handling of non-regulated asbestos waste shall include measures to assure that any Category I non-friable asbestos containing material is not subjected to sanding, grinding, cutting or abrading and that any Category II non-friable asbestos containing material is not subjected to forces expected to break, crumble, pulverize or reduce the material to powder during the course of excavation, renovation, demolition, or storage, and that it is disposed at a permitted landfill. If the waste is regulated asbestos waste it shall be disposed at a landfill permitted to accept regulated asbestos waste and shall be handled accordingly.

C. If non-regulated asbestos waste is to be disposed as non-regulated asbestos waste, the hauler of non-regulated asbestos waste shall handle the waste in a manner to prevent the asbestos waste from becoming regulated asbestos waste. The handling of non-regulated asbestos waste by a hauler shall include measures to assure that any Category I non-friable asbestos containing material is not subjected to abrading and that any Category II non-friable asbestos containing material is not subjected to forces expected to break, crumble, pulverize or reduce the material to powder during the course of storage, transportation, or while exposed during disposal operations. The hauler shall notify the landfill operator that the load contains non-regulated asbestos waste that must be disposed of in a manner to prevent breakage and release of fibers while exposed during disposal operations.

D. A landfill that accepts non-regulated asbestos waste shall assure that the asbestos containing material is not broken, abraded, crumbled, pulverized or reduced to powder while exposed during disposal operations. The non-regulated asbestos waste shall be covered with at least 6 inches of non-waste containing material prior to compaction.

E. The generator of regulated asbestos waste shall properly wet and containerize the waste. No hauler shall accept or transport regulated asbestos waste unless the waste has been properly wetted and containerized.

(1) Regulated asbestos waste is properly wetted when its moisture content prevents fiber release.

(2) Regulated asbestos waste is properly containerized when it is placed in a plastic bag of 6-mil or thicker, sealed in such a way to be leak-proof, and the amount of void space or air in the bag is minimized. Asbestos waste slurries shall be packaged in leak-proof drums if they are too heavy for the plastic bag containers. Regulated asbestos waste may also be containerized by double bagging, using plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(a) Pipes or other facility components that are removed as sections without first removing the asbestos shall be wrapped in a minimum of 6-mil plastic sufficient to prevent asbestos fibers from escaping.

(b) The hauler shall ensure that regulated asbestos waste is properly contained in a manner to prevent asbestos fibers from escaping and with appropriate labels, and that the outsides of the containers are not contaminated with asbestos debris adhering to the containers. The transporter shall not accept nor transport regulated asbestos waste if there is a reason to believe that the condition of the asbestos waste may allow fiber release.

(3) The hauler shall ensure that the regulated asbestos waste containers are loaded into the transport vehicle in a manner which prevents the breaking of the containers. The hauler shall ensure that the asbestos waste containers are transferred at the disposal site in such a manner to prevent fiber release.

(a) If the hauler discovers that the regulated asbestos waste is not properly containerized in conformance with Paragraph (2) of this subsection, the hauler shall immediately clean up the contaminated area and

repair or reseal the container by appropriate methods. The department shall be notified of any release within 24 hours. The transporter shall ensure that all containers in his possession are of adequate design and condition to prevent the release of fibers during transport.

(b) Vehicles used for transport of containerized regulated asbestos waste shall have an enclosed carrying compartment or utilize a canvas or plastic lined covering sufficient to contain the transported waste, prevent damage to containers, and prevent fiber release. All surfaces of vehicles and other asbestos handling equipment and facilities shall be maintained free from the accumulation of dusts and waste containing asbestos and shall have a smooth, non-absorbent finish. No vehicle which uses compactors to reduce waste volume may be used to transport asbestos waste. Vacuum trucks used to transport waste slurry shall be inspected to ensure that liquid is not leaking from the truck.

(c) The hauler of the regulated asbestos waste shall notify the landfill operator that the load contains regulated asbestos waste.

F. All regulated asbestos containers, to include individually wrapped facility components or pipes, shall have a warning label specified by the U.S. EPA or the Occupational Safety and Health Administration (OSHA). Labels shall be printed in both English and Spanish.

G. The operator of a landfill permitted to accept regulated asbestos waste shall:

(1) inspect the loads at the time of disposal at the landfill to verify that the regulated asbestos waste is properly contained and labeled;

(2) if the wastes are not properly containerized, and the landfill operator accepts the load, thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste containing material which prevents fiber release prior to compacting the waste in the landfill;

(3) prepare a separate excavation to receive only regulated asbestos wastes. The excavation shall be as narrow as possible while complying with all Occupational Safety and Health Administration (OSHA) regulations and standards;

(4) align the excavation perpendicular to the prevailing winds;

(5) off-load asbestos containers within the excavation with sufficient care to avoid breaking the containers;

(6) completely cover the containerized waste within 18 hours with a minimum of 6 inches of non-waste containing material;

(7) completely cover improperly containerized regulated asbestos waste with 6 inches of non-waste containing material immediately; and

(8) not compact the regulated asbestos waste until it is completely covered with 6 inches of non-waste containing material.

H. If, at any time during the generation or transportation of non-regulated asbestos waste the waste material is subjected to handling that renders it to be regulated asbestos waste, the generator or hauler shall immediately begin handling the regulated asbestos waste according the requirements of this part, and shall dispose of the regulated asbestos waste in a landfill or monofill permitted to accept such waste.

I. When closing a cell containing regulated asbestos waste, the landfill operator shall:

(1) cover with an additional 30 inches of compacted non-waste containing material to provide a 36-inch final cover to the original grade; and

(2) implement measures as necessary to control erosion and rodent intrusion.

J. The operator of a landfill that accepts regulated asbestos shall provide barriers adequate to control public access. At a minimum, the owner or operator shall:

(1) limit access to the regulated asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to deter access by the general public; and

(2) place warning signs at the entrance and at intervals no greater than 100 feet along the perimeter of the sections where regulated asbestos waste is deposited. The sign shall read as follows:

ASBESTOS WASTE DISPOSAL SITE  
DO NOT CREATE DUST  
BREATHING ASBESTOS IS HAZARDOUS  
TO YOUR HEALTH

The signs shall be posted in such a manner and location that a person can easily read the legend and conform to the requirements of 20 inches by 14 inches upright format signs specified in 29 CFR 1910.145(d)(4) (or equivalent regulation adopted by the board under the Occupational Health and Safety Act). Spacing between any two lines shall be at least equal to the height of the upper of the two lines; and

(3) have at least one employee who has received at least 32 hours of course work in a U.S. EPA certified training course which deals with the identification, hazards and management of asbestos wastes. An employee with this training shall be present at all times when asbestos wastes are being disposed.

#### **20.9.1.706 INFECTIOUS WASTE.**

A. This section applies:

(1) without regard to the quantity of infectious waste generated, to any generator of infectious waste including, but not limited to:

- (a) general acute care hospitals;
- (b) skilled nursing facility or convalescent hospitals;
- (c) intermediate care facilities;
- (d) in-patient care facilities for the developmentally disabled;
- (e) dialysis clinics;
- (f) free clinics;
- (g) community clinics;
- (h) employee clinics;
- (i) health maintenance organizations;
- (j) home health agencies;
- (k) surgical clinics;
- (l) urgent care clinics;
- (m) acute psychiatric hospitals;
- (n) blood/plasma centers;
- (o) laboratories;
- (p) medical buildings;
- (q) physicians offices;
- (r) veterinarians;
- (s) dental offices;

- (t) acupuncturists;
- (u) funeral homes;
- (v) eye clinics; and
- (w) tattoo parlors and body-piercing establishments; and

(2) to all infectious waste storage areas, processing, transformation, transfer and disposal facilities, other than sewage treatment systems that provide secondary treatment of waste..  
[1-30-92]

B. All material that has been rendered non-infectious is not subject to the handling requirements of this Section, provided:

(1) if it is an otherwise regulated, hazardous, special, or radioactive waste, it shall be handled according to regulations applicable to that type of waste;

(2) any person that processes or transforms infectious waste shall certify in writing on at least an annual basis, or upon any change that could affect the efficacy of the treatment that the waste has been rendered noninfectious by sterilization, incineration or another method approved by the secretary; a certification that the waste has been rendered non-infectious shall be provided to the generator, transporter, and disposal facility; the generator, processing or transformation facility, and disposal facility shall maintain copies of certifications for a period of three years and the records shall be made available to the department upon request; and

(3) the operator of the disposal facility applies daily cover as required in 20.9.1.402 NMAC prior to any compaction of the sharps.

C. The following storage and containment requirements apply to all infectious waste:

(1) Containment shall be in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects and rodents, and minimizes exposure to the public.

(2) Infectious waste shall be segregated by separate containment from other waste at the point of origin.

(3) Except for sharps, infectious waste shall be contained in plastic bags inside rigid containers. The bags shall meet the testing requirements specified by 40 CFR 173.197. All bags used for containment purposes shall be red or orange and clearly identified as specified in 29 CFR 1910.145(f). The bags shall be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage, handling or transport.

(4) Sharps shall be contained for storage, transportation, transfer, processing, transformation, and disposal in leak-proof, rigid, puncture-resistant containers which are manufactured for the purpose of sharps containment and are taped closed or tightly lidded to preclude loss of contents.

(5) Rigid containers shall be labeled "biomedical waste", or otherwise conspicuously labeled as holding infectious waste, or placed in disposable bags used for other infectious waste. Rigid containers shall meet or exceed the requirements of 49 CFR 173.197 including that the containers be:

- (a) rigid;
- (b) leak resistant;
- (c) impervious to moisture;
- (d) of sufficient strength to prevent tearing or bursting under normal conditions of use;
- (e) sealed to prevent leakage during transport; and
- (f) puncture resistant for sharps and sharps with residual fluids.

(6) If other waste is placed in the same container as regulated infectious waste, then the generator shall package, label and mark the container and its entire contents as infectious waste.

(7) Rigid infectious waste containers may be reused for infectious or non-infectious waste if they are thoroughly washed and decontaminated each time they are emptied or the surfaces of the containers have been completely protected from contamination by disposable, unpunctured or undamaged liners, bags, or other devices that are removed with the infectious waste, and the surface of the containers have not been damaged or punctured.

(8) Storage and containment areas shall protect infectious waste from the elements, be ventilated to the outdoors (unless refrigerated), provide refrigeration as necessary, be only accessible to authorized persons, and be marked with prominent warning signs on, or adjacent to, the exterior doors or gates. The warning signs shall be easily read during daylight from a distance of 25 feet.

(9) Generators of medical waste, shall place sufficient absorbent material inside the rigid container or liner of the rigid container sufficient to absorb the entire amount of liquid present in the event of an unintentional release of contents, as specified in 49 CFR 173.197.

(10) Compactors, grinders or similar devices shall not be used to reduce the volume of infectious waste before the waste has been rendered non-infectious unless prior approval has been obtained from the department.

D. All generators of infectious waste shall dispose of the infectious waste at a facility permitted to process, store or dispose of infectious waste.

E. All infectious waste generation, processing, transformation, transfer, storage and disposal facilities subject to this section shall comply with the following operational requirements:

(1) Every person who generates, transports, stores, processes, or disposes of infectious waste shall prepare and maintain on file a management plan for the waste that identifies the type of waste the person generates or handles, the segregation, packaging, labeling, collection, storage, method of storage, and transportation procedures to be implemented, the processing, transformation or disposal methods that will be used, the transporter and disposal facility that will be used, and the person responsible for the management of the infectious waste.

(2) All infectious waste management facilities may only accept infectious waste that is accompanied by a manifest that contains the information required by 20.9.1.712 NMAC.

(3) Report to the secretary any delivery of unauthorized waste, contamination of any person, or other emergencies immediately upon recognition.

(4) Human fetal remains, as defined by the state medical investigator, when measured to be 500 grams or greater, shall be disposed by incineration or interment.

(5) Infectious waste consisting of recognizable human anatomical remains shall be disposed by incineration or interment, unless such remains are subject to different treatment or disposal standards due to contamination by a hazardous or radioactive substance. Recognizable human anatomical remains may be released to the patient, proper governmental authority, or designated family member for interment or incineration, as long as all forensic needs of the facility have been met and the release is not in violation of any other law.

[1-30-92; 11-30-95]

F. Processing, transformation and disposal of infectious waste shall be by one of the following methods:

(1) incineration in a controlled air multi-chambered incinerator which provides complete combustion of the waste to carbonized or mineralized ash:

NMAC;

(a) ash from the incinerator shall be sampled in accordance with Subsection B of 20.9.1.704

(b) the sample shall be analyzed by the U.S. EPA Test Method 1311: Toxic Characteristics Leaching Procedure (TCLP) to determine if it is a hazardous waste. If hazardous, it shall be managed by applicable state regulations;

(c) the retention times and temperatures for each chamber shall be continuously measured and recorded, or other equivalent tests approved by the department to determine if it is still infectious shall be performed; if infectious, it shall be re-incinerated in accordance with this section; and

(d) charge rates shall be maintained and recorded.

(2) sterilization by heating in a steam sterilizer so as to render the waste non-infectious:

(a) the operator shall have available and shall certify in writing that she or he understands written operating procedures for each steam sterilizer including time, temperature, pressure, type of waste, type of container(s), closure on container(s), pattern of loading, water content, and maximum load quantity;

(b) infectious waste shall be subjected to sufficient temperature, pressure and time to kill *Geobacillus stearothermophilus* spores or induce a complete color change in an approved steam sterilization integrator when either indicator is located in the center of the waste load being decontaminated;

(c) unless a steam sterilizer is equipped to continuously monitor and generate a printed paper record of time, temperature and pressure during the entire length of each sterilization cycle, a chemical indicator shall be attached to each package of infectious waste that will visually demonstrate at the end of the autoclave cycle that each package was exposed to a temperature of at least 250 degrees Fahrenheit or 121 degrees Celsius in the presence of steam under pressure was reached during the process; the original printed record generated by the autoclave must be maintained for three years;

(d) each sterilization unit shall be evaluated for effectiveness with spores of *Geobacillus stearothermophilus* or approved steam sterilization integrator at least once each 40 hours of operation; and

(e) a written log shall be maintained for each sterilization unit which contains;

- (i) date, time and load number for each load;
- (ii) amount per load;
- (iii) duration of the cycle; and
- (iv) the operator's name.

(3) discharge to a sewage treatment system that provides secondary treatment of waste, if the waste is liquid or semi-solid and approved in writing by the operator of the sewage treatment system;

(4) other products or methods may be approved by order of the secretary which provide:

(a) a 6Log10 reduction in:

- (i) vegetative bacteria *Staphylococcus aureus* or *Pseudomonas aeruginosa*;
- (ii) fungi *Penicillium chrysogenum*, *Aspergillus niger*, or *Candida albicans*;
- (iii) parasites *Cryptosporidium* spp. oocysts or *Giardia* spp. cysts;
- (iv) mycobacteria *Mycobacterium phlei*, *Mycobacterium terrae*, or *Mycobacterium bovis*

(BCG); and

(v) Bacteriophage;

- and
- (b) a 4Log10 reduction in bacterial spores of *Geobacillus stearothermophilus* or *Bacillus subtilis*;
  - (c) verification that the species used in Subparagraphs (a) and (b) of Paragraph (4) of this subsection are the species indicated and that the strain used is appropriate for the proposed method.

G. The following requirements and condition shall apply to any person seeking approval from the secretary for a treatment method under Paragraph 4 of Subsection F of this section:

- (1) the person shall provide any information requested by the secretary within the time period specified by the secretary;
- (2) the request for approval shall be approved, approved with terms and conditions, or denied by the secretary;
- (3) within 45 days from the end of each calendar year, manufacturers of on-site treatment or processing products approved by the secretary shall submit an annual report to the department that includes:
  - (i) current manufacturer's company name, contact names, addresses, and telephone numbers;
  - (ii) a current list of product consumers or clients in New Mexico with contact names, addresses, and telephone numbers;
  - (iii) proof of current registration with the U.S. EPA, if required under the Federal Insecticide, Fungicide, and Rodenticide Act;
  - (iv) a current Material Safety Data Sheet for any materials used in the treatment method;
  - (v) a current copy of the manufacturer's instructions as printed on the product and a copy of the most recent operator's manual, if not previously submitted; and
  - (vi) proof of current registration with the New Mexico Department of Agriculture, if required under the New Mexico Pesticide Control Act;
- (4) the secretary may withdraw the approval of an on-site processing product if the product fails to properly treat infectious waste as claimed, or if the on-site processing product or method is altered in any manner. To withdraw the approval, the secretary shall issue an order withdrawing the approval. The interested person may appeal the secretary's order by filing a request for hearing within 30 days of the date of the secretary's order. The procedures set forth in *Adjudicatory Procedures - Environment Department, 20.1.5 NMAC* shall apply to the appeal.

**20.9.1.707 ASH. [1-30-92]**

A. Transporters of ash shall:

- (1) not accept or transport ash unless it has been treated or is securely covered or containerized to prevent release of fugitive dust;
- (2) cover vehicles to prevent fugitive dust loss during transport; and
- (3) line or seal vehicles in a manner to prevent any leakage of liquids or fugitive dust during transport.

B. The landfill owner or operator that accepts ash shall:

- (1) prepare an excavation to receive non-hazardous ash;
- (2) provide a ground water monitoring system and a leachate collection system unless an adequate demonstration is made to the secretary that such systems are not necessary;
- (3) keep the ash wetted to prevent fugitive emissions prior to covering;
- (4) unload transport vehicles at the bottom of the excavations; and
- (5) completely cover the ash within 24 hours with a minimum of 6 inches of clean non-waste containing material, or other material approved by the secretary. If the ash is containerized, an alternate frequency may be specifically approved.

C. The landfill owner or operator that accepts ash shall provide barriers adequate to control public access and shall:

- (1) limit access to the ash site to no more than two entrances, by:
  - (a) gates that can be locked when left unattended; and
  - (b) fencing adequate to deter access by the general public; or
- (2) when excavations are used at a landfill, isolate such excavations from the rest of the facility in a manner to deter access by the general public.  
[1-30-92; 8-17-94]

D. Ash that is temporarily stored at a generation site awaiting transportation shall be stored in a manner so as to prevent fugitive dust emissions.

**20.9.1.708 PETROLEUM CONTAMINATED SOILS.**

A. The generator of petroleum contaminated soil shall assure that all petroleum contaminated soils to be disposed, processed, composted, or transformed at a solid waste facility shall be tested under the requirements of 20.9.1.704 NMAC.

(1) All soils that are suspected to be contaminated with petroleum products shall be tested for Total Petroleum Hydrocarbons (TPH) and other contaminants as required by the disposal management plan to determine the contaminants of the soil.

(2) The frequency of sampling shall be one representative sample per 100 cubic yards of contaminated soil, unless an alternate frequency is permitted or specifically approved by the secretary upon a demonstration that the contaminated soil is homogeneous.

(3) Copies of the results from the laboratory analyses shall be placed in the operating record.

B. Petroleum contaminated soils containing free liquid shall not be accepted at a solid waste facility. When the soil can pass the Paint Filter Liquids Test, the test results shall be placed in the daily operating record and made available to the secretary upon request.

C. Petroleum contaminated soil may be stored temporarily or remediated at a solid waste facility in a bermed area on an impermeable liner or in a manner that does not contaminate ground water, surface water, or uncontaminated soil above regulatory limits. The method of storage, remediation, and testing shall be described in the disposal management plan. Remediation shall be complete when the following conditions are met in a soil sample:

(1) the sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations is less than 500 mg/Kg, with benzene individually less than 10 mg/Kg; and

(2) the TPH concentration is less than 1,000 mg/Kg.

D. Remediated petroleum contaminated soil may be disposed at a landfill authorized to accept petroleum contaminated soils. Petroleum contaminated soils that have been remediated at the landfill may be removed only if the soil complies with applicable environmental laws. Remediated petroleum contaminated soil may not be removed from the facility for beneficial use as clean fill, as the soil does not constitute clean fill as defined in paragraph (4) of subsection C of 20.9.7.

E. Uncontaminated or remediated soils shall not be mixed with contaminated soils. [8-17-94]

F. The owner or operator shall provide a written report to the department documenting remediation.

G. Permitted facilities not otherwise authorized to accept petroleum contaminated soil for remediation may remediate petroleum contaminated soil generated at the facility, provided the volume of contaminated soil does not exceed 50 cubic yards and the area where the petroleum contaminated soil is remediated is restricted from public access. Remediation shall be complete when the soil meets the standards in 20.5.12.1202 NMAC or other applicable standards.

**20.9.1.709 SLUDGE.**

A. The owner or operator of a landfill may dispose or use sludge as an amendment to intermediate or final cover material provided:

(1) the landfill owner or operator has been issued a permit to dispose of sludge or has received specific approval from the secretary to use sludge as an amendment to intermediate or final cover material, respectively;

(2) the sludge does not exceed the test parameters specified in Subsection D of this section; and

(3) the sludge contains no free liquids as determined by the Paint Filter Liquids Test (U.S. EPA Test Method 9095), unless permitted to do otherwise under 20.9.1.310 NMAC.

B. The owner or operator of a solid waste facility that is authorized to accept sludge shall have an approved disposal management plan that shall, at a minimum:

(1) describe the methods used to:

(a) obtain representative samples of sludge for analysis; and

(b) analyze the sludge for the parameters specified in Subsection D of this section to demonstrate the sludge is non-hazardous and passes the Paint Filter Liquids Test, unless otherwise permitted under 20.9.1.309 NMAC;

(2) identify the laboratory used to analyze the sludge and include a certification that, to the best of the preparer's knowledge and belief, the laboratory follows quality assurance and quality control procedures in accordance with U.S. EPA approved methods;

(3) describe the transport method, indicate transportation routes that will be used by the transport vehicles, and demonstrate that the transport method will prevent leaks and litter;

- (4) describe the anticipated volumes to be transported and total time period for disposal of any sludges;
- (5) describe any plans for continuation of landfill disposal of the sludge, including how often sludge will be tested and transported to the landfill and how long the sludge will be stored at the landfill prior to disposal;
- (6) provide a site map indicating the solid waste facility boundaries, the location of the sludge disposal area, and the routes of the disposal vehicles once they enter the facility; and
- (7) include the portion of the facility's contingency plan a section describing methods for clean-up if an accident should occur during transport or disposal;

C. In addition to the requirements of Subsection A of this section, all owners or operators that dispose of sewage sludge or use sewage sludge as an amendment to cover material at a landfill shall meet the following requirements prior to disposal or use as a cover material amendment:

- (1) obtain at least one representative sample per 100 cubic yards of sludge for analysis of the parameters listed in Subsection D of this section, but an alternate frequency may be permitted or specifically approved by the secretary if a demonstration is made that the sludge is homogeneous; and
- (2) cover the sludge with six inches of clean earthen material or other suitable material at the end of the day in order to be excluded from the 40 CFR Part 503 pathogen reduction criteria;
- (3) restrict the treatment area from public access until the sludge is either placed in a disposal cell and covered or until it meets the requirements of 40 CFR Part 503; and
- (4) ensure that all sewage sludge complies with 40 CFR Part 503, Subpart B before it is used as an amendment to intermediate or final cover.

D. Prior to delivery of sludge to a solid waste facility for disposal, the generator shall test a representative sample for the following parameters to determine if it exceeds the specified limits below:

- (1) No free liquids as determined by Paint Filter Liquids Test (U.S. EPA Test Method 9095), unless exempt in accordance with 20.9.1.310 NMAC;
- (2) Percent solids (no specified limits);
- (3) pH, within the range of 2.0 to 12.5;
- (4) Polychlorinated biphenyls (PCB's), less than 50 mg/Kg; and
- (5) Toxicity Characteristic Leaching Procedure (TCLP) (U.S. EPA Test Method 1311), for the following parameters and maximum allowable concentrations:
  - (a) arsenic, 5.0 mg/L;
  - (b) benzene, 0.5 mg/L;
  - (c) cadmium, 1.0 mg/L;
  - (d) chlordane, 0.03 mg/L;
  - (e) chromium, 5.0 mg/L;
  - (f) 2,4-Dichlorophenoxy-acetic acid, 10.0 mg/L;
  - (g) lead, 5.0 mg/L;
  - (h) lindane, 0.4 mg/L;
  - (i) mercury, 0.2 mg/L;
  - (j) methyl ethyl ketone, 200.0 mg/L; and

(k) toxaphene, 0.5 mg/L.

**20.9.1.710 PACKING HOUSE AND KILLING PLANT OFFAL.** The owner or operator of a solid waste facility that is authorized to accept offal shall have an approved disposal management plans for packing house and killing plant offal ensuring that, prior to disposal at the working face of a landfill, the wastes shall:

- A. pass the Paint Filter Liquids Test (U.S. EPA Test Method 9095);
- B. be mixed with soil, in a separate area of the facility, to a consistency that will support compaction and cover material; and
- C. be covered immediately after disposal.

[1-30-92]

**20.9.1.711 DISPOSAL OF SPECIAL WASTE NOT OTHERWISE SPECIFIED.** Any solid waste facility owner or operator who wishes to be permitted to receive special wastes that do not have specified disposal requirements shall submit a disposal management plan, as specified in Subsection C of 20.9.1.202 NMAC, to the department for approval.

**20.9.1.712 MANIFEST REQUIREMENTS.** [1-30-92]

A. Each generator or his authorized agent shall prepare a manifest to accompany each load of special waste, including:

- (1) the name, address and telephone number of the generator and origin of the special waste;
- (2) the name, address and telephone number of all haulers in the order each will be transporting the waste;
- (3) the name, site address, telephone number and identification number of the solid waste facility to which the waste is to be delivered;
- (4) the type and proper name of waste being shipped;
- (5) the total weight or volume of waste prior to shipment from the generator;
- (6) the type and number of containers in the shipment; and
- (7) any special handling instructions.

B. The generator or his authorized agent shall sign the manifest and obtain the signature of the initial transporter and date of acceptance on the manifest, and shall retain a copy of the manifest. Each hauler shall obtain the signature of the individual who accepts the special waste for storage, further transportation or disposal, retain a copy of the manifest, and provide the original manifest to the next hauler or solid waste facility operator who receives the special waste.

C. The manifest shall accurately reflect the required information and shall be signed and dated by the generator and each hauler of the special waste, and by the solid waste facility owner or operator, acknowledging delivery, weight or volume, and receipt of the special waste. All signatories shall be duly authorized agents of their organizations. The generator shall keep a copy of the originating manifest for three years.

D. Upon discovery of any significant discrepancy including, but not limited to, factual misrepresentation on the manifest, irregularities in transportation, discharges, or any unauthorized action in regard to the shipment,

delivery, or disposal of the solid waste, the person discovering the discrepancy shall notify the department, the generator, hauler, and the solid waste facility operator in writing within 24 hours.

E. Upon Within thirty days of receipt of a special waste shipment at the solid waste facility, the owner or operator shall send a the original signed copy of the manifest to the generator, acknowledging receipt of the shipment. The facility owner or operator shall list any discrepancies on the manifest. Other methods of return of the manifest may be allowed upon specific approval from the secretary.

F. A copy of the manifest shall be retained by each hauler, and solid waste facility operator for their operating records. The generator shall retain for a period of three years both the originating copy and the returned original manifest signed by the solid waste facility owner or operator and all haulers transporting the waste. Haulers shall retain a copy of the manifest for a period of three years.

G. Copies of the manifest shall be retained by the facility owner or operator throughout any post-closure period. [1-30-92; 8-17-94]

**20.9.1.714 - 20.9.1.799 [RESERVED.]**

**20.9.1.800 SUBMISSION AND APPROVAL OF GROUND WATER MONITORING SYSTEM PLAN AND GROUND WATER MONITORING PLAN; CORRECTIVE ACTION: 20.9.1.801 NMAC through 20.9.1.899 NMAC shall apply to all solid waste facilities.**

**20.9.1.801 GROUND WATER MONITORING APPLICABILITY. [8-17-94]**

A. The owner or operator of a municipal or special waste landfill, unless it is a category 1 landfill, is waived under 20.9.1.111 NMAC, or is suspended under Subsection C of this section, shall submit, obtain approval of, and implement a ground water monitoring system plan and a ground water monitoring plan in accordance with the following:

(1) owners or operators of category 4 landfills and landfills seeking approval of lateral expansions shall obtain approval of a ground water monitoring system plan and ground water monitoring plan in compliance with 20.9.1.801-899 NMAC prior to placement of waste in the landfill or lateral expansion, as part of their permit or permit modification. Owners or operators of category 4 landfills and landfills making lateral expansions shall implement and comply with their system plan and ground water monitoring plan as approved;

(2) owners or operators of category 3 landfills or landfills that closed on or after October 9, 1993 shall submit and obtain approval of a ground water monitoring system plan and ground water monitoring plan in compliance with 20.9.1.802-808 NMAC as part of their permit or closure or post closure care plan, and shall implement and comply with the approved system plan and monitoring plan; and

(3) owners or operators of category 2 landfills shall comply with Sections 20.9.1.802-899 NMAC, with the exception that the ground water sampling parameters may be limited to those approved in the closure and post-closure care plan.

(4) the secretary may require monitoring for additional parameters as necessary to protect the public health, welfare and the environment.

B. Construction and demolition landfills, scrap tire monofills, and asbestos monofills are not required to comply with the ground water monitoring requirements of 20.9.1.802 to 899 unless required in the permit, or if the Secretary orders groundwater monitoring, based on a finding that there is a potential for constituents to migrate from the facility to the uppermost aquifer. If contamination is detected at a construction and demolition landfill, scrap tire monofill or asbestos monofill, the requirements of 20.9.1.802-899 NMAC shall thereafter apply. [8-17-94; 11-30-95]

C. The secretary may suspend part or all of the ground water monitoring requirements of 20.9.1.802 - 806 NMAC if the owner or operator demonstrates that there is no potential for migration of constituents referenced in 20.9.1.813 from the landfill to the uppermost aquifer during the active life or post-closure care period of the landfill. This demonstration shall be certified by a qualified ground water scientist and presented in the permit application or a permit modification or petition (from non-permitted landfills) for approval by the secretary. For category 2 landfills that closed prior to receiving a solid waste facility permit, the demonstration shall be presented in an application for a closure and post closure care plan or an application to modify the approved closure and post closure care plan. The demonstration shall include:

(1) site-specific field measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport,;

(2) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on public health, welfare and environment; and

(3) a plan for periodic leak detection or vadose zone monitoring or ground water monitoring in compliance with subsection N of 20.9.1.802 NMAC may be implemented as a secondary monitoring approach to support approval of a monitoring suspension.

D. If a suspension is granted, the secretary may require the owner or operator to conduct periodic ground water or vadose zone monitoring and leak detection at any landfill during the active life or post-closure care period as necessary to protect the public health, welfare or environment.

E. If ground water contamination is detected after a suspension has been granted pursuant to subsection I of this section, the suspension is revoked and the requirements of 20.9.1.802-899 NMAC shall apply, unless the owner or operator can demonstrate that ground water cannot be adversely affected and there is no risk to human health or the environment. If contaminants are detected in vadose zone monitoring instruments or a leak is detected after a suspension has been granted pursuant to subsection I of this section, actions specified in the vadose zone monitoring or leak detection plan must be undertaken to respond.

F. The secretary may require the owner or operator to conduct periodic ground water or vadose zone monitoring at any landfill for which ground water monitoring has been waived under Section 20.9.1.111 during the active life or post-closure care period to demonstrate the landfill is not contaminating ground water.

#### **20.9.1.802 GROUND WATER MONITORING SYSTEMS AND GROUND WATER MONITORING SYSTEM PLANS.**

A. A ground water monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(1) represent the background quality of ground water that has not been affected by a release from the landfill as determined under 20.9.1.803; and

(2) represent the quality of ground water passing the detection monitoring point which shall be at the waste management unit boundaries on land owned by the owner of the landfill:

(a) the downgradient monitoring system shall be installed at the detection monitoring point;

(b) when physical obstacles preclude installation of ground water monitoring wells immediately downgradient from an existing landfills, the secretary may approve a monitoring system plan that provides for an alternative detection monitoring point at the closest practicable distances hydraulically downgradient from the landfill that ensure detection of ground water contamination in the uppermost aquifer.

B. The ground water monitoring system plan shall comply with this Section and shall include a detailed plan for all wells, piezometers or other measurement and sampling devices and an explanation of the purpose and placement of each (with maps). The ground water monitoring system plan shall be certified that it is in compliance with this Section by a qualified ground water scientist on a form provided by the department.

C. The ground water monitoring plan shall include a description of the hydrogeologic characteristics of the site, a geologic cross-section of the site, a description of ground water sampling and analysis procedures, and a detection monitoring plan, and shall comply with 20.9.1.802-899 NMAC. The ground water monitoring plan shall be certified that it is in compliance with 20.9.1.802-899 by a qualified ground water scientist on a form provided by the department.

D. The owner or operator shall comply with the ground water monitoring system plan and ground water monitoring plan approved by the department throughout the active life and post-closure care period of each landfill subject to the requirements of 20.9.1.802-899 NMAC. The secretary may require monitoring for additional constituents, parameters and frequency as necessary to protect the public health, welfare and the environment. No change shall be made to the approved ground water monitoring system plan or ground water monitoring plan without a specific approval by the department.

E. Owners or operators shall not install or decommission any monitoring well, piezometer, or other ground water measurement, sampling, or analytical device unless it is in accordance with an approved ground water monitoring system plan. The owner or operator shall submit a written notice of intent to the department at least 14 days prior to the installation or decommissioning of any monitoring wells or piezometers. The notice shall include a statement, on a form provided by the department, that the installation of any monitoring well complies with this section and the approved ground water monitoring system plan.

F. The owner or operator shall submit an installation report to the department within 90 days after the installation of a monitoring well or piezometer. The report shall include the following documentation.

(1) A certification by a qualified ground water scientist that the monitoring device has been installed in compliance with the approved ground water monitoring system plan and 20.9.1.802-899.

(2) A construction and lithologic log for each monitoring well or piezometer. The lithologic log shall be drawn to a scale of one inch equals ten feet, except if the boring is greater than 200 feet, then a scale of one-half inch equals ten feet may be used, graphically depicting the initial depth at which ground water was encountered and the soil or rock strata penetrated and describing each layer.

(a) if soil was encountered, the log should indicate the color, degree of compaction, moisture content plus any additional information necessary for an adequate visual description and classification of each stratum based on the Unified Soils Classification System.

(b) if rock was encountered, the log should include a detailed lithologic description, including rock type, degree of induration, presence of fractures, fissility, and porosity (including vugs) plus any other information necessary for an adequate description. All field notes made by the qualified ground water scientist shall be made available on request of the department;

G. A copy of all construction and lithologic logs, and all sampling data from groundwater monitoring shall be placed in the operating record.

H. The secretary may approve an alternate detection monitoring point in the monitoring system plan if it is located 150 meters or less from the waste management unit boundary and it is located on land owned by the owner of the landfill. When approving an alternate detection monitoring point under this section, the secretary shall consider at least the following factors:

- (a) the hydrogeologic characteristics of the facility and surrounding land;
- (b) the volume and physical and chemical characteristics of the leachate;
- (c) the quantity, quality, and direction of flow of the ground water;
- (d) the proximity and withdrawal rate of the ground water users;
- (e) the availability of alternative drinking water supplies;
- (f) the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;
- (g) public health, safety, and welfare effects; and
- (h) the practicable capability of the owner or operator.

I. The secretary may approve, in the ground water monitoring system plan or closure and post-closure care plan, a multiunit ground water monitoring system instead of separate systems for each landfill where the facility has several landfills, provided the multiunit system meets the appropriate requirements of this part and will be as protective of public health, welfare and the environment as individual monitoring systems for each landfill, based on the following factors:

- (1) number, spacing, and orientation of the landfills;
- (2) hydrogeologic setting;
- (3) site history;
- (4) engineering design of the landfills; and
- (5) types of waste accepted at the landfills.

J. Unless otherwise approved by the department in the ground water monitoring system plan or by specific approval, monitoring wells shall be constructed in such a manner that the integrity of the bore-hole and well is maintained and is in accordance with American Society of Testing Materials method D-5092 or the following requirements:

- (1) the bore-hole shall be drilled a minimum of 4 inches larger than the casing diameter to allow for the emplacement of sand and sealant;
- (2) care shall be taken not to introduce contamination to the well;
- (3) the well shall be developed so that ground water flows freely through the screen and to decrease turbidity, and that all sediment is removed from the well;
- (4) the casing shall, unless otherwise approved by the secretary, consist of Schedule 40 or heavier threaded PVC pipe of not less than 2 inches diameter;
  - (a) the casing shall extend from the top of the screen to at least one foot above ground surface;

- casing; and
- (b) the casing top shall be protected by a cap and a locking shroud shall protect the exposed
  - (c) the shroud shall be large enough to allow easy access for removal of the plastic cap;
- (5) the screen shall be at least a 20-foot section of machine slotted or other manufactured screen. A slot size of 0.01-inch generally is adequate for most installations. No on-site or hack-saw slotting is permitted;
- (6) if the uppermost aquifer is unconfined, the top of the screen shall be 5 feet above the water table to allow for seasonal fluctuations;
- (7) if the uppermost aquifer is confined, the top of the screen shall be at the location of the geologic boundary between the top of the aquifer and the bottom of the confining unit;
- (8) centralizers shall be placed at the top and the bottom of the screen;
- (9) an annular space from 2 feet below to 2 feet above the screen shall be packed with sand;
- (a) the sand shall be clean and medium to coarse grained;
  - (b) the sand shall be properly sized to prevent fines from entering the well; and
  - (c) a tremmie pipe shall be used for sand placement in deeper wells when appropriate;
- (10) the annular space for at least 2 feet above the sand pack shall be grouted or sealed;
- (a) pressure grouting with bentonite or cement using a tremmie pipe is preferred; or
  - (b) alternatively, a bentonite seal may be installed using bentonite pellets, 1/4 or 1/2 inch in size;
- (11) the annular space above the seal shall be fully sealed using grout or bentonite to within 10 feet of the ground surface;
- (12) the annular space above the cuttings shall be filled with bentonite-cement grout to within 3 feet of the ground surface;
- (13) the remaining 3 feet shall be filled with concrete (expanding cement); and
- (14) a concrete slab with a minimum 2-foot radius and a 4-inch thickness shall be poured around the shroud. The pad shall be sloped so that rainfall and run-off flows away from the shroud.
- [8-17-94]

K. The casing of each well or wells that will be used to monitor ground water shall be surveyed, referenced to a standard grid, and subsequently mapped by a licensed surveyor. The location of the well shall be determined within one-tenth of a foot, and the height above sea level at the top of the casing shall be determined within one-hundredth of a foot. This information shall be submitted to the department with the installation report required in Subsection D of 20.9.1.801.NMAC.

[8-17-94]

L. The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring plan.

M. The number, spacing, and depths of monitoring systems shall be based upon site-specific technical information that includes thorough characterization of:

(1) aquifer thickness, ground water flow rate, and flow direction, including seasonal and temporal fluctuations in ground water flow; and

(2) saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer; and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.

N. Vadose zone monitoring or leak detection systems, if required by the secretary pursuant to Subsections C or F of 20.9.1.801 NMAC, shall include:

(1) direct and indirect monitoring techniques such as:

(a) permanent monitoring stations such as those which utilize access tubes for neutron moderation instrumentation, time domain reflectometry (TDR) probes, capacitance probes or other permanently installed devices;

(b) nested piezometers when used for monitoring perched water or locally saturated portions of the vadose zone;

(c) soil gas measurements;

(d) lysimeters;

(e) electronic leak detectors; and

(f) other devices or methods as approved in the permit ;

(2) an adequate frequency of testing and a sufficient number of sampling points at appropriate locations and depths to determine a change in soil characteristics; and

(3) an action plan that addresses potential vadose zone contamination and the sources of the contamination.

O. Amendments to an approved groundwater monitoring system plan shall be by specific approval.

**20.9.1.803 GROUND WATER MONITORING PLAN; SAMPLING AND ANALYSIS; ESTABLISHING BACKGROUND CONCENTRATION LEVELS AND ASSESSMENT MONITORING LEVELS. [8-17-94]**

A. Ground water Monitoring plans shall describe in detail all aspects of the landfill's proposed ground water monitoring program. It shall include descriptions of sampling and analysis procedures to be used, proposed sampling frequencies, test methodologies, procedures that will be used to establish background concentrations of all constituents and parameters listed in 20.9.1.813 NMAC, assessment monitoring levels (AMLs), and practical quantitation limits (PQL) for each constituent listed in 20.9.1.813 NMAC, and any other information describing the program as required by this section.

B. The ground water monitoring plan shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground water quality at the upgradient and downgradient wells. The plan shall include procedures and techniques for:

(1) sample collection;

(2) sample preservation and shipment;

- (3) analytical procedures;
- (4) chain of custody control; and
- (5) quality assurance and quality control.

[8-17-94]

C. The ground water monitoring plan shall describe sampling and analytical methods that are appropriate for ground water sampling and that accurately measure constituents and other monitoring parameters in ground water samples. A PQL for each constituent listed in 20.9.1.813 NMAC shall be proposed in the plan based on the proposed sampling and analytical method. A PQL will not be approved unless the level is the lowest concentration that can be reliably determined by an analytic methodology acceptable to the department. Ground water samples shall not be field-filtered prior to laboratory analysis unless otherwise allowed under 40 CFR Part 258 and the approved ground water monitoring plan. The owner or operator shall conduct ground water sampling in accordance with the "EPA Solid Waste Disposal Facility Criteria Technical Manual" (1998, EPA 530-R-93-017, revised April 13, 1998) unless otherwise approved in the ground water monitoring plan.

D. Ground water elevations shall be measured within one-hundredth of a foot in each well immediately prior to purging, each time ground water is sampled. The owner or operator shall determine the rate and direction of ground water flow each time ground water is sampled. Ground water elevations in wells which monitor the same waste management area shall be measured within a period of time short enough to avoid temporal variations in ground water flow which could preclude accurate determination of ground water flow rate and direction.

E. The owner or operator of a landfill seeking a background determination shall apply for specific approval of background ground water quality concentrations for each constituent and parameter referenced in subsections A and C of 20.9.1.813 NMAC, and as required in the landfill's approved ground water monitoring plan within 14 months after any waste disposal at the landfill or lateral expansion. The application shall propose background concentrations based upon the following:

- (1) the sampling results from at least four independent samples taken during the first semiannual sampling event and at least one additional sample during the subsequent semiannual sampling event for each individual monitoring well;

- (2) the first sampling event shall occur prior to any waste disposal at a new landfill or lateral expansion;

and

- (3) if a constituent is not detected in the sampling used to establish background concentrations, the owner or operator shall propose the PQL approved in the ground water quality monitoring plan as the background concentration.

F. The background ground water quality concentrations and values must be approved by the department in writing. Once background ground water quality concentrations and values for the constituents and the parameters referenced in subparagraphs A and C of 20.9.1.813 NMAC are approved for a landfill, an individual well comparison procedure shall be used to compare constituent concentrations and parameter values with background constituent concentrations, ground water protection standards and parameter values for purposes of detection and assessment monitoring. Alternatively, if it is in accordance with the approved ground water quality monitoring plan, the background levels established from hydraulically upgradient wells may be used for comparison purposes.

G. For category 4 and 5 landfills, a background determination shall be made at each monitoring well as specified in subsection E of 20.9.1.803 NMAC unless the owner operator demonstrates that hydrogeological conditions are such that sampling at upgradient wells will provide an indication of background ground water quality that is as representative or more representative than that provided by making a determination at each monitoring well.

H. For category 2 and 3 landfills, a background determination shall be made at each individual monitoring well as specified in subsection E of 20.9.1.803 NMAC, except when the concentration of a hazardous

constituent at an upgradient well is lower than the concentration at a downgradient well, in which case the concentration of that constituent at the upgradient well shall be used as the background concentration, unless the owner or operator demonstrates that use of the downgradient well to determine the background concentration of that constituent will provide an indication of background ground water quality that is as representative or more representative than that provided by the upgradient well.

I. The owner or operator shall identify ground water protection standards for which a numeric standard has been established and shall apply for specific approval of proposed assessment monitoring levels (AMLs) in compliance with 20.9.1.805 for constituents listed or referenced in subsection A of 20.9.1.813 NMAC, and for the parameter of pH, within 90 days following approval of background ground water quality concentrations by the department. The ground water protection standard for a constituent and for pH shall be the more stringent of the maximum contaminant level (MCL) promulgated at 40 CFR 141, or the ground water protection standard established by the commission at 20.6.2.3103 NMAC.

J. The number of samples collected to establish ground water quality data shall be consistent with the appropriate statistical procedures determined pursuant to this section..

K. The owner or operator of a landfill using an individual well comparison procedure shall use one of the following statistical methods to compare an individual compliance well constituent concentration and parameter value with background constituent concentration and parameter value or the relevant ground water protection standard:

(1) a comparison using a t-interval or t-test with a Type I error level of no less than 0.01 shall be made between the approved background concentration or value and any subsequent sample analysis results for each parameter or constituent from each individual well.;

(a) background values and concentrations shall be established for each parameter or constituent for each individual well from at least four independent samples during the first semiannual sampling event and at least one additional sample during the subsequent semi-annual sampling event; and

(b) if the background concentration is below the practical quantitation limit (PQL), the PQL shall be used to establish background. A statistical method is not necessary for a comparison between the analytical results and the PQL; or

(2) another method that meets the performance standards of 40 CFR 258.53(h). The alternative must be approved in the ground water monitoring plan, and the owner or operator must demonstrate the method meets the performance standards of 40 CFR 258.53(h).

L. The owner or operator of a landfill using an upgradient well to establish background concentrations shall specify in the ground water monitoring plan one of the statistical methods described in 40 CFR 258.53(g). The statistical method to be used in evaluating ground water monitoring data must be demonstrated to meet the performance criteria of 40 CFR 254.53(h); and

(1) if the background concentration at the upgradient well is below the practical quantitation limit (PQL), the PQL shall be used to establish background. A statistical method is not necessary for a comparison between the analytical results and the PQL;

(2) the number of samples collected to establish ground water quality data must be consistent with the appropriate statistical procedure that meets the performance standards of 40 CFR 258.53(h).

M. Ground water samples for the constituents and values referenced in subparagraphs A and C of 20.9.1.813 NMAC shall be collected from each monitoring well at least semi-annually during the active life of the facility. At a new landfill, or at a lateral expansion, the first sampling event shall be prior to the receipt of any waste. Once background concentrations and values have been established and approved, the owner or operator shall conduct

detection monitoring for all constituents and parameters listed in or referenced in subparagraphs A and C of 20.9.1.813 NMAC and determine whether or not the AML has been exceeded for any constituent referenced in Subsection A of 20.9.1.813 and for the parameter of pH, or as required in the particular ground water monitoring plan that applies to the landfill.

(1) In determining whether the AML has been exceeded, the owner or operator shall compare the ground water quality for each constituent at each monitoring well to the background value for that constituent, according to the statistical procedures and performance standards specified in the ground water monitoring plan and this section.

N. Ground water documentation shall be submitted to the department within 90 days of completing sampling, in a form acceptable to the department, for each sample, and a copy of all monitoring results shall be kept in the operating record. The documentation shall include:

- (1) the constituents and parameter tested;
- (2) the test method (U.S. EPA or equivalent) for each constituent and parameter;
- (3) the ground water protection standard for each constituent detected (if a numeric standard has been established);
- (4) the method detection limit (MDL) for each constituent;
- (5) the practical quantitation limit (PQL) for each constituent and parameter;
- (6) the well number and location for each sample;
- (7) the laboratory ID sample number;
- (8) chain of custody documentation;
- (9) the date sampled;
- (10) the date received at the laboratory;
- (11) the date analysis commenced;
- (12) results, with constituent or parameter, chemical abstract system number, concentration with units, approved AML, ground water protection standard, PQL, qualifier code (e.g., J, B, U, etc.), well number, and sample date;
- (13) sample preservation (field data);
- (14) field blank results, and trip blank results;
- (15) quality assurance/quality control summary report (laboratory blanks, spike recoveries, etc.);
- (16) anomaly report (non-conformance with quality assurance/quality control plan, corrective actions, etc.);
- (17) laboratory review (signature and date);
- (18) an updated ground water elevation contour map for the facility or, if ground water elevation data is insufficient to contour, then the ground water elevation for each monitoring well, prior to purging, reported on a well location map;
- (19) the approved background concentration levels as determined in accordance with Subsection E of this section; and
- (20) a certification by a qualified ground water scientist that AMLs have or have not been exceeded.

O. Amendments to an approved ground water monitoring plan shall be by specific approval.

#### **20.9.1.804 DETECTION MONITORING PLAN.**

A. The owner or operator shall conduct detection monitoring at all ground water detection monitoring wells unless such monitoring has been suspended in accordance with Subsection C of 20.9.1.801 NMAC. The detection monitoring program shall include the monitoring for constituents and parameters listed and referenced in Subsection A of 20.9.1.813 NMAC, and shall be conducted at least semiannually during the active life and post-closure care period of the facility. After background concentrations have been approved as required in Subsection E of 20.9.1.803 NMAC for all constituents in Subsection A of 20.9.1.813 NMAC, the owner or operator may request a specific approval that the ground water detection monitoring program description be amended to:

(1) not require testing for particular constituents in Subsection A of 20.9.1.813 NMAC for a municipal landfill if it can be shown that the particular constituents are not reasonably expected to be in or derived from the waste contained in the landfill; and

(2) establish an alternate list of inorganic indicator parameters constituents for a landfill in lieu of some or all of the heavy metals listed or referenced in Subsection A of 20.9.1.813 NMAC if the alternative constituents provide a reliable indication of inorganic releases from the landfill to the ground water. In determining alternative constituents, the department shall consider the following factors;

- (a) the types, quantities, and concentrations of constituents in wastes managed at the landfill;
- (b) the mobility, stability, and persistence of constituents or their reaction products in the unsaturated earth zone beneath the landfill;
- (c) the detectability of the constituents, and reaction products in the ground water; and
- (d) the concentrations or values and coefficients of variation of levels of the constituents in the ground water.

(3) allow annual sampling of the approved alternate list after the first year based on the following factors:

- (a) lithology of the aquifer and unsaturated zone;
- (b) hydraulic conductivity of the aquifer and unsaturated zone;
- (c) ground water flow rates;
- (d) minimum distance between upgradient edge of the landfill and downgradient monitoring well screen (minimum distance of travel); and
- (e) resource value of the aquifer.

B. Regardless of approval by the department of an alternate constituent list under Subsection A of this section, the minimum frequency for testing for all the constituents in Subsection A of 20.9.1.813 NMAC shall be at least once every five years in addition to the required frequencies for the alternate list.

C. If the owner or operator determines, as evidenced in the ground water monitoring data, that the AML has been exceeded for one or more of the constituents or parameters referenced in Subsection A of 20.9.1.813 NMAC or approved alternate constituent list at any monitoring well, the owner or operator:

(1) shall, within 14 days of this finding, notify the department of the exceedance and place a notice in the operating record indicating which constituents or values have exceeded approved AMLs; and

(2) shall submit, within 60 days of the finding, an assessment monitoring plan that meets the requirements of 20.9.1.806 NMAC;

(3) in addition, the owner or operator may submit, within 60 days after the finding, a demonstration that a source other than a landfill caused the contamination or that the AML exceedance resulted from an error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration shall be certified by a qualified ground water scientist, shall be placed in the operating record, and shall be submitted to

the department for specific approval. The department shall issue a specific approval or denial within 90 days approving or denying the demonstration. If the demonstration is denied, the assessment monitoring shall proceed according to the submitted plan within 90 days after the denial. .

**20.9.1.805 ASSESSMENT MONITORING LEVELS. [8-17-94]**

A. Approved background ground water quality determinations shall be used as the baseline for determination of AMLs.

B. For all hazardous constituents, AMLs shall be 50 percent of the ground water protection standard.

C. If the background concentrations of any hazardous constituents is above 50 percent of the ground water protection standards, then the background concentration shall be the AML. Any statistically significant increase above the AML shall be an exceedance of the AML for that constituent. [8-17-94]

D. If a ground water protection standard has not been established for a hazardous constituent, the AML shall be the background concentration or a 95 percent increase over the PQL of the constituent, whichever is greater.

E. For constituents identified in Subsections B and C of 20.6.2.3103 NMAC, the AMLs shall be 75 percent of the ground water protection standard, except pH, which shall be within the range of values shown in subsection B of 20.6.2.3103 NMAC

F. If the background concentration of any constituent identified in Subsections B and C of 20.6.2.3103 NMAC is above 75 percent of the ground water protection standard, then the background concentration shall be the AML. Any statistically significant increase above the AML shall be an exceedance of the AML for that constituent. [8-17-94]

G. If more than one toxic pollutant identified in 20.6.2.7 NMAC is detected, the toxic pollutant criteria of the commission regulations for the combination of constituents shall be used to determine a ground water standard, using the methods described in Subsection I of 20.9.1.806 NMAC. The AML shall be 50 percent of the ground water standard, or the background concentration, whichever is greater. If the background concentration is greater than the ground water standard, then any statistically significant increase above the background concentration shall be an exceedance of the AML. However, this shall apply only in cases where such AMLs are more stringent than the AMLs otherwise determined under this section. [8-17-94]

**20.9.1.806 ASSESSMENT MONITORING.**

A. Owners and operators shall conduct assessment monitoring whenever the AML has been exceeded for one or more constituent of Subsection A of 20.9.1.813 NMAC or an alternate constituent list approved under Subsection A of 20.9.1.804 NMAC unless a demonstration has been approved pursuant to Paragraph (3) of Subsection C of 20.9.1.804 NMAC. Assessment monitoring shall be conducted in accordance with an assessment monitoring plan, approved in accordance with subsection C of 20.9.1.804 NMAC.

B. Within 90 days of the determination of an exceedance under Subsection M of 20.9.1.803 NMAC, and annually thereafter, the owner or operator shall sample and analyze the ground water for all constituents and parameters referenced and listed in Subsections B and C of 20.9.1.813 NMAC for each downgradient well. For any constituents detected in the downgradient wells as a result of the complete analysis, a minimum of four independent samples from each well (upgradient and downgradient) shall be collected and analyzed to establish background for the constituents for which background has not been established. Sampling data and proposed background concentration shall be submitted to the department within 180 days of the determination of an exceedance under Subsection M of 20.9.1.803 NMAC. The upgradient concentrations shall be presumed to be the background unless the owner or operator demonstrates that hydrogeological conditions are such that sampling at other points will provide an indication of background ground water quality that is as representative or more representative than that provided at the upgradient wells. The department shall approve background levels for those detected constituents for which background concentrations have not previously been determined within 60 days, or the upgradient concentrations shall be deemed to be the background concentrations.

C. The department may specifically approve an alternative frequency or subset of wells for repeated sampling for assessment monitoring during the active life and post-closure care period of the facility. In determining an alternative frequency or subset of wells, the department shall consider:

- (1) lithology of the aquifer and unsaturated zone;
- (2) hydraulic conductivity of the aquifer and unsaturated zone;
- (3) ground water flow rate;
- (4) minimum distance between the waste management unit boundary and downgradient monitoring well screen;
- (5) resource value of the aquifer; and
- (6) nature of any constituents detected.

D. After obtaining the results from the sampling required by Subsection B of this section, the owner or operator shall:

(1) within 14 days, notify the the department in writing and document in the operating record any constituents that have been detected;

(2) within 90 days and at least semiannually, resample all wells and analyze for all constituents in Subsections A and C of 20.9.1.813 NMAC and any constituents in Subsection B of 20.9.1.813 NMAC or an approved alternate list that have been detected. The department may specify an alternate monitoring frequency in accordance with Subsection A of 20.9.1.804 NMAC, but all constituents in Subsection B of 20.9.1.813 NMAC shall be sampled no less frequently than once every five years during the active life and post-closure care period.

E. If the concentration of each constituents in Subsection A of 20.9.1.813 NMAC, and each detected constituent of Subsection B of 20.9.1.813 NMAC is determined to be at or below the approved AML after two sampling events, the owner or operator shall notify the department in writing and may return to detection monitoring.

F. If the concentration of any constituent in 20.9.1.813 NMAC is above the AML, but below the corrective action level (CAL), the owner or operator shall continue assessment monitoring in accordance with this section.

G. If one or more constituents in 20.9.1.813 NMAC is detected above the CALs in any sampling event, the owner or operator shall,:

(1) within 14 days of this finding, notify the department and all appropriate local government officials in writing;

(2) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with this section within six months. The department may approve an extension for this installation and sampling for good cause for up to an additional six months of the finding of the exceedance;

(3) characterize the nature and extent of the release by installing additional monitoring wells as necessary within one year of the finding of the exceedance;

(4) notify area residents and land owners in the same manner as described in Subsection B of 20.6.2.4108 NMAC; and

(5) initiate an assessment of corrective measures as required by 20.9.1.808 NMAC within 90 days; or

(6) the owner or operator may demonstrate that a source other than the facility caused the contamination, or that the increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration shall be certified by a qualified ground water scientist and submitted to the department for review and approval. If a demonstration is specifically approved by the department, the owner or operator may return to detection monitoring. Until a successful demonstration is made, the owner or operator shall comply with 20.9.1.805-899 NMAC, including initiating an assessment of corrective action.

H. Within 90 days after any AML exceedance, the owner or operator shall identify the ground water protection standard for each constituent in 20.9.1.813 NMAC that exceeded the AML in the ground water that was not identified pursuant to Subsection I of 20.9.1.803. The owner or operator shall propose for department approval ground water protection standards for any constituent that exceeded the AML pursuant to Subsection B of this section and Paragraph (2) of Subsection D of this section that does not have an MCL or numeric standard in commission regulations. The owner or operator shall make a demonstration that the proposed standard will be protective of the public health and the environment, in accordance with Subsection I of this section..

(1) The ground water protection standards for constituents shall be the more stringent of the MCL promulgated at 40 CFR 141, or the numeric standard established by commission regulations.

(2) For hazardous constituents for which the background concentration is higher than the ground water protection standard, the background concentration shall be used as the ground water protection standard.

I. The secretary may establish an alternative ground water protection standard for constituents for which MCLs or commission standards have not been established. These ground water protection standards shall be appropriate health based levels that satisfy the following:

(1) the level is derived in a manner consistent with U.S. EPA guidelines for assessing the health risks of environmental pollutants;

(2) the level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards or equivalent;

(3) for carcinogens, the level represents a concentration associated with an excess lifetime cancer risk of more than one cancer per 100,000 exposed persons; and

(4) for systemic toxicants, the level represents a concentration to which the human population could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. Systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

J. In establishing ground water protection standards under Subsection I of this section, the secretary may consider the following:

(1) multiple contaminants in the ground water;

(2) exposure threats to sensitive environmental receptors; and

(3) other site specific exposure or potential exposure to ground water.

#### **20.9.1.807 CORRECTIVE ACTION LEVELS.**

A. Background water quality data approved by the department shall be used as the baseline to determine corrective action levels (CALs).

B. For all constituents, CALs shall be the ground water protection standard.

C. If the background concentrations of any constituent is above what would otherwise be the ground water protection standards, then the background concentration shall be used as the CAL. Any statistically significant increase above the CAL shall be considered an exceedence of the CAL for that constituent.

D. If more than one potential toxic pollutant, as defined in 20.6.2.7 NMAC, is detected, the potential toxic pollutant criteria of the commission regulations for the combination of constituents shall be used to determine the CALs. If the background concentration is greater than the ground water standard, then any statistically significant increase above the background concentration shall be an exceedence of the CAL. However, this shall apply only in cases where such CALs are more stringent than the CALs otherwise determined under this section.

**20.9.1.808 ASSESSMENT OF CORRECTIVE MEASURES.**

A. Upon finding that any constituent listed in 20.9.1.813 has exceeded its CAL, the owner or operator shall initiate an assessment of corrective measures. Such an assessment shall be submitted to the department within 180 days of the finding.

B. The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in 20.9.1.806 NMAC.

C. The assessment shall include a demonstration of:

- (1) the extent and nature of contamination;
- (2) the practical capabilities of remedial technologies in achieving compliance with ground water protection standards and other objectives of the remedy;
- (3) the availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (4) the desirability of utilizing technologies that are not currently available, but which may offer significant advantages over available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (5) the potential risks to public health, welfare and the environment from exposure to contamination prior to completion of the remedy;
- (6) the resource value of the aquifer including:
  - (a) current and future uses;
  - (b) proximity and withdrawal rate of users;
  - (c) ground water quantity and quality;
  - (d) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
  - (e) the hydrogeologic characteristic of the facility and surrounding land;
  - (f) ground water removal and treatment costs; and

- (g) the cost and availability of alternative water supplies;
- (7) the practicable capability of the owner or operator; and
- (8) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts and control of exposure to any residual contamination;
- (9) the time required to begin and complete the remedy;
- (10) the costs of remedy implementation; and
- (11) the institutional requirements for local permits or other environmental or public health requirements that may substantially affect implementation of the remedy(s).
- (12) the need for interim measures in accordance with provisions of subparagraph (3) of subsection A of 20.9.1.810 NMAC.
- (13) an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives and evaluation factors of the remedy as described in 20.9.1.809 NMAC; and
- (14) other relevant factors.

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D. The owner or operator shall discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties. Notice of the public meeting shall be provided the same as that specified in the Act for permit applications and Paragraph (4) of Subsection G of 20.9.1.806 NMAC. The public notice shall also contain the following information:

- (1) name, address, and telephone number of the owner or operator and contact person;
- (2) name and location of the facility;
- (3) meeting location, date, and time;
- (4) nature and extent of the plume;
- (5) brief description of the assessment of corrective measures and the preferred remedy of the owner or operator;
- (6) location where the assessment of corrective measures can be reviewed; and
- (7) information regarding the opportunity to submit oral or written comments at the public meeting, and until 30 days after the public meeting, regarding the assessment and proposed remedy for consideration by the department. [8-17-94]

E. The owner or operator shall make a record of the public meeting and submit it to the department.

F. The Secretary may, based on the initial assessment, order interim measures, in accordance with subparagraph (3) of subsection A of 20.9.1.810 NMAC.

**20.9.1.809 SELECTION OF REMEDY. [8-17-94]**

A. Based on the results of the corrective measures assessment conducted under 20.9.1.808 NMAC, the owner or operator shall, within 120 days following the submission of the assessment of corrective measures, submit a proposed remedy to the department for review and approval, that meets the standards listed in this section. The secretary may issue an order approving, approving with conditions, denying the proposed remedy, may require submission of an alternative proposed remedy, or may impose a remedy whether or not proposed by the owner or operator. [8-17-94]

B. Prior to approving or imposing a remedy, the department shall hold a hearing on the remedy proposed by the owner or operator and any draft remedy proposed by the department. The owner or operator shall be required to provide notice of hearing on the proposed remedy or remedies in accordance with section 74-9-22 NMSA 1978. Hearing procedures shall be in accordance with 20.1.4 NMAC.

C. The selected remedy shall:

- (1) be protective of public health, welfare and the environment;
- (2) attain the CAL;
- (3) control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases into the environment that may pose a threat to public health, welfare or the environment;
- (4) comply with standards for management of wastes as specified in Subsection C of 20.9.1.810 NMAC.

D. In its submission of a proposed remedy that meets the standards listed above, the owner or operator shall provide evidence demonstrating:

- (1) the long and short term effectiveness and protectiveness of the potential remedy, along with the degree of certainty that the remedy will prove successful based on consideration of the following:
  - (a) magnitude of reduction of existing risks;
  - (b) magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
  - (c) the type and degree of long term management required, including monitoring, operation, and maintenance;
  - (d) short term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to public health, welfare and the environment associated with excavation, transportation, and redisposal of wastes;
  - (e) time until full protection is achieved;
  - (f) potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to public health, welfare and the environment associated with excavation, transportation, redisposal, or containment;
  - (g) long term reliability of the engineering and institutional controls; and
  - (h) potential need for replacement of the remedy.;
- (2) the effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

- (a) the extent to which containment practices will reduce further releases; and
  - (b) the extent to which treatment technologies may be used;
- (3) the ease or difficulty of implementing a potential remedy based on consideration of the following factors:
- (a) degree of difficulty associated with constructing the technology;
  - (b) expected operational reliability of the technology;
  - (c) need to coordinate with, and obtain necessary approvals and permits from, other agencies;
  - (d) availability of necessary equipment and specialists; and
  - (e) available capacity and location of needed treatment, storage, and disposal services;
- (4) practicable capability of the owner or operator, including a consideration of the technical and economic capability; and
- (5) the degree to which community concerns are addressed .

E. The owner or operator shall specify as part of the proposed selected remedy a schedule for initiating and completing remedial activities. Such a schedule shall provide for the initiation of remedial activities within a reasonable period of time, taking into consideration the factors listed in subsection C of 20.9.1.808.

F. In its submission of a proposed remedy under this section, the owner or operator may seek a determination that remediation of a contaminant to the CAL is not required as follows:

- (1) if an exceedance of a commission standard would occur, the owner or operator shall seek a variance from the commission standard in accordance with Subsection E or F of 20.6.2.4103 NMAC and incorporate the terms and conditions of any such variance into the selected remedy and corrective action program; or
- (2) the owner or operator may seek a determination from the secretary that remediation of a contaminant to the CAL (for CALs not based on a commission standard) is not required by submitting a written request to the secretary for a determination that attainment of the CAL is technically infeasible. The request shall include: a demonstration of technical or physical impossibility of attaining the CAL using potential remedies; the effectiveness of potential remedies; whether the proposed determination will allow a present or future hazard to public health or the environment; and any other information required by the secretary. In addition, the request shall propose an alternate CAL for the secretary's approval, based on the effectiveness of potential remedies and a site-specific risk assessment. The secretary may approve, approve with terms and conditions, or deny the requested determination.

G. A determination by the secretary pursuant to Subsection F of this section shall not affect the authority of the secretary to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize releases to the ground water, to prevent exposure of the ground water to concentrations that are technically practicable and significantly reduce threats to public health, welfare or the environment.

**20.9.1.810 IMPLEMENTATION OF A CORRECTIVE ACTION PROGRAM. [8-17-94]**

A. Based on the schedule approved by the secretary under Subsection F of 20.9.1.809 NMAC for initiation and completion of remedial activities, the owner or operator shall:

- (1) establish and implement a corrective action ground water monitoring program that:
- (a) at a minimum, meets the requirements of an assessment monitoring program under 20.9.1.806 NMAC;
  - (b) will indicate the effectiveness of the corrective action remedy; and
  - (c) demonstrates compliance with the corrective action levels;
- (2) implement the corrective action remedy approved under 20.9.1.809 NMAC; and
- (3) take any interim measures necessary to ensure the protection of public health, welfare and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy that may be required pursuant to 20.9.1.809 NMAC. The following factors shall be considered in determining whether interim measures are necessary:
- (a) time required to develop and implement a final remedy;
  - (b) actual or potential exposure of nearby populations or environmental receptors to constituents;
  - (c) actual or potential contamination of drinking water supplies or sensitive ecosystems;
  - (d) further degradation of the ground water that may occur if remedial action is not initiated expeditiously;
  - (e) weather conditions that may cause constituents to migrate or be released;
  - (f) risks of fire or explosion, or potential for exposure to constituents as a result of an accident or failure of a container or handling system; and
  - (g) other situations that may pose threats to public health, welfare and the environment.

B. If the secretary determines, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Subsection C of 20.9.1.809 NMAC are not being achieved through the remedy selected he may issue an order requiring the owner or operator to propose, for consideration by the secretary, other methods or techniques that could practicably achieve compliance with Subsection C of 20.9.1.809 NMAC. An owner or operator proposing an alternative remedy under this subsection shall comply with all factors and criteria of 20.9.1.808 and 809.

C. All solid wastes that are generated pursuant to this section , or an interim measure required under Paragraph (3) of Subsection A of this section, shall be managed in a manner which:

- (1) is protective of public health, welfare and the environment; and
- (2) complies with applicable RCRA requirements, the solid waste act and this Part.

[8-17-94]

D. Remedies selected pursuant to 20.9.1.809 NMAC shall be considered complete when:

- (1) the owner or operator complies with the CALsat all points within the plume of contamination for a period of three consecutive years. The secretary may specify an alternative length of time during which the owner or

operator shall demonstrate that concentrations of constituents referenced in 20.9.1.813 NMAC have not exceeded CALs provided the time is not less than eight consecutive calendar quarters with one sampling event per quarter, and taking into consideration :

- (a) extent and concentration of the release(s);
  - (b) behavior characteristics of the hazardous constituents in the ground water;
  - (c) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that affect the accuracy; and
  - (d) characteristics of the ground water; and
- (2) all actions required to complete the remedy have been satisfied.

E. Upon completion of the remedy, the owner or operator shall notify the secretary in writing within 14 days with a certification that the remedy has been completed in compliance with the requirements of Subsection F of this section. The certification shall be signed by a qualified ground water scientist and submitted to the secretary for specific approval. [8-17-94]

F. Upon approval of the certification that the corrective action remedy has been completed in accordance with the requirements under Subsection D of this section, the owner or operator shall be released from the requirements for financial assurance for corrective action under 20.9.1.905 NMAC.

G. In the event that new information becomes available which indicates a constituent release may pose a threat to human health or welfare or the environment, the department may require continued compliance with 20.9.1.810 NMAC, or further investigation or selection of a remedy as necessary.

**20.9.1.811 APPROVED LABORATORIES.** For the purpose of determining compliance with the requirements of 20.9.1.800-899 NMAC, within one year of the effective date of this part, analytical results may be considered only if they have been determined by a laboratory acceptable to the department as specified in this section. The department may accept analytical results if they have been determined by:

A. the Scientific Laboratory Division of the New Mexico Department of Health or other laboratories certified by the U.S. EPA. A laboratory, other than the Scientific Laboratory Division, shall provide the department documentation of its certification by the U.S. EPA;

B. a laboratory certified by an official agency of a state and approved by the department. A laboratory shall provide the department documentation of its certification by an official agency of a state for review and approval; or

C. a laboratory accredited by an approved third party accreditation organization and approved by the department. A third party accreditation organization shall submit a quality assurance project plan to the department for review and approval.

**20.9.1.812 DEPARTMENT APPROVAL OF BACKGROUND AND TOXIC POLLUTANT STANDARDS.** All background levels proposed by the owner or operator are subject to review and approval by the secretary. All ground water protection standards proposed for toxic pollutants listed in 20.6.2.7 NMAC are subject to review and approval by the secretary.

**20.9.1.813 CONSTITUENTS AND PARAMETERS.** Constituents and parameters to be evaluated under the requirements of 20.9.1.800-812 NMAC include:

- A. every constituent listed in the following:

- (1) 40 CFR 258 Appendix I;
- (2) 20.6.2.3103 NMAC, including the parameter of pH;

B. all constituents listed in 40 CFR 258 Appendix II, 20.6.2.3103 NMAC, potential toxic pollutants listed in 20.6.2.7 NMAC; and

C. the following constituents and parameters:

- (1) calcium (CAS No. 7440-70-2);
- (2) magnesium (CAS No. 7439-95-4);
- (3) potassium (CAS No. 7440-09-7);
- (4) sodium (CAS No. 7440-23-5);
- (5) ammonia (CAS No. 1331-21-6);
- (6) bicarbonate alkalinity;
- (7) carbonate alkalinity;
- (8) total nitrogen;
- (9) total kjeldahl nitrogen;
- (10) total organic carbon;
- (11) phosphate;
- (12) specific conductance;
- (13) temperature;
- (14) depth to ground water; and
- (15) ground water elevation.

D. When additional constituents are added to ground water monitoring requirements through updates to the regulations cited, the new constituents shall be added to the routine sampling frequency for a particular landfill. Background quality for the new constituent shall be determined after a sufficient number of samples are collected during routine sampling, unless a new constituent is detected above the AML, in which case the procedure in Subsection E of 20.9.1.803 NMAC shall be used to determine background concentration.

E. A list of constituents and parameters to be evaluated under the requirements of 20.9.1.800-813 will be made available to the public and posted on the NMED website.

**20.9.1.814 - 20.9.1.899 [RESERVED.]**

**20.9.1.900 FINANCIAL ASSURANCE:**

**20.9.1.901 APPLICABILITY AND EFFECTIVE DATE.**

A. The requirements of 20.9.1.900-999 NMAC apply to owners and operators of all solid waste facilities and composting and recycling facilities required to provide financial assurance pursuant to Subsection C of 20.9.1.221 NMAC and Subsection E of 20.9.1.2.222 NMAC, except owners and operators who are the United States, the state of New Mexico, or any agency, department, instrumentality, office, or institution of those governments whose debts and liabilities are the debts and liabilities of the United States or the state of New Mexico. Owners or operators of composting and recycling facilities required to provide financial assurance pursuant to Subsection C of 20.9.1.221 NMAC and Subsection E of 20.9.1.2.222 NMAC are not required to provide financial assurance for post-closure care, phase I and II assessments or corrective action.

B. The owner or operator of a category 5 landfill or any solid waste facility modified after the effective date of these regulations shall submit to the department proof of financial assurance prior to the initial receipt of waste.

C. For municipal landfills operating on or after April 9, 1997, or solid waste facilities permitted after January 30, 1992, the requirements of 20.9.1.901-999 NMAC apply. For landfills that have been granted a waiver under 20.9.1.111 NMAC, the requirements of 20.9.1.901-999 NMAC apply.

D. Multiple facilities under one permit shall be treated individually for the purposes of 20.9.1.901-999 NMAC. Estimates and assurance must be given for each facility, but multiple facilities may be covered by the same mechanism(s).

**20.9.1.902 FINANCIAL ASSURANCE FOR CLOSURE AND NUISANCE ABATEMENT. [8-17-94]**

A. The owner or operator of a solid waste facility shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the facility ever requiring closure under 20.9.1.501-599 NMAC at any time during the active life. This estimated cost should include estimated costs for an independent project manager and contract administration. The estimate may contain a subsidiary schedule showing the amount necessary to perform closure of the facility in each year of the permit life of the facility. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record.

(1) For landfills, the cost estimate shall be based upon the cost of closing the largest area of all landfill cells ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. Should the owner or operator submit a subsidiary schedule, the amount guaranteed annually may be in accordance with this schedule upon approval by the secretary. If the owner or operator is found to be utilizing acreage in excess of the amount shown in the subsidiary schedule, final closure on the excess acreage shall be completed within sixty days of the subsidiary schedule and the amount of financial assurance shall be increased to reflect the excess acreage.

(2) For all other solid waste facilities, the cost estimate must be a detailed written estimate of the cost of closure to be performed in accordance with the applicable portions of 20.9.1.505 NMAC and also shall include the cost of hiring a third party to clean up and dispose of the largest inventory of material and end product expected at the facility and to clean up and dispose of all fugitive trash, solid waste, or other materials that could potentially create a nuisance at the facility. The cost estimate shall also include costs of an independent project manager and contract administration. For a recycling or composting facility required to provide financial assurance for nuisance abatement pursuant to Subsection C of 20.9.1.221 NMAC or Subsection E of 20.9.1.222 NMAC, the owner or operator shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to clean up and dispose of the largest inventory of compostable or recyclable material and end product expected at the facility and to clean up and dispose of all fugitive trash, solid waste, or other materials that could potentially create a nuisance at the facility. The cost estimate shall also include the costs of an independent project manager and contract administration.

(3) During the active life of the facility, the owner or operator shall annually adjust the closure cost estimate for inflation, installation of final cover material on any areas at final grade, and any other factors affecting closure costs. A copy of the adjusted closure cost estimate shall be placed in the operating record.

(4) The owner or operator shall increase the amount of financial assurance if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life by over 3 percent of the current financial assurance amount.

(5) The owner or operator may reduce the amount of financial assurance for closure if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the adjusted cost estimate and supporting documentation to the department. If approved, the owner or operator may revise any financial assurance documents to reflect the adjusted closure cost estimate, and shall file a duplicate original of each financial assurance document with the department within 15 days following approval, and shall place a copy of the estimate and approval in the operating record.

B. The owner or operator of each solid waste facility shall establish a financial assurance mechanism for closure of the facility in compliance with 20.9.1.906 NMAC. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.1.501 NMAC.

**20.9.1.903 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE. [8-17-94]**

A. The owner or operator of a solid waste facility shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the facility in compliance with the post-closure care plan developed under 20.9.1.501-599 NMAC. The post-closure care cost estimate shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. This estimated cost should also include estimated costs for an independent project manager and contract administration. The owner or operator may submit a subsidiary schedule showing, for the permit life of the facility, the annual incremental acreage and total acreage needing post-closure care and the corresponding estimate of post-closure costs. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record.

(1) The cost estimate for post-closure care shall be based on the most expensive costs for care during the post-closure period. Should the owner or operator submit a subsidiary schedule as described in paragraph A of this section, the amount guaranteed annually for post-closure care during the permit life of the facility may be in accordance with this schedule upon approval by the Secretary. If the owner or operator, upon inspection, is found to have exceeded the acreage shown on the subsidiary schedule, the subsidiary schedule and the amount of financial assurance shall be increased within sixty days.

(2) During the active life of the facility and during the post-closure care period, the owner or operator shall annually adjust the post-closure care estimate for inflation, and any other factors affecting post-closure care costs. The owner or operator shall place a copy of the adjusted estimate in the operating record.

(3) The owner or operator shall increase the amount of financial assurance if changes in the post-closure care plan or facility conditions increase the maximum cost of post-closure care by over 3 percent of the current financial assurance amount.

(4) The owner or operator may reduce the amount of financial assurance if the adjusted cost estimate exceeds the maximum cost of care remaining over the post-closure period, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the reduced post-closure care cost estimate and any justification for the reduced estimate in a request to the department.

C. The owner or operator of each solid waste facility shall establish financial assurance for the costs of post-closure care in compliance with 20.9.1.906 NMAC. An originally signed duplicate of each financial assurance document shall be filed with the department. The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements by a written verification issued by the secretary pursuant to 20.9.1.501 O.

**20.9.1.904 FINANCIAL ASSURANCE FOR PHASE I & PHASE II ASSESSMENTS. [8-17-94]**

A. Unless suspended from the requirements of 20.9.1.802-806 NMAC in accordance with Subsection C of 20.9.1.801 NMAC, the owner or operator shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct activities of the Phase I ( 20.9.1.806 NMAC) and Phase II (20.9.1.808-809 NMAC) assessments . The Phase I and Phase II assessments cost estimate shall account for the entire cost of the Phase I and Phase II assessments for the entire assessment period. This estimated cost should also include estimated costs for an independent project manager and contract administration. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record. The estimate may contain a subsidiary schedule showing the amount necessary to

perform a phase I assessment if a release is detected. Should the owner or operator submit a subsidiary schedule, the amount guaranteed annually may be in accordance with this schedule upon approval by the secretary.

(1) During the permit life of the facility and during the post-closure care period, the owner or operator shall annually adjust the Phase I and Phase II assessments estimate for inflation and any other factors affecting phase I and phase II assessment costs.

(2) The owner or operator shall increase the amount of financial assurance for phase I and phase II assessment costs if changes in the Phase I and Phase II assessments or facility conditions increase the maximum costs of the Phase I and Phase II assessments by over 3 percent of the current financial assurance amounts for phase I and phase II costs.

(3) The owner or operator may reduce the amount of the Phase I and Phase II financial assurance if the cost estimate exceeds the maximum remaining cost for the Phase I and Phase II assessments, upon specific approval by the secretary. To seek approval, the owner or operator shall provide a revised cost estimate and supporting documentation to the department. If approved, the owner or operator shall place a copy of the revised cost estimate in the operating record, shall notify the secretary that the estimate has been placed in the operating record and shall file a copy with the department.

B. Unless suspended from the requirements of 20.9.1.802-806 NMAC in accordance with Subsection C of 20.9.1.801 NMAC, the owner or operator of each solid waste facility shall secure financial assurance for the costs of Phase I and Phase II assessments as required under 20.9.1.806-809 NMAC. The owner or operator shall provide continuous coverage for the Phase I and Phase II assessments until released from financial assurance requirements by a written verification issued by the secretary pursuant to 20.9.1.501 O.

#### **20.9.1.905 FINANCIAL ASSURANCE FOR CORRECTIVE ACTION.**

A. An owner or operator of a facility required to undertake a corrective action program under 20.9.1.807-810 NMAC, or required to guarantee any portion of a corrective action program as a condition of any permit or order by the secretary, shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate shall account for the total costs of activities as described in the corrective action plan for the entire corrective action period. This estimated cost should also include estimated costs for an independent project manager and contract administration. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record.

(1) The owner or operator shall annually adjust the estimate for inflation and any other factors affecting the corrective action costs until the corrective action program is completed .

(2) The owner or operator shall increase the amount of financial assurance if changes in the corrective action program or facility conditions increase the maximum costs of corrective action by over 3 percent of the current financial assurance amounts for corrective action costs.

(3) The owner or operator may reduce the amount of the financial assurance if the cost estimate exceeds the maximum remaining cost of corrective action, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the revised cost estimate and supporting documentation to the department. If approved, the owner or operator shall notify the secretary that the amount of financial assurance have been placed in the operating record.

[8-17-94; 11-30-95]

B. The owner or operator of each solid waste facility required to implement a corrective action program shall secure financial assurance for the corrective action program in compliance with 20.9.1.906 NMAC. The owner or operator shall provide continuous coverage for corrective action until released from corrective action financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.1.501 NMAC.

**20.9.1.906 ALLOWABLE MECHANISMS. [8-17-94]**

A. The owner or operator shall establish a financial assurance mechanism to ensure that the funds necessary to meet the costs of closure, post-closure care, the Phase I and Phase II assessments, and corrective action for known releases will be available whenever they are needed. The allowed mechanisms are:

- (1) Trust Fund
- (2) Surety Bond
- (3) Irrevocable Letter of Credit
- (4) Insurance
- (5) Risk Management Pool
- (6) Local Government Financial Test
- (7) Local Government Guarantee
- (8) Local Government Reserve Fund
- (9) Corporate Financial Test
- (10) Multiple mechanisms.

B. Owners or operators shall implement one or more of the financial assurance mechanisms specified in this section. Each selected mechanisms shall be made payable to or name the New Mexico governmental entity or entities that own or operate the facility as the beneficiary of the instrument, but if no New Mexico governmental entity or entities own or operate the facility, then the instrument shall be made payable to or name the New Mexico Environment Department as the beneficiary.

(1) Trust Fund. An owner or operator may demonstrate financial assurance for closure, post-closure care, Phase I and Phase II assessments, or corrective action by establishing a trust fund that is worded as shown in forms supplied by the department. This trust fund may also be used as a repository for funds received from other financial assurance mechanisms. The trust fund shall be established as follows:

(a) in the case of a trust fund for closure, post-closure care, or Phase I and Phase II assessments, payments into the trust fund shall be made at least annually over the term of the initial permit or over the remaining life of the facility, whichever is shorter,. In the case of a trust fund for corrective action for known releases, payments into the trust fund shall be made annually over the first half of the estimated length of the corrective action period, or in the time period specified by the permit condition or the secretary's decision. This period is referred to as the pay-in period.

(b) for a trust fund used to demonstrate financial assurance for closure, post-closure care, and Phase I and Phase II assessments, the first payment into the fund shall be at least equal to the current approved cost estimate divided by the number of years in the pay-in period. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current cost estimate (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(c) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least one-half of the current approved cost estimate for corrective action. The amount of subsequent annual payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

where CE is the current remaining cost estimate for corrective action, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(d) In the case of closure, post-closure care, and Phase I and Phase II assessments, the initial payment into the trust fund shall be made prior to the initial receipt of waste. In the case of corrective action, the initial payment into the trust fund shall be made no later than 120 days after the corrective action remedy has been approved by the secretary.

(e) If the owner or operator establishes a trust fund after having used one or more other mechanisms, the initial payment into the trust fund shall be at least equal to the amount that the fund would contain if the trust fund had been established initially and annual payments had been made according to the specifications of Subparagraph (b) of this paragraph.

(f) The owner or operator, or other person authorized to conduct closure, post-closure care, Phase I and Phase II assessments, or corrective action activities may request reimbursement from the trust fund for these expenditures by submitting itemized bills to the secretary. Unless there is an imminent threat to public health, welfare and safety or the environment, or undue economic hardship would delay or cease the required activities, requests for reimbursement shall be granted by the secretary only if the trust fund assets are sufficient to cover the remaining costs of required activities, and if justification and documentation of the expenditure is filed with the secretary and placed in the operating record. Withdrawals of any funds from the trust fund shall be directed in writing to the trustee by the secretary.

(g) The trust fund may be terminated only if the owner or operator substitutes alternate financial assurance as approved in writing by the secretary as specified in this section or if the secretary determines that the owner or operator is no longer required to demonstrate financial assurance.

(h) The trustees shall be a trust company or banks authorized to do business as a trust company in New Mexico under the Trust Company Act, NMSA 1978 Section 58-9-4 or 58-10-35, or authorized under federal law.

(i) The trustee shall file annual reports on the trust fund balance with the department.

(2) Surety Bond Guaranteeing Payment or Performance. An owner or operator may demonstrate financial assurance for closure, post-closure care, Phase I and Phase II assessments, or corrective action by obtaining a surety bond guaranteeing payment into a trust fund or standby trust fund established by the owner or operator. The surety bond and standby trust fund shall be worded as in the forms supplied by the department.

(a) In the case of closure, post-closure care, and Phase I and Phase II assessments, the surety bond shall be effective prior to the initial receipt of waste. In the case of corrective action, the surety bond shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

(b) The owner or operator who uses a surety bond to satisfy its financial assurance requirements must also establish a trust fund or standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the trust fund or standby trust fund in accordance with instructions from the secretary. A standby trust fund must meet all the requirements of the trust fund specified in 20.9.1.906 B (1), except that, until the standby trust fund is funded pursuant to the requirements of this section and the surety agreement, annual payments into the standby trust fund are not required, updating of schedule A to the trust agreement is not required, annual valuation as required by the trust agreement is not required, and notices of non-payment are not required.

(c) Companies providing surety bonds shall be admitted carriers, licensed carriers, or registered carriers of surplus lines of insurance and authorized in the state of New Mexico to do business and be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(d) Except as provided in Paragraph (9) of Subsection B of this Section, the penal sum of the bond shall be in an amount at least equal to the estimated costs to perform the activities assured by the bond.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the secretary determines that the owner or operator has failed to perform as guaranteed by the bond.

(f) Payments made under the terms of the bond shall be deposited by the surety directly into the trust fund or standby trust fund in accordance with instructions by the secretary. No payments shall be made from the trust fund or standby trust fund unless approved in writing by the secretary.

(g) The bond shall remain in effect until the closure and post-closure care or phase I and II assessments or any corrective action for which the bond was acting as financial assurance is certified as complete, or until it is replaced by an alternate financial assurance mechanism.

(3) Irrevocable Standby Letter of Credit. An owner or operator may demonstrate financial assurance for closure, post-closure care, Phase I and Phase II assessments, and corrective action by obtaining an irrevocable standby letter of credit worded as in forms supplied by the the department and payable to a trust fund or standby trust fund established in conformance with Paragraph (1) of this subsection.

(a) In the case of closure, post-closure care, and Phase I and Phase II assessments, the letter of credit shall be effective prior to the initial receipt of waste. In the case of corrective action, the letter of credit shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

(b) The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state of New Mexico agency. The issuing institution shall be authorized to transact business in the state of New Mexico.

(c) A letter from the owner or operator referring to the letter of credit by number, issuing institution, issue date, and providing the name and address of the facility, and the amount of funds assured, shall be submitted to the secretary along with the letter of credit. A copy of the letter from the owner or operator and a copy of the letter of credit shall be placed in the operating record.

(d) The institution issuing the letter of credit shall be an institution with assets of at least one billion dollars (\$1,000,000,000). If the assets of the issuing institution are less than this amount, the letter of credit shall be fully collateralized by the owner or operator.

(e) The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the secretary 120 days in advance of cancellation. If the issuing institution notifies the owner or operator that it plans to cancel the letter of credit, the owner or operator shall obtain alternate financial assurance at least 30 days prior to the cancellation date. If the owner or operator fails to obtain alternate financial assurance in a timely manner, the secretary shall draw funds guaranteed by the letter of credit and place them in the trust fund or standby trust fund.

(f) The trust fund or standby trust fund established by the owner or operator shall be worded as in forms supplied by the department.

(g) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this section or if the owner or operator is notified in writing by the secretary that financial assurance is no longer required.

(h) The owner or operator shall file an originally signed duplicate of the standby trust agreement and originally signed duplicate of the letter of credit with the department.

[8-17-94; 11-30-95]

(4) *Insurance. An owner or operator may demonstrate financial assurance for closure, post-closure care, and Phase I and Phase II assessments by obtaining insurance which conforms to the requirements of 20.9.1.900-999 NMAC. In the case of closure, post-closure care, and Phase I and Phase II assessments, the insurance shall be effective prior to the initial receipt of waste. In the case of corrective action, the insurance shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.*

(a) The insurer shall be authorized to transact the business of insurance in the state of New Mexico and:

(i) have assets of one hundred million dollars (\$100,000,000) or more; or

(ii) be an admitted carrier, a licensed carrier or a registered carrier of surplus lines of insurance or reinsurance in one or more states and have either a surplus of not less than twenty-five million dollars (\$25,000,000) above undiscounted actuarial reserves (including incurred but not reported (IBNR) claims), or have an AM BEST Rating of not less than a B+ or the equivalent rating of other recognized rating companies.

(b) The certificate of insurance shall be worded as in a form supplied by the department.

(c) The insurance policy shall guarantee that funds will be available for closure post-closure care, Phase I and Phase II assessments, and corrective action, as applicable. The policy shall also guarantee that the insurer will, as necessary, provide funds up to the face amount of the policy to persons authorized by the secretary to conduct activities covered by the policy. The face amount of the policy shall be at least equal to the most recent cost estimate for each of the covered activities.

(d) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(e) The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator, and to the secretary, 120 days in advance of cancellation. If the insurer notifies the owner or operator that it plans to cancel the policy, the owner or operator shall obtain alternate financial assurance at least 60 days prior to cancellation of the policy. *Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:*

- (i) the secretary deems the facility abandoned;
- (ii) the permit is terminated or revoked or a new permit is denied;
- (iii) closure is ordered by the secretary or a court of competent jurisdiction;
- (iv) the owner or operator is named a debtor in a voluntary or involuntary bankruptcy

proceeding;

(v) the premium due is paid.

(f) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(g) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted or if the secretary notifies the owner or operator that financial assurance is no longer required.

(h) The owner or operator shall file a copy of the certificate of insurance and insurance policy with the department. The owner or operator shall report any changes in either surplus or rating to the secretary. In addition, a copy of the latest annual rating (if applicable) and a copy of the latest audited financial statements shall be forwarded by the insurer to the owner or operator and the secretary.

[8-17-94; 11-30-95]

(5) Risk Management Pool. An owner or operator may demonstrate financial assurance for closure, post-closure care, Phase I and Phase II assessments, or corrective action by joining a risk management pool. In the case of closure, post-closure care, and Phase I and Phase II assessments, participation in an approved risk management pool shall be effective prior to the initial receipt of waste. In the case of corrective action, participation shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

(a) A risk management pool shall not be an allowed mechanism unless the pool is approved by the secretary. Approved pools shall incorporate any mechanisms or combination of mechanisms in this section and have the following characteristics:

(i) be evidenced by a written contractual agreement among participating private entities or a Joint Powers Agreement among participating governmental entities;

(ii) would not be in violation of the anti-donation clause of the New Mexico State Constitution if funds were used;

(iii) is liquid in nature, allowing for prompt initiation and payment of closure, post-closure care, Phase I and Phase II assessments, or corrective action activities;

(iv) has a defined annual contribution table that provides for timely periodic payments from the risk sharers;

(v) provides for guaranteed and timely supplemental funding in the event of an incident that depletes the assets of the pool;

(vi) has incorporated in its framework a trust fund or standby trust fund that conforms with Paragraph (1) of this subsection.

(b) The risk management pool shall provide an explicit guarantee that funding in the amount of estimated closure, post closure care, phase I and phase II assessments and any corrective action costs will be paid by the pool into the trust fund or standby trust fund established by the facility in the event the owner or operator fails to undertake and complete the covered activities;

(c) The owner or operator shall file a copy of the agreement establishing the risk management pool and the contribution table. The owner operator shall file an original duplicate of the trust fund agreement or standby trust fund agreement, and the guarantee by the pool to pay into the standby trust fund or trust fund for covered activities for the particular facility.

[8-17-94; 11-30-95]

(6) Local Government Financial Test. A local government that satisfies the requirements of Subparagraphs (a) through (c) of this paragraph may demonstrate financial assurance pursuant to subsection B of this section up to the amount specified in Subparagraph (d) of this paragraph for closure, post-closure care, Phase I and Phase II assessments, and corrective action.

(a) Financial component. The local government shall satisfy one of the following:

(i) if the local government has outstanding general obligations bonds, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all outstanding general obligation bonds; or,

(ii) if the local government does not have outstanding general obligation bonds, it must satisfy each of the following financial ratios based on the local government's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(b) The local government shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or appropriate state agency.

(c) A local government is not eligible to assure its obligations using the local government financial test if it: is currently in default on any outstanding general obligation bonds; has an outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; operated at a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years; or receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement. However, the secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the secretary deems the qualification insufficient to warrant disallowance of the test.

(d) Public notice component. The local government shall place a reference to all closure, post-closure care, Phase I and Phase II assessments, and corrective action costs assured through the financial test into its comprehensive annual financial reports (CAFR) and budgets. Upon initial receipt of waste at the facility, the reference must be included in the next CAFR. In the case of existing facilities, the reference must be included prior to the effective date of this part. In the case of closure, post closure care, and the phase I and phase II assessment, and, in the case of corrective action, not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.1.801-899, the permit issuance, or the Secretary's decision. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operation record until insurance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. The reference shall include the amount of each cost estimate and the year in which the local government expects these costs to be incurred. References in the budget must occur as budgeted line items if the activities are to occur in the period covered by the budget, but may appear in a supplemental data section if the activities will not occur until after the period covered by the budget.

(e) Record keeping and reporting requirements.

(i) The local government shall submit the following items to the department: a) a letter signed by the local government's chief financial officer that: i) lists all the current cost estimates covered by a financial test, as described in subparagraph (f) of Paragraph (6) of Subsection B of this Section; ii) provides evidence and certifies that the local government meets the conditions of either subparagraph (a) (b) or (c) of paragraph (6) of subsection B of this section; and iii) certifies that the local government meets the conditions of subparagraphs (d) and (f) of paragraph (6) of subsection B of this section; b) the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits; and c) a report to the local government from the local government's independent certified public

accountant or the appropriate state agency stating that: i) the certified public accountant or state agency has compared the data in the chief financial officer's letter with the owner's or operator's most recent independently audited, year-end financial statements; and ii) in connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted. A copy of the supporting documentation shall also be placed in the facility operating record.

(ii) the items required in subparagraph (e) of paragraph (6) of subsection B of this section must be placed in the facility operating record as follows: in the case of closure, post-closure care, and the Phase I and Phase II assessment, prior to the initial receipt of waste at the facility, or for existing facilities, prior to the effective date of this part; or in the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of 20.9.1.801-899 NMAC, the permit issuance, or the Secretary's decision.

(iii) After the initial placement of the items in the facility's operating record, the local government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the local government's fiscal year.

(iv) The local government owner or operator is no longer required to meet the requirements of subparagraph (e) of paragraph (6) of subsection B of this section when: the owner or operator substitutes alternate financial assurance as specified in subparagraph (e) of paragraph (6) of subsection B of this section; or the owner or operator is released from the requirements of this section in accordance with subsection B of 20.9.1.902 NMAC, subsection C of 20.9.1.903 NMAC, subsection C of 20.9.1.904 NMAC, or subsection C of 20.9.1.905 NMAC.

(v) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the owner or operator's fiscal year, obtain alternative or supplemental financial assurance, and place the required submissions for that assurance in the operating record.

(vi) The secretary, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the secretary finds that the local government no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance that meets the requirements of this section.

(f) Calculation of costs to be assured. The portion of the closure, post-closure care, Phase I and Phase II assessments, and corrective action costs which a local government can assure under Paragraph (6) of Subsection B of this Section is determined as follows:

(i) If the local government does not assure other environmental obligations through a financial test, it may assure closure, post-closure care, Phase I and Phase II assessments, and corrective action costs in an amount not to exceed 43 percent of the local government's total annual revenue;

(ii) If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, it must add those costs to the closure, post-closure care, the Phase I and Phase II assessments, and corrective action costs it seeks to assure under this paragraph; the total shall not exceed 43 percent of the local government's total annual revenue;

(iii) the local government shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in Items (i) and (ii) of this subparagraph.  
[8-17-94]

(7) Local Government Reserve Fund. A local government may demonstrate financial assurance for closure, post-closure care, Phase I and Phase II assessments, and corrective action by establishing a reserve fund within its existing financial accounting system.

(a) The reserve fund shall be created by resolution of the governing body specifying the use of funds only for purposes of closure, post-closure care, Phase I and Phase II assessments, or corrective action for the facility. The reserve fund shall specify that the funds shall be used for closure, post-closure care, phase I and phase II assessments and corrective action costs in compliance with 20.9.1 NMAC and orders issued pursuant to such regulations by the secretary. In the case of closure, post-closure care, and Phase I and Phase II assessments for new facilities, the resolution shall be effective prior to the initial receipt of waste. In the case of corrective action, the resolution shall be effective not later than 120 days after the corrective action remedy has been approved by the secretary. The resolution shall specify withdrawals from the fund will only occur with approval by the secretary. Funding of the reserve fund shall be in conformance with the formulas specified for trust funds in Paragraph (1) of Subsection B of this section. The reserve fund shall be audited annually by the state auditor under the Single Audit Act.

(b) The local government shall file a copy of the resolution with the department. The local government shall file audit reports of the reserve fund annually with the department.  
[8-17-94; 11-30-95]

(8) Local Government Guarantee.

(a) An owner or operator may demonstrate financial assurance for closure, post-closure, Phase I and Phase II assessment, and corrective action, as required by Sections 20.9.1.902-905 NMAC by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in paragraph (6) of subsection B of this section, and must comply with the terms of a written guarantee.

(b) Terms of the written guarantee. The guarantee must be effective prior to the initial receipt of waste, or in the case of existing facilities, prior to the effective date of this part. In the case of closure, post-closure care, or Phase I and Phase II assessments, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of sections 20.9.1.801-899 NMAC, the permit issuance, or the secretary's decision. The guarantee must provide that:

(i) if the owner or operator fails to perform closure, post-closure care, Phase I and Phase II assessments, or corrective action of a facility covered by the guarantee, the guarantor will: perform, or pay a third party to perform, closure, post-closure care, and corrective action as required; or establish a fully funded trust fund as specified in this section in the name of the owner or operator.

(ii) The guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the secretary. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the secretary, as evidenced by the return receipts.

(iii) If a guarantee is canceled, the owner or operator must within 90 days following receipt of the cancellation notice by the owner or operator and the secretary, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the secretary. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record and notify the secretary

(c) Record keeping and reporting.

(i) The owner or operator must place a certified copy of the guarantee along with the items required under subparagraph (e) of paragraph (6) of subsection B of this section into the facility's operating record prior to the initial receipt of waste, or in the case of existing facilities, prior to the effective date of this part. In the case of closure, post-closure care, or Phase I and Phase II assessments, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of sections 20.9.1.801-899 NMAC, the permit issuance, or the Secretary's decision.

(ii) The owner or operator is no longer required to maintain the items specified in subparagraph (b) of paragraph (8) of subsection B of this section when the owner or operator substitutes alternate financial assurance as specified in this section; or the owner or operator is released from the requirements of this

section in accordance with subsection B of 20.9.1.902 NMAC, subsection C of 20.9.1.903 NMAC; subsection C of 20.9.1.904 NMAC, or subsection C of 20.9.1.905 NMAC.

(iii) If a local government guarantor no longer meets the requirements of subparagraph (a) of paragraph (6) of subsection B of this section the owner or operator must, within 90 days following the close of the guarantor's fiscal year obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the secretary. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days

(9) Corporate Financial Test. A private entity that satisfies the financial test requirements of Subparagraphs (a) and (b) of this paragraph may provide a corporate guarantee for financial assurance up to the amounts specified in Subparagraph (c) of this paragraph for closure, post-closure care, Phase I and Phase II assessments, and corrective action.

(a) Financial component.

(i) The owner or operator shall satisfy at least one of the following three conditions: a) a current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; b) a ratio of less than 1.5 comparing total liabilities to net worth; or c) a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator shall be greater than: a) the sum of the current closure, post-closure care, Phase I and Phase II assessments, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million; or b) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided all of the current closure, post-closure care, Phase I and Phase II assessments and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements.

(iii) The owner or operator shall have assets located in the United States amounting to at least the sum of current closure, post-closure care, Phase I and Phase II assessments, corrective action cost estimates, and any other environmental obligations covered by a financial test as described in Subparagraph (c) of this paragraph.

(b) Recordkeeping and reporting requirements.

(i) An owner or operator seeking to demonstrate that it meets the corporate financial test shall file the following items with the department: a) a letter signed by the owner's or operator's chief financial officer that: i) lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities and cost estimates required for any facilities described in Item (ii) of Subparagraph (g) of Paragraph (6) of this subsection; and ii) provides evidence demonstrating that the firm meets the conditions of Subparagraph (a) of this paragraph; b) a copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion shall be cause for disallowance, except that the secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the secretary deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test; c) if the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subitems b) or c) of Item (i) of Subparagraph (a) of this paragraph that are different from data in the audited financial statements referred to in Subitem b) of Item (i) of this subparagraph or any other audited financial statement or data filed with the Securities and Exchange Commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in

accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences; and d) if the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in Subitem b) of Item (ii) of Subparagraph (a) of this paragraph, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(ii) The owner or operator shall meet the requirements of this paragraph (8) unless the owner or operator provides alternate financial assurance that is approved in writing by the secretary or if the secretary notifies him in writing that he is no longer required to provide financial assurance.

(iii) The owner or operator shall satisfy the requirements of the corporate financial test at the close of each fiscal year. If the owner or operator no longer meets the requirements of the test, the owner or operator shall, within 60 days following the close of the owner or operator's fiscal year, obtain alternate financial assurance approved in writing by the secretary.

(iv) The secretary, based on a reasonable belief that the owner or operator may no longer meet the requirements of the corporate financial test, may require the owner or operator to provide reports of its financial condition at any time. If the secretary finds that the owner or operator no longer meets the requirements of the corporate financial test, the owner or operator shall provide alternate financial assurance.

(c) Calculation of costs to be assured. When calculating the current cost estimates for closure, post-closure care, Phase I and Phase II assessments, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a corporate financial test, the owner or operator shall include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if they are assured through a corporate financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

(10) Multiple Financial Mechanisms. An owner or operator may satisfy financial assurance requirements by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in Subsection B of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate approved by the secretary for closure, post-closure care, the Phase I and Phase II assessments, or corrective action, as applicable. The language of the mechanism listed in this section NMAC must ensure that the instruments satisfy the following criteria:

(a) The financial assurance mechanisms must ensure that amount of funds assured is sufficient to cover the cost of closure, post-closure care, Phase I and Phase II assessments, or corrective action for known releases when needed, as applicable;

(b) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(c) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closer and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.1.810 NMAC, until the owner of operation is released from the financial assurance requirements under 20.9.1.902-905 NMAC.

(d) The financial assurance mechanisms must be legally valid, binding, and enforceable under State and Federal law.

20.9.1.907 - 20.9.1.999 [RESERVED.]

20.9.1.1000 MISCELLANEOUS

20.9.1.1001 VARIANCES.

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

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

- (1) contain the name of the owner and operator of the solid waste facility;
- (2) address and telephone number at which interested persons may obtain further information;
- (3) briefly describe for what the variance is being sought and the proposed alternative;
- (4) state the time period for which the variance is sought;

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

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

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

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

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

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

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

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

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

D. No variance shall be granted until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected, and the general public. [1-30-92]

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

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

(2) if the variance is granted on the grounds that it is justified to relieve or prevent hardship of a kind other than that provided for in Paragraph (1) of this subsection, it shall not be granted for more than one year.

F. Any variance granted by the secretary shall be reviewed for consistency with existing federal regulations. [8-17-94]

**20.9.1.1002 EXEMPTIONS.**

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

B. A petition for exemption shall:

(1) state each provision of the Act or this part from which exemption is sought;

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

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

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

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

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

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

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

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

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

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

**20.9.1.1003 SEVERABILITY.** If any provision or application of this part is held invalid by a court of competent jurisdiction, the remainder, or its application to other situations or persons, shall not be affected.

**20.9.1.1004 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve a person of the obligation to comply with other applicable local, state and federal laws.

**20.9.1.1005 SAVINGS CLAUSE.** This part does not apply to pending litigation or affect violations of prior, effective regulations, permits, registrations, closure and post-closure care plans. [

**20.9.1.1006 INTERPRETATION.** This part shall be liberally construed to carry out its purpose.

**20.9.1.1007 SUPERSESION OF PRIOR REGULATIONS.** This part supersedes the Solid Waste Management Regulations, 20 NMAC 9.1, filed October 27, 1995, which superseded Solid Waste Management Regulations, New Mexico Environmental Improvement Board/SWMR-4, filed July 18, 1994. New Mexico Environmental Improvement Board/SWMR-4 superseded the Solid Waste Management Regulations, New Mexico Environmental Improvement Board/SWMR-3, filed December 31, 1991.

**20.9.1.1008 CONTINUING EFFECT OF PRIOR ACTIONS; EXCEPTIONS.**

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

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

C. If a permit application, closure plan, or registration has been submitted to the department prior to the effective date of this Part, the relevant sections of permit application, closure plan or registration requirements under 20 NMAC 9.1.201 - 208, 213, and 501-505 shall remain in effect for that permit, closure plan or registration application. However, all other requirements of this Part shall apply.

**20.9.1.1009 DOCUMENTS.** Copies of all documents cited in this part may be viewed at the department's Solid Waste Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico.

**20.9.1.1010 - 20.9.1.1099 [RESERVED.]**

**20.9.1.1100 - 20.9.1.9999 [RESERVED.]**